Supreme Court No. _____
Court of Appeals No. 31311-5-III

91285-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

THOMAS T. ARANDA,
Defendant/Appellant.

APPEAL FROM THE CHELAN COUNTY SUPERIOR COURT
Honorable Lesley A. Allan, Superior Court Judge

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner, Thomas T. Aranda, is the appellant below and asks this Court to review the decision referred to in Section II.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals, Division III, Commissioner's Ruling filed November 5, 2014, which affirmed his conviction. A copy of the ruling is attached hereto as Appendix A. A copy of the Order Denying Motion to Modify the Commissioner's Ruling filed January 7, 2015, is attached as Appendix B.

III. ISSUES PRESENTED FOR REVIEW

1. Mr. Aranda's guilty plea was not knowing, voluntary and intelligent where boilerplate language was not mentioned or discussed at the plea hearing and his plea was accepted despite uncorrected misinformation regarding the direct consequence of his plea that his offense of first degree rape required an indeterminate sentence consisting of a maximum term of life and a minimum term of confinement.

2. A court lacks statutory authority to impose an additional non-restitution legal financial obligation upon an offender after he has been sentenced.

IV. STATEMENT OF THE CASE

The relevant facts are set forth in Brief of Appellant at 1–7 and in the Commissioner's Ruling at 2. Incorrect and omitted facts in the Commissioner's Ruling are noted in the Argument section. In general, eighteen-year-old Aranda pleaded guilty pursuant to a plea agreement to a

Second Amended Information[1] charging first degree rape and first degree robbery (both while armed with a firearm), first degree burglary, second degree unlawful possession of a firearm and unlawful possession of a controlled substance—psilocybin. Aranda was sixteen-years-old at the time of the crimes and had a ninth grade education[2].

Aranda signed a Statement of Defendant on Plea of Guilty.[3] The statement shows the range or total actual confinement (including 60-month firearm enhancement) for his offense of first degree rape as 222 to 276 months and the maximum term as life.[4] In boilerplate the form also stated:

> "[T]he judge will impose a maximum term of confinement consisting of the statutory maximum of the offense ... and a minimum tern of confinement ... The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody."[5]

The plea judge did not advise Aranda of the indeterminate sentencing required for sex offenses committed after July 12, 2001 or discuss the above-referenced boilerplate at paragraph 6(f) of his statement on plea of guilty or advise him that a life sentence was a possible outcome

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[1] CP 9–12, 13–24. In this summary, citations are made only for additional facts not cited to in the Brief of Appellant.
[2] CP 13.
[3] CP 21.
[4] CP 14.
[5] CP 15.

of pleading guilty to the first degree rape charge. There is no mention in the plea hearing of minimum (or maximum) term of confinement or indeterminate (or determinate) sentencing. 11/17/09 RP *passim.*

The plea judge told Aranda the court was going to be sentencing him to no more than the effective range of 282 to 336 months on the first degree rape charge[6] , the prosecutor's office was recommending 324 months (27 years) and the plea agreement allowed him to ask to be sentenced to the low end of that range (23 and one-half years). The court confirmed with Aranda that he and his attorney read the plea form to each other, he understood it and had signed it.[7] .

The court accepted the pleas and found Aranda guilty as charged, finding he knowingly, voluntarily and intelligently waived his legal rights, was fully advised of the charges and consequences of the charges against him and there was a factual basis for the pleas.

At sentencing the same judge stated he accepted the State's recommendation and imposed "what amounts to a 27-year sentence" on the first degree rape charge. The court imposed a determinate mid-range effective sentence of 324 months. The judgment and sentence accurately

