Supreme Court No. 95692-8
Court of Appeals No. 75548-0-I

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER HUTTON,

Petitioner.

PETITION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Christopher Hutton, the petitioner, asks this Court to review the Court of Appeals' opinion affirming his judgment and sentence. Mr. Hutton argued on appeal that he should be permitted to withdraw his guilty plea because he was affirmatively misinformed about the consequences of his plea. The Court of Appeals issued its opinion on January 29, 2018. The court denied Mr. Hutton's motion for reconsideration on February 28, 2018. These rulings are attached in the appendix.

B. ISSUES

1. When a defendant is affirmatively misinformed as to a consequence of pleading guilty, the plea is involuntary and the defendant may withdraw it. Mr. Hutton was affirmatively misinformed that he was pleading guilty to a "felony firearm offense" and that the sentencing court would be required to consider whether to make him register as a "felony firearm offender." Did the Court of Appeals err in holding that Mr. Hutton's plea was voluntary? RAP 13.4(b)(1), (4).

2. Before pleading guilty, Mr. Hutton was misinformed that the maximum term sentence he faced was "life." But without an aggravator, this was untrue. The maximum sentence he faced was the high end of the

standard range—416 months. Did the Court of Appeals err by holding that Mr. Hutton's plea was voluntary? RAP 13.4(b)(2), (4).

C. STATEMENT OF THE CASE

The State charged Christopher Hutton with murder in the first degree and unlawful possession of a firearm in the first degree. CP 1-2. The murder charge alleged a firearm enhancement. CP 1.

Mr. Hutton denied the allegations and exercised his right to a trial. CP 6. Following the third day of trial, Mr. Hutton entered into an agreement to plead guilty to first degree murder. RP 681; CP 28-52. The State agreed to dismiss the firearm enhancement and the charge of unlawful possession of a firearm. RP 681; CP 32, 47. Both parties would recommend a sentence of 416 months, the high end of the standard range. CP 32, 47.

Mr. Hutton was affirmatively told that he was not pleading guilty to a "felony firearm offense" and that the maximum sentence he faced was "life." CP 29, 33-34, 48; RP 682-90, 700.

Mr. Hutton entered his guilty plea, which the court accepted. RP 693. The court sentenced Mr. Hutton to 416 months' imprisonment. CP 104. Mr. Hutton appealed the judgment and sentence. CP 117.

On appeal, Mr. Hutton contended that his guilty plea was involuntary because he was affirmatively misinformed about the

consequences of pleading guilty. The Court of Appeals agreed Mr. Hutton was affirmatively misinformed about whether he pleaded guilty to a "felony firearm offense," but nevertheless held his plea was voluntary. The court affirmed. Mr. Hutton seeks this Court's review.

D. ARGUMENT

1. Mr. Hutton was affirmatively misinformed that he was not pleading guilty to a "felony firearm offense." Under this Court's precedent, his plea was involuntary and he is entitled to withdraw the plea. The Court of Appeals' contrary conclusion warrants review.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004); U.S. Const. amend. XIV; Const. art. I, § 3. Under the court rules, a plea must be "made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). Before a guilty plea is accepted, the defendant must be informed of all the "direct" consequences. State v. A.N.J., 168 Wn.2d 91, 113-14, 225 P.3d 956 (2010). "[C]ollateral consequences can be undisclosed," but "a defendant cannot be positively misinformed about the collateral consequences." Id. at 114. Failure to inform a defendant about a direct consequence or affirmative misinformation concerning a collateral consequence renders the plea

involuntary. Id. at 116; State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003).

As the Court of Appeals found, Mr. Hutton pleaded guilty to a "felony firearm offense," which required the sentencing court to consider making Mr. Hutton register as a "felony firearm offender." RCW 9.41.330, .333; slip. op. at 3-5.

Mr. Hutton, however, was told the opposite. He was affirmatively told that his offense was *not* a felony firearm offense and that the judge at sentencing would *not* be required to decide whether to make Mr. Hutton register as a felony firearm offender. CP 33-34; RP 682-90. The Court of Appeals agreed with Mr. Hutton that the trial court affirmatively "misinformed him that it could not require him to register as a felony firearm offender." Slip. op. at 5.

Nevertheless, the Court of Appeals held this did not make Mr. Hutton's plea involuntary. Slip. op. at 6-8. The court reasoned that the requirement that a sentencing court consider imposing a felony firearm registration upon a defendant is a "collateral" consequence of pleading guilty. Slip. op. at 7. The court further reasoned that unless a defendant proves misinformation about a "collateral" consequence materially influenced the choice to plead guilty, the defendant is not entitled to withdrawal. Slip. op. at 8. Because Mr. Hutton had not proved that he

relied on the affirmative misrepresentation in choosing to plead guilty, the court concluded Mr. Hutton was not entitled to withdraw his plea. Slip. op. at 8.

