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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 45392-4-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAMES JOHN CHAMBERS, JR., Appellant

REPLY BRIEF OF APPELLANT

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ORIGINAL

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I. ARGUMENT

COMES NOW the Appellant James John Chambers (henceforth Appellant), by and through his attorney Stephen G. Johnson, to respectfully submit this response to the Brief of Respondent.

A. THE APPELLANT HAS DEMONSTRATED CONCLUSIVELY THAT ACTUAL AND SUBSTANTIAL PREJUDICE EXISTS TO JUSTY HIS GUILTY PLEA WITHDRAWAL.

Appellant's motion to withdraw his plea of guilty is a motion for post-conviction relief, and therefore governed by CrR 7.8. See, CrR 4.2(f). Mistakes, even a "mutual mistake" as described by the Respondent State of Washington (See, Brief of Respondent, page 13), are a basis to seek relief from a final judgment. CrR 7.8(b)(1). As stated by the Respondent, citing State v. Barber, 170 Wn.2d 854, 872-873, 248 P.3d 4947 (2011)—"When a plea agreement rests on a mutual mistake as to the direct consequences of a plea, the plea is involuntary and the defendant may be entitled to withdrawal of the plea." See, Brief of Respondent, page 13.

The Respondent does not deny that the Appellant did not have the requisite Class B conviction that would support a conviction of Unlawful Possession of a Firearm in the First Degree. Nor has the Respondent produced one (1) piece of evidence to prove that the Appellant knew that

he could not be convicted of Unlawful Possession of a Firearm in the First Degree when he made his plea, let alone evidence that he benefited from such a knowing plea (i.e. an In Re Barr¹ plea).

The Respondent does not deny the Appellant's analysis of the prejudice, whether "actual and substantial" or "presumed", caused by his involuntary plea to two (2) counts of Unlawful Possession of a Firearm in the Second Degree. See, Opening Brief of Appellant, §IV-A-2, pages 9-13. Rather, the Respondent continues to blatantly mis-state and mis-quote the Washington State Supreme Court's decision in State v. Chambers, 176 Wn.2d 573, 586-587, 293 P.3d 1185 (2013). The "benefit of the bargain made" and the "precise sentence [Appellant] stipulated to" was an implied exceptional sentence of two hundred forty (240) months under Pierce County Superior Court cause number 99-1-05307-1. Id. The Washington State Supreme Court did not address the Appellant's claims as to Counts III and IV of the judgment and sentence under Pierce County Superior Court cause number 99-1-00817-2. Id.

B. THERE IS NO PREJUDICE TO THE RESPONDENT BY ALLOWING THE APPELLANT TO WITHDRAW HIS GUILTY PLEA.

The Respondent claims that allowing the Appellant to withdraw his plea of guilt under Pierce County Superior Court cause number 99-1-

¹ In Re Barr, 102 Wn.2d 265, 684 P.2d 712 (1984).

00817-2 would work an injustice because “[t]he State no longer has access to evidence that would support the offenses [Appellant] pleaded guilty to in that cause number.” See, Brief of Respondent, page 15. However, Appellant’s withdrawal to his plea of guilty on one cause number works to withdraw his plea of guilty to all of the cases encompassed by the “global plea deal.” See, State v. Chambers, 176 Wn.2d 573, 293 P.3d 1185 (2013); State v. Chambers, 163 Wn.App. 54, 256 P.3d 1283 (Div. II, 2011). This would relieve the State from its forbearance to prosecute a felony murder charge. As was stated at the hearing in Appellant’s motion:

The State is not without remedy either. They have, from the outset, have been hinting that any sort of tampering with the pleas in this case is Mr. Chambers' tampering all of them, and that frees up Mr. Chambers to be exposed to a felony murder charge.

RP 6. The Respondent did not deny that this remedy exists for them. Rather, the Respondent made it clear at oral arguments that it considered the Appellant to be prejudiced (to their benefit) should the Appellant successfully withdraw his plea of guilty:

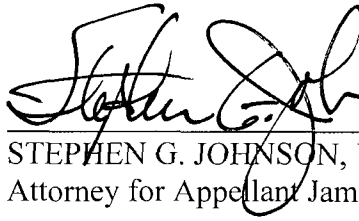
MR. SCHACHT: The State certainly would not characterize the equities favoring the defendant [should Appellant’s plea be withdrawn]. In fact, exactly the opposite.

RP 15. The Respondent, simply, is not prejudiced by the Appellant being granted relief.

II. CONCLUSION

Based upon the foregoing, the Appellant James John Chambers, Jr., respectfully requests that the Court REVERSE the Trial Court's denial of his Motion to Withdraw his Guilty Plea, and MANDATE that the trial court allow the Appellant to withdraw his pleas of guilty.

DATED THIS 26th day of September, 2014.

A handwritten signature in black ink, appearing to read "Stephen G. Johnson", written over a horizontal line. The signature is stylized and cursive.

STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant James John Chambers, Jr.

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named person(s) with a true, correct and complete copy of this document:

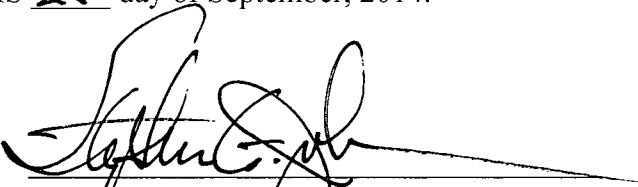
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DATED THIS 26th day of September, 2014.



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Attorney for Appellant James John Chambers, Jr.