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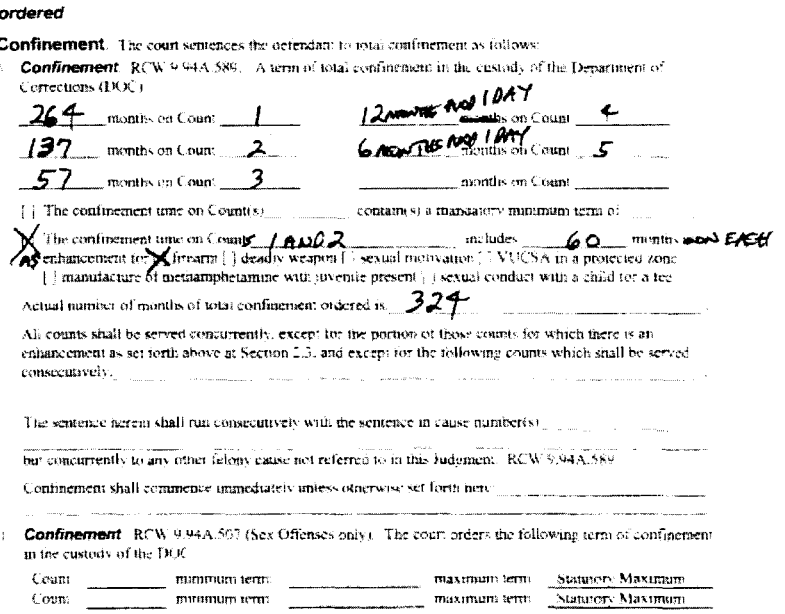
[6] The standard range of 162 to216 months plus 60 months firearm enhancement plus the 60 months firearm enhancement on count 2 that must be served consecutively. 11/17/09 RP 3–4, 10.

reflected the sentencing judge's ruling: actual total confinement of 324 months. The preprinted portions of the judgment form provided for indeterminate sentences imposed under RCW 9.94A.507 were left blank.



It is ordered

4.1 **Confinement**. The court sentences the defendant to total confinement as follows:

(a) ***Confinement*** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

264 months on Count: 1 — 12 MONTHS AND 1 DAY months on Count 4

137 months on Count: 2 — 6 MONTHS AND 1 DAY months on Count 5

57 months on Count: 3 — _____ months on Count _____

[ ] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

[X] The confinement time on Count(s) 1 AND 2 includes 60 months AS EACH enhancement for [X] firearm [ ] deadly weapon [ ] sexual motivation [ ] VUCSA in a protected zone [ ] manufacture of methamphetamine with juvenile present [ ] sexual conduct with a child for a fee

Actual number of months of total confinement ordered is: 324

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

(b) ***Confinement*** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count: _____ minimum term: _____ maximum term: Statutory Maximum

Count: _____ minimum term: _____ maximum term: Statutory Maximum

CP 32–33.

In closing remarks, the court emphasized the sentence, although lengthy, was not a life sentence:

> [THE COURT]: Sir, you will serve a lot of time in prison for these crimes. But unlike as was suggested I think maybe by your sister, *this, because of your young age, does not represent the rest of your life. You will eventually get out of prison* and have the opportunity to show that you mean what you say when you stand here and say that you've changed, that you've learned things and that you want to make better use of your life. *You will have this opportunity* although it will not be coming for [] quite a long time. I hope that *when that day arrives* that you do in fact remember what you said

[7] 11/17/09 RP 19–20.

> as you stood here in this court and show our community that you can be a better person than you were in April of 2008.

1/14/10 RP 33–34 (emphasis added).

Two months after sentencing, an order was entered without hearing. The Agreed Order Clarifying and Amending Judgment and Sentence ordered that "the Judgment and Sentence entered herein on January 14, 2010, is clarified and amended on page 5, section 4.1(b) to reflect that as to count I (first degree rape), the minimum term is 264 months and the maximum term is the statutory maximum of life in prison." CP 48–49.

At sentencing, the court also imposed a total of $1350 in legal financial obligations plus restitution in the amount of $2,308.14. The Judgment and Sentence and Order of Restitution accurately reflected the judge's ruling and were signed by the judge and filed on the date of sentencing, January 17, 2010. 1/14/10 RP 33; CP 29, 34–35, 38, 293–94. The line on the Judgment and Sentence for assessment of "court appointed defense expert and other defense costs" was left blank. CP 34.

Three weeks after sentencing, the court on its own motion entered an "Order Imposing Costs and Fees Associated with Defense". The order imposed $6900 as additional legal financial obligations "for expert costs and fees associated with [Aranda's] defense." 2/8/10 RP 2–4; CP 47. The

order was entered over defense counsel's objection and despite the prosecutor's representation it was "not requesting the court to impose costs associated with these matters because that was not part of the State's plea agreement." 2/3/10 RP 2; 2/8/10 RP 2–4.

V. ARGUMENT IN SUPPORT OF REVIEW

Review should be granted under RAP 13.4(b)(1) and (2) because the decision of the court below is in conflict with its own decisions and those of this Court and other divisions of the Court of Appeals.

1. Mr. Aranda's guilty plea was not knowing, voluntary and intelligent where boilerplate language was not mentioned or discussed at the plea hearing and his plea was accepted despite uncorrected misinformation regarding the direct consequence of his plea that his offense of first degree rape required an indeterminate sentence consisting of a maximum term of life and a minimum term of confinement.