The Court of Appeals failed to recognize that a defendant does not need to prove that a collateral consequence was material to the decision to plead guilty if the defendant was *affirmatively* misled about the collateral consequence.[1] A.N.J., 168 Wn.2d at 114 ("While a defendant cannot be positively misinformed about the collateral consequences, those collateral consequences can be undisclosed without rendering the plea involuntary.") (emphasis added). In A.N.J., this Court held a juvenile defendant was entitled to withdraw his guilty plea to first degree child molestation. A.N.J., 168 Wn.2d at 114, 116-17. The record showed that the defendant had been *affirmatively* told that he could remove the conviction from his record. Id. at 116-17. This was incorrect. Id. This Court reasoned that while the mere failure to advise the defendant that the conviction would remain on his record would not entitle him to withdrawal, the affirmative misinformation entitled him to withdrawal. Id. at 116. Despite the "collateral" nature of the misinformation, the Court did not engage in a

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[1] Mr. Hutton maintains that "firearm offender" designation is a direct consequence. Br. of App. at 8-11; Reply Br. at 4-5. But even if "collateral," the result is the same because Mr. Hutton was affirmatively misled about the consequence.

materiality analysis. Rather, the Court held the affirmative misinformation entitled the defendant to withdrawal. Id. at 117.

In reaching a contrary conclusion, the Court of Appeals relied on its decision in In re Pers. Restraint of Reise, 146 Wn. App. 772, 192 P.3d 949 (2008), an opinion predating A.N.J. Slip. op. at 8. According to Reise, affirmative misinformation about a collateral consequence does not make a plea involuntary unless the defendant proves materiality:

> But affirmative misinformation about a collateral consequence may nevertheless create a manifest injustice if the defendant materially relied on that misinformation when deciding to plead guilty.

Reise, 146 Wn. App. at 787, citing State v. Conley, 121 Wn. App. 280, 285, 87 P.3d 1221 (2004); State v. Stowe, 71 Wn. App. 182, 187-89, 858 P.2d 267 (1993).

There are three problems with this rule. First, it is contrary to A.N.J., which did not apply a "materiality" rule in holding that the defendant was entitled to withdrawal based on an affirmative misrepresentation as to a collateral consequence. A.N.J., 168 Wn.2d at 114-18. The Court of Appeals was bound to apply this Court's precedent even if it conflicts with a Court of Appeals' decision. In re Heidari, 174 Wn.2d 288, 293-94, 274 P.3d 366 (2012); 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006).

Second, the language in Reise is dicta. "A statement is dicta when it is not necessary to the court's decision in a case." Protect the Peninsula's Future v. City of Port Angeles, 175 Wn. App. 201, 215, 304 P.3d 914 (2013). The defendant in Reise did not show he was misinformed about *any consequence* of pleading guilty. Reise, 146 Wn. App. at 788-89. Thus, the rule set out in Reise was not necessary to the court's decision.

Third, the cases cited by Reise in support of the materiality rule do not support the rule, especially given subsequent case law. The first cited case is Conley. Conley is a 2004 opinion from the Court of Appeals applying a defunct rule that, for a plea to be involuntary, a defendant must show materiality for misinformation about *any* consequence, no matter how it is labeled. Conley, 121 Wn. App. at 285 (citing State v. McDermond, 112 Wn. App. 239, 247-48, 47 P.3d 600 (2002)). But this materiality test, as set forth in Conley and McDermond (the case cited by Conley), has been overruled. In re Bradley, 165 Wn.2d 934, 940-41, 205 P.3d 123 (2009) (court does not inquire whether misinformation affected the decision to plead guilty, at least as to direct consequences); Isadore, 151 Wn.2d at 301-02.[2] To the extent the materiality rule could be read to

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[2] This Court has clarified that a defendant must show prejudice if the issue is raised on collateral review. In re Stockwell, 179 Wn.2d 588, 602-03, 316 P.3d 1007 (2014). Mr. Hutton's case is on direct appeal, so this rule does not apply. A defendant may raise the issue concerning the

still apply to "collateral" consequences, that reading is contrary to A.N.J., at least as to *affirmative* misinformation. A.N.J. held that affirmative misrepresentation about a collateral consequence made the defendant's guilty plea involuntary and entitled the defendant to withdrawal, irrespective of materiality. A.N.J., 168 Wn.2d at 114-18.