Despite boilerplate language disclosing a required indeterminate sentence for his offense Aranda was affirmatively misinformed. The Commissioner nonetheless ruled the boilerplate language together with generic colloquy that Aranda had read and understood and signed the Statement of Defendant on Plea of Guilty was more than sufficient evidence he was made aware of the terms of the sentence imposed. *Commissioner's Ruling* at 4–5. The superior court incorrectly told Aranda he could not be imprisoned for more than 336 months. 11/17/09 RP 10, 18. This was affirmative misinformation regarding the maximum sentence,

a direct consequence of his plea. *See State v. Mendoza*, 157 Wn.2d 582, 590, 141 P.3d 49 (2006) (length of sentence is direct consequence of plea). Because this misinformation was not corrected but instead was reinforced by all circumstances, Aranda's plea was not voluntary and he should be permitted to withdraw his plea. CrR 4.2.

An error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. *State v. Walsh*, 143 Wn.2d 1, 7–8, 17 P.3d 591 (2001). Due process under the United States and Washington State constitutions requires that a plea of guilty be made knowingly, intelligently and voluntarily. U.S. Const. amend. 14; Wash. Const. art 1 § 3; *PRP of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004), citing *Boykin v. Alabama,* 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *PRP of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A defendant enters a valid plea only if he makes a knowing, voluntary, and intelligent decision based on an understanding of the charge and the consequences. *State v. McDermond,* 112 Wn. App. 239, 243–44, 47 P.3d 600 (2002). A guilty plea is not knowingly made when it is based upon misinformation of sentencing consequences. *Isadore*, 151 Wn.2d at 298, citing *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). A defendant need not

be informed of all possible consequences of his plea, but he must at least be informed of all direct consequences of the plea. *Isadore*, 151 Wn.2d at 298, citing *Ross*, 129 Wn.2d at 284.

A guilty plea is constitutionally involuntary when a defendant is misinformed about a direct consequence of pleading guilty. *State v. Mendoza*, 157 Wn.2d at 584. A plea will be overturned based on defective advice when the advice relates to a direct, as opposed to a collateral, consequence of the plea that materially affects the defendant's decision to plead. *McDermond,* 112 Wn. App. at 247. The possibility of a life sentence is a direct, not a collateral, consequence of pleading guilty. *Id.* at 248.

Because of the constitutional rights waived by a guilty plea, the State bears the burden of ensuring the record of a guilty plea demonstrates the plea was knowingly and voluntarily entered. *Boykin,* 395 U.S. at 242. "The record of a plea hearing or clear and convincing extrinsic evidence must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea." *Wood v. Morris,* 87 Wn.2d 501, 502–03, 554 P.2d 1032 (1976).

In *PRP of Murillo*, 134 Wn. App. 521, 142 P.3d 615 (2006), Division III held that a defendant who was not advised properly of the

requirement of a maximum sentence of life for his offense and of the community custody range of his sentence did not enter a plea knowingly, intelligently or voluntarily. In reaching this conclusion, Division III noted that: (1) although the required sentence was life imprisonment, the court that accepted Murillo's plea "told Mr. Murillo otherwise: 'I guess I can go low [below the standard range minimum sentence], but I cannot go above under the present law'"; (2) "the sentencing court wrote the determinate sentence of 59-1/2 months in the portion of the judgment form used for sentences not subject to [former] RCW 9.94A.712, while leaving blank the portion of the judgment form that related to sentences subject to [former]RCW 9.94A.712"; and (3) misunderstandings regarding the term of community custody and the term of confinement and maximum term of sentence were apparent from colloquy and the written plea agreement. *Murillo*, 134 Wn. App. at 531.

The Commissioner summarily dismissed Aranda's reliance on *Murillo*, finding it factually distinguishable: "Unlike Mr. Aranda, Mr. Murillo was not advised at his plea hearing of the maximum penalty for the crime he was convicted of nor that he would be on community custody for the rest of his life." *Commissioner's Ruling* at 5. The Commissioner disregards that Aranda does not dispute he was told at the plea hearing he

could be on community custody for the rest of his life. Aranda's issue is that he faced and in fact received an indeterminate sentence with a minimum of 324 months of confinement that the ISRB can extend up to the maximum of life imprisonment.

The Commissioner is further in error in concluding there was a factual difference because "Mr. Murillo was not advised at his plea hearing of the maximum penalty for the crime he was convicted of." To the contrary, the plea statement signed by Mr. Murrillo stated a Total Actual Confinement of 51–68 months and a Maximum Term of life imprisonment. *Murillo*, 134 Wn. App. at 525. The information in Aranda's plea statement is essentially identical— Total Actual Confinement of 222 to 276 months and a Maximum Term of life imprisonment. CP 14.

The facts of this case are very similar to those in *Murillo*. As in *Murillo*, Aranda signed a plea agreement which stated in boilerplate language the sentence required by statute for his crime of first degree rape was life imprisonment and the court would impose a minimum term of confinement. CP 15, 21; *accord Murillo*, 134 Wn. App. at 525. Just as in *Murillo*, the court that accepted Aranda's plea told him otherwise. "[*O*]*n the ... longest range* which is on count one, the rape first degree, *your range* [including the two 60 month firearm enhancements] effectively

becomes 282 to 336 months. That's the range that the Court is going to be sentencing you in, on the most serious count. 11/17/09 RP 10 (emphasis added); *accord Murillo*, 134 Wn. App. at 525.

The filled-in portions of his statement on plea of guilty also reflect that Aranda was facing only a determinate sentence. As in *Murillo*, the statement lists his "Total Actual Confinement" as 222–276 months including one 60–month enhancement as well as the additional enhancement attributable to the first degree robbery charge. CP 14; *Murillo*, 134 Wn. App. at 525. The addendum to the statement notes "[t]he effective sentence on this plea is 282-336 months which is the standard range on the rape 1st charge plus its own 60 month firearm enhancement plus the 60 month firearm enhancement on the robbery 1st charge. The two firearm enhancements are consecutive to each other and to the other standard ranges thereby the effective range noted here. (23.5 years to 28 years)." CP 16. And the plea statement similarly reflects a determinate sentence: the "[p]rosecutor will recommend 27 years (324) months" (CP 18) and Aranda is free to ask to be sentenced to the low end of the range, 23 and one- half years. 11/17/98 RP 11; CP 4.

The error that a determinate sentence was the subject of the plea agreement was not corrected, and was presented to Aranda as part of the

consequences of his plea. When the trial court reviewed the plea with Aranda during colloquy, the judge did not correct the determinate sentence misconception—instead, the judge failed to advise Aranda in any way of the statutorily required sentence of life imprisonment with a specified minimum term of confinement and only informed him of the maximum penalty and fine. As in *Murillo*, the court accepted Aranda's plea of guilty without mentioning that he must impose a maximum sentence of life or that a sentence within the standard range would represent only Aranda's minimum term. *Murillo*, 134 Wn. App. at 526.

While the written plea agreement arguably sets forth the law regarding the indeterminate sentence, that alone is not dispositive. *State v. S.M.*, 100 Wn. App. 401, 414–15, 996 P.2d 1111 (2000).

> 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). But a guilty plea is not truly voluntary 'unless the defendant possesses an understanding of the law in relation to the facts.' *In re PRP of Keene*, 95 Wn.2d 203, 209, 622 P.2d 360 (1981) (quoting *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)).

S.M., 100 Wn. App. at 413–14. In *S.M.*, the attorney delegated to his legal assistant and wife the task of explaining the plea agreement. 100 Wn. App. at 405–06. The legal assistant gave S.M. incorrect information about the elements of the offense, the rights he was foregoing, and the consequences

of his plea. *Id.* at 411. His written statement, supposedly providing the factual basis for the plea, gave no indication he understood penetration was an element of the offense of rape of a child. *Id.* at 415. On these facts, the court concluded the record did not establish that S.M.'s plea was voluntary and the lower court erred in denying his motion to withdraw his plea. *Id.* at 415.

Here, while the plea agreement sets forth in boilerplate the law on indeterminate sentencing for those convicted of sex offenses, this is in a separate section from the standard range which is labeled "actual confinement." To the uninitiated this does not make clear the Indeterminate Sentence Review Board does not have to approve release at the end of the end of the standard range sentence. It does not make clear the accused is facing a potential life sentence. This is particularly true because the court, with no correction from either attorney, told Aranda the longest time he could be kept in prison was 336 months. 11/17/09 RP 10, 18. Under indeterminate sentencing for sex offenses, that is patently false. RCW 9.94A.507. Like S.M., Aranda should be permitted to withdraw his plea because he received clearly false information that was crucial to his decision to plead guilty. *S.M.*, 100 Wn. App. at 411.

At the sentencing hearing, the error continued. The State

recommended a determinate sentence, Aranda's attorney asked for a low-end determinate sentence as contemplated by the plea agreement, and the court imposed the determinate sentence of 27 years recommended by the State, to be followed upon Aranda's release by lifetime supervision with the Department of Corrections. 1/14/10 RP 4–6, 13–14, 32. In closing remarks, the court emphasized that the sentence, although lengthy, was not a life sentence and that Aranda would "eventually get out of prison". 1/14/10 RP 33–34. Just as in *Murillo*, the sentencing court wrote the sentence of 264 months on the rape charge in the portion of the judgment form used for sentences not subject to RCW 9.94A.507. It left blank the portion of the judgment form that related to indeterminate sentences subject to RCW 9.94A.507. CP 32–33; *Murillo*, 134 Wn. App. at 527.

From all information in the record, Aranda was misinformed as to his potential life sentence from all directions—the court, the prosecutor and Aranda's attorney[8]. At the time of the plea hearing Aranda was barely eighteen years old and had made an unsuccessful suicide attempt earlier that morning. CP 29, 114. Aranda was not correctly informed of the consequence of his plea of guilty to first degree rape until well after his plea was accepted and nearly two months after sentencing, when an order

was entered that amended the Judgment and Sentence to "reflect that as to count I (first degree rape), the minimum term is 264 months and the maximum term is the statutory maximum of life in prison." CP 48–49.

Criminal rules of procedure impose a duty on the trial courts of this State to ensure that defendant's guilty pleas are knowingly, voluntarily, and intelligently made; CrR 4.2(d) affirmatively imposes this duty. *Murillo*, 134 Wn. App. at 531. That duty was not met here. The court apparently misunderstood the sentencing consequences. The sentence a court will impose is a direct consequence of the plea. *Isadore,* 151 Wn.2d at 298, citing *Miller*, 110 Wn.2d at 531. As in *Murillo,* the judge's advice to Aranda and the written plea agreement reflect this misunderstanding. Aranda's guilty plea was not knowingly, intelligently, and voluntarily made. Manifest injustice of a constitutional magnitude exists, and Aranda must be allowed to withdraw his guilty plea to correct that manifest injustice. *Murillo*, 134 Wn. App. at 531.

2. A court lacks statutory authority to impose an additional non-restitution legal financial obligation upon an offender after he has been sentenced.

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[8] According to the WSBA web-site, Mr. Aranda's attorney, Michael Joseph Platts, is deceased. www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr_ID=6903 (last accessed April 15, 2014).

The Commissioner summarily ruled the trial court "clearly ... had the authority to enter the Agreed Order Clarifying and Amending the Judgment and Sentence" pursuant to RCW 9.94A.760(1) and "[a]lso, not only did the trial judge at the initial sentencing hearing state on the record that expert costs and fees would be addressed at a subsequent hearing, Aranda did not object, and the subsequent order amending the judgment and sentence was an agreed order." *Commissioner's Ruling* at 5.

Aranda respectfully asserts the Commissioner erred. First, the Commissioner refers to the wrong order. The correct order at issue is "Order Imposing Costs and Fees Associated with Defense." CP 47. Second, the order was not agreed and was entered over defense counsel's objection and despite the prosecutor's representation it was "not requesting the court to impose costs associated with these matters because that was not part of the State's plea agreement." 2/3/10 RP 2; 2/8/10 RP 2–4. More importantly, the court failed to comply with statutory requisites in imposing the additional legal financial obligation.

Sentencing is a legislative power, not a judicial power. *State v. Bryan*, 93 Wn.2d 177, 181, 606 P.2d 1228 (1980). The legislature has the power to fix punishment for crimes subject only to the constitutional limitations against excessive fines and cruel punishment. *State v. Mulcare*,

189 Wn. 625, 628, 66 P.2d 360 (1937). It is the function of the legislature and not the judiciary to alter the sentencing process. *State v. Monday*, 85 Wn.2d 906, 909-910, 540 P.2d 416 (1975). A trial court's discretion to impose sentence is limited to what is granted by the legislature, and the court has no inherent power to develop a procedure for imposing a sentence unauthorized by the legislature. *State v. Ammons*, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986). Whether a trial court has exceeded its statutory authority under the Sentencing Reform Act of 1981(SRA) is an issue of law, which is reviewed de novo. *State v. Hale,* 94 Wn. App. 46, 54, 971 P.2d 88 (1999).

Statutory construction is a question of law which is reviewed de novo. *Matter of the Post-sentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782 (2007), citing *Cockle v. Dep't of Labor & Indus.,* 142 Wn.2d 801, 807, 16 P.3d 583 (2001). "A trial court may only impose a sentence that is authorized by statute." *Leach*, 161 Wn.2d at 184, citing *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980). "This court applies unambiguous statutes according to their plain language and construes only ambiguous statutes." *Leach*, 161 Wn.2d at 185, citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). When interpreting a statute, a court must first assume that the legislature means exactly what it

says. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). Thus, if the statute is clear on its face, its meaning is derived from the statutory language alone. *State v. Watson*, 146 Wn.2d 947, 51 P.3d 66 (2002). In *State v. Hall*, the court stated this rule as follows:

> Where the meaning of a statute is clear on its face, this court assumes that the Legislature "means exactly what it says" and we give effect to the plain language without regard to rules of statutory construction. *State v. Warfield*, 103 Wn. App. 152, 156, 5 P.3d 1280 (2000.

State v. Hall, 112 Wn. App. 164, 48 P.3d 350 (2002).

The statute authorizing the superior court to impose legal financial obligations as part of an offender's sentence is RCW 9.94A.760, which provides in pertinent part:

> Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation *as part of the sentence.* The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.

RCW 9.94A.760(1) (emphasis added); *see State v. Hunter*, 102 Wn. App. 630, 9 P.3d 872 (2000).

Here, the trial court did not order the payment of $6,900 as "costs and fees associated with defense" at the time of the January 14, 2010 sentencing. *See* Order, entered February 8, 2010 (CP 47). Although the

court mentioned at the plea hearing[9] and again at sentencing[10] it was considering assessing some of these costs, it did not do so. *See* Judgment and Sentence at CP 34–35. At sentencing, the court also remarked "I don't know that anybody is prepared to do that today. And we may need to set a short hearing to do that." RCW 9.94A.760, however, says the court may order payment of a specific assessment only as part of the sentence. The court did not order it at time of sentencing. The statute does not authorize setting a future hearing to assess an additional legal financial obligation. *C.f.,* the restitution statute, RCW 9.94A.750, which requires restitution to be ordered at time of sentencing but allows for a future hearing to determine the amount.[11]

Nor did the trial court have authority to modify the judgment and sentence to include post-sentence imposition of a legal financial obligation. "After final judgment and sentencing, the court loses jurisdiction to the DOC." *State v. Harkness,* 145 Wn. App. 678, 685, 186 P.3d 1182 (2008). This leaves no room for inherent authority to be exercised by the sentencing court. *State v. Murray*, 118 Wn. App. 518,

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[9] 11/17/09 RP 11–12.
[10] 1/14/10 RP 33.
[11] "If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. ..." RCW 9.94A.750(1).

524, 77 P.3d 1188 (2003). A sentence imposed under the SRA may be modified only if it meets statutory requirements relating directly to the modification of sentences. *Harkness,* 145 Wn. App. at 685 (citing *State v. Shove,* 113 Wn.2d 83, 89, 776 P.2d 132 (1989)). Examples include earned early release time as determined by the DOC, authorized furlough or leave of absence, serious medical issues, clemency or pardon, partial confinement for reestablishment in the community, or reduction in sentence due to prison overpopulation. *Id.* A court commits reversible error when it exceeds its sentencing authority under the SRA. *State v. Hale,* 94 Wn. App. at 53. Here, there was no statutory basis for the post-sentence order, and the court's post-sentence imposition of an additional legal financial obligation exceeded its authority to modify the judgment and sentence. The order is invalid and must be stricken.

VI. CONCLUSION

For the reasons stated, Petitioner respectfully asks this Court to grant review and reverse the decision of the Court of Appeals.

Respectfully submitted on February 6, 2015.

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PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on February 6, 2015, I mailed to the following, by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Mr. Aranda's petition for review:

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The Court of Appeals
of the
State of Washington
Division III

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November 5, 2014

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CASE # 313115
State of Washington v. Thomas T. Aranda
CHELAN COUNTY SUPERIOR COURT No. 081002340

Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling (**December 5, 2014**). Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

c: Honorable Lesley A. Allan, Superior Court Judge
E-Mail

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The Court of Appeals
of the
State of Washington
Division III

NOV -5 2014

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	COMMISSIONER'S RULING
	)	NO. 31311-5-III
v.	)	
	)	
THOMAS T. ARANDA,	)	
	)	
Appellant.	)	

Thomas Aranda appeals his Chelan County Superior Court conviction of first degree rape and the sentence imposed as a result. He contends that: (1) his guilty plea was not knowing, voluntary and intelligent because he was not informed until after sentencing that his offense of first degree rape required an indeterminate sentence consisting of a maximum term of life and a minimum term of confinement; and (2) the court lacked statutory authority to impose an additional non-restitution legal financial obligation upon him after he was sentenced. In his Statement of Additional Grounds for Review, Mr. Aranda raises the issue of the voluntariness of his plea because he was not informed of the maximum sentence with the possibility of a life sentence he could

receive, and he also contends that (1) the plea should be invalid because it was accepted without a factual basis to support it; (2) the plea was not knowingly and voluntarily entered into because he was incompetent and had attempted suicide earlier that morning; and (3) his right to effective assistance of counsel was denied because his attorney failed to raise the issue of competency and request an immediate mental evaluation. The State of Washington's motion on the merits is granted.

On April 25, 2008, Mr. Aranda and four other individuals participated in a home invasion robbery armed with firearms. At the time, the home was occupied by several of the residents. During the commission of the robbery, Mr. Aranda raped one of the residents vaginally, orally, and anally, while holding a gun to her head. On November 17, 2009, he entered a plea of guilty to first degree rape, first degree robbery, first degree burglary, second degree unlawful possession of a firearm, and unlawful possession of a controlled substance, psilocybin. On January 14, 2010, the judgment and sentence was entered at which time the court imposed $1350 in legal financial obligations, but stated that a short hearing may be needed in the future to determine and assess further costs. On March 3, 2010, an agreed order clarifying and amending the judgment and sentence was entered.

Mr. Aranda now appeals.

First, Mr. Aranda contends that his plea was not knowing, voluntary, and intelligent because he was not informed until after sentencing that the offense of first degree rape required an indeterminate sentence consisting of a maximum term of life

and a minimum term of confinement. (Mr. Aranda also raised this issue in his Statement of Additional Grounds for Review).

As set forth in the State's motion on the merits: a defendant's plea of guilty must be knowing, intelligent, and voluntary. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A defendant must be informed of all direct consequences of a plea. *In Re Personal Restraint of Isadore*, 151 Wn.2d 294, 298, 88 P.3d 390 (2004), and "knowledge of the direct consequences of a plea can be satisfied by the plea documents." *State v. Codiga*, 162 Wn.2d 912, 923, 175 P.3d 1082 (2008) (citing *In Re Personal Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001)). Further, due process does not require that the court "orally question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense." *Codiga*, 162 Wn.2d at 923 (citing *In Re Personal Restraint of Keene*, 95 Wn.2d 203, 207, 622 P.2d 360 (1980)). A trial court is not required to orally confirm a defendant's understanding of the various elements of the plea if the court relies on the defendant's plea form, its attached documents, and the defendant's assurances that he reviewed the form with his attorney and understood it. *Codiga*, 162 Wn.2d at 924. A plea is strongly presumed to have been properly entered where the defendant admits to reading, understanding, and signing a plea statement. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). The *Codiga* court stated that there is a strong preference for the enforcement of plea agreements, and that the burden of showing manifest injustice

sufficient to warrant withdrawal of a plea agreement rests with the defendant. *Codiga*, 162 Wn.2d at 929.

Here, Mr. Aranda signed a Statement of Defendant on Plea of Guilty which set forth the standard range for first degree rape as being 22 to 276 months and the maximum term as life. The form also stated that: "the judge will impose a maximum term of confinement . . . and a minimum term of confinement . . . The minimum term of confinement that is imposed may be increased by the indeterminate sentence review board if the board determines by a preponderance of the evidence that it is more likely than not I will commit sex offenses if released from custody." (CP 15) Just above Mr. Aranda's signature on his Statement is the following:

> My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

(CP 21). Mr. Aranda's attorney also acknowledged by signing that he had read and discussed the statement with Mr. Aranda and believed that Mr. Aranda was competent and fully understood the statement.

At the plea hearing the trial judge thoroughly questioned Mr. Aranda about his understanding of his Statement of Defendant on Plea of Guilty, whether he had read through it with his attorney, whether his attorney explained it to him, whether his attorney had answered his questions, whether he had signed it, and then asked if Mr. Aranda had any questions. It was only after this questioning, the court stated that Mr. Aranda knowingly, voluntarily and intelligently chose to waive his rights in the matter and enter

his plea. All of the above is more than sufficient evidence that Mr. Aranda was made aware of the terms of the sentence imposed.

Mr. Aranda's reliance on *In re Personal Restraint Petition of Murillo*, 134 Wn. App. 521, 142 P.3d 615 (2006) is misplaced as it is factually distinguishable. Unlike Mr. Aranda, Mr. Murillo was not advised at his plea hearing of the maximum penalty for the crime he was convicted of nor that he would be on community custody for the rest of his life.

Second, Mr. Aranda contends that the court lacked statutory authority to enter an order imposing costs and fees after he had already been sentenced. This contention is without merit.

RCW 9.94A.760(1) provides:

> Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence *or on a subsequent order to pay*, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.

(emphasis added). Clearly, the trial court had the authority to enter the Agreed Order Clarifying and Amending the Judgment and Sentence. Also, not only did the trial judge at the initial sentencing hearing state on the record that expert costs and fees would be addressed at a subsequent hearing, Mr. Aranda did not object, and the subsequent order amending the judgment and sentence was an agreed order.

In his Statement of Additional Grounds on Review, Mr. Aranda contends that his plea of guilty is invalid because there is no factual basis for it. This contention is without

merit as there is sufficient evidence in the record to support Mr. Aranda's plea of guilty. In his Statement of Defendant on Plea of Guilty, the paragraph 11 box is checked in front of the following statement: "Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea." (CP 21). This specific paragraph was also discussed at the guilty plea hearing. The judge read paragraph 11 and then asked Mr. Aranda if he wanted the judge to rely on the police reports to determine whether there were facts that exist that make Mr. Aranda guilty of these crimes. Mr. Aranda said yes. (RP 18-19). An affidavit of probable cause, statements of victims, and a special report of the Chelan County Sheriff's office are contained in the record before this Court. These documents set forth sufficient facts to establish the elements of the crimes Mr. Aranda entered a plea of guilty to.

Finally, Mr. Aranda contends that his plea was involuntary because he had attempted suicide the day before he entered his plea, the suicide attempt impacted his competency, both the court and his counsel were aware of this, and he received ineffective assistance of counsel because his attorney did not raise this issue nor move for a mental evaluation.

Unfortunately for Mr. Aranda, as the State points out, these claims do not implicate the facial validity of his judgment and sentence and since this appeal was filed more than one year after the judgment and sentence was entered and none of the exceptions listed in RCW 10.73.100 apply, the one-year time bar of RCW 1.73.090(1) operates.

Also, on May 12, 2011, Mr. Aranda moved the trial court to withdraw his guilty plea. The superior court transferred the matter to this Court for consideration as a personal restraint petition. (Appellate Cause Number 30082-0-III). Mr. Aranda raised this same issue in that petition. This Court denied the petition. Mr. Aranda then moved for discretionary review of his petition in the Washington State Supreme Court. On July 3, 2012, the Supreme Court denied discretionary review. That decision is res judicata. Further, this issue will not be considered in accordance with RCW 10.73.140.

The State of Washington's motion on the merits is granted and Mr. Aranda's judgment and sentence is affirmed.

November 5 , 2014.

Joyce J. McCown
COMMISSIONER

Renee S. Townsley
Clerk/Administrator

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January 7, 2015

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CASE # 313115
State of Washington v. Thomas T. Aranda
CHELAN COUNTY SUPERIOR COURT No. 081002340

Dear Counsel:

Enclosed is a copy of the Order Denying Motion to Modify the Commissioner's Ruling of November 5, 2014.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.4(a). A party seeking discretionary review must file a Petition for Review in the Court of Appeals within 30 days after this Court's Order Denying Motion to Modify (may be filed by electronic facsimile transmission). Please serve a copy upon the opposing party and provide proof of such service.

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:mk
c: Thomas Aranda
#336060
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

COURT OF APPEALS, STATE OF WASHINGTON, DIVISION III

STATE OF WASHINGTON,	)	**No. 31311-5-III**
	)	
Respondent,	)	**ORDER DENYING**
	)	**MOTION TO MODIFY**
v.	)	**COMMISSIONER'S RULING**
	)	
THOMAS T. ARANDA,	)	
	)	
Appellant.	)	

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of November 5, 2014, and having considered the records and files herein is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify the Commissioner's Ruling is hereby denied.

DATED: 1/7/15

PANEL: Jj. Brown, Fearing, Lawerence-Berrey

FOR THE COURT:

Laurel H Siddoway, CJ

LAUREL H. SIDDOWAY
CHIEF JUDGE