As for Stowe, the second case cited by Reise, that case concerned a meritorious ineffective assistance of counsel claim. Stowe, 71 Wn. App. at 189. The defendant had been misadvised by his attorney that his military career would not end if he entered an Alford[3] plea. Id. at 184-85. Because the defendant met the two-pronged Strickland[4] test for ineffective assistance of counsel—deficient performance and resulting prejudice—he was entitled to withdraw his plea. Id. at 188-89. Because Stowe concerned a Sixth Amendment ineffective of assistance claim, it does not set a rule that defendant must show materiality before being entitled to withdrawal.

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voluntariness of a plea for the first time on appeal as manifest constitutional error. RAP 2.5(a)(3); State v. Mendoza, 157 Wn.2d 582, 589, 141 P.3d 49 (2006).

[3] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[4] Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

In sum, the Reise materiality rule is not good law. It is in conflict with A.N.J. This Court should grant review to overrule Reise and to reaffirm what it held in A.N.J.: *affirmative* misinformation about a sentencing consequence renders a plea involuntary and entitles a defendant to withdrawal. RAP 13.4(b)(1). This issue will also recur and is therefore a matter of substantial public interest warranting review. RAP 13.4(b)(4). Review is warranted.

2. Mr. Hutton was affirmatively misinformed about the maximum sentence he faced under his plea. For this separate reason, his plea was involuntary. This Court should grant review to resolve a split in the Court of Appeals on what constitutes the "maximum" sentence.

Mr. Hutton was also affirmatively misinformed as to the maximum sentence he faced under his guilty plea. Nevertheless, the Court of Appeals held his plea was voluntary. This reasoning cannot be squared with this Court's precedent. Review should be granted.

The relevant maximum sentence is a direct consequence of a guilty plea. State v. Walsh, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001); State v. Morley, 134 Wn.2d 588, 621, 952 P.2d 167 (1998). A "defendant must be advised of the maximum sentence which could be imposed prior to entry of the guilty plea." State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

In Blakely, the United States Supreme Court recognized the maximum sentence was the "sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely v. Washington, 542 U.S. 296, 301-02, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Importantly, the maximum sentence that may be imposed in a particular case is not the statutory maximum. See id.

Rather, the maximum sentence is the maximum permissible sentence the court could impose as a consequence of the guilty plea. Id. That is the only lawfully available maximum sentence.

In Mr. Hutton's case, the standard range is the maximum possible sentence the court could impose for the conviction. The court has authority to impose a sentence above the standard range only under the strict parameters of RCW 9.94A.535 and RCW 9.94A.537, in addition to the requirements of the state and federal constitutional guarantees of trial by jury and due process of law.

Under RCW 9.94A.537(1), the State is required to give notice it will seek a possible exceptional sentence before the entry of a guilty plea. When not sought by the prosecution, the court is only permitted to impose an exceptional sentence if the increased sentence is based on the enumerated factors in RCW 9.94A.535(2). These factors essentially require egregious criminal history that enables an offender to commit "free

crimes" that go unpunished and renders the standard range to be unduly trivial. RCW 9.94A.535(2). No such facts were present or alleged here.

Mr. Hutton was informed that the crime he pleaded guilty to carried a standard range sentence of 312 to 416 months and a maximum term of "Life years" and a $50,000 fine. CP 29, 48; RP 700.

But here, there were no circumstances which would permit the trial court to impose a sentence above the standard range. Consequently, the "maximum term" was not "Life years" as the plea stated. Rather, the maximum was the top end of the standard range. Mr. Hutton was misinformed of the maximum punishment he faced as a consequence of his guilty plea. State v. Knotek, 136 Wn. App. 412, 149 P.3d 676 (2006).

Knotek is instructive. There, the Court of Appeals acknowledged that before pleading guilty, a defendant needs to understand the "direct consequences of her guilty plea, not the maximum potential sentence if she [or another defendant] went to trial. . . ." Id. at 424 n.8. The Knotek Court agreed that Blakely "reduced the maximum terms of confinement to which the court could sentence Knotek . . . [to] the top end of the standard range[] . . . ." Id. at 425. The top of the standard range was the "effective maximum" for the defendant's plea. Id. Thus, where a defendant is told the maximum sentence is life when in fact the maximum sentence is the

top of the standard range, the defendant is misadvised of the consequences of the plea.[5]

The Criminal Rules do not require a different result. In Kenner, this Court interpreted Criminal Rule 4.2 to require advising the defendant of the statutory maximum sentence established by the legislature. State v. Kennar, 135 Wn. App. 68, 73-76, 143 P.3d 326 (2006). But this rule does not require advisement of the statutory maximum, which may only be applicable to hypothetical other defendants:

> Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

CrR 4.2(d).

Nothing in the rule requires the trial court to inform the defendant of the statutory "maximum." Instead, the rule requires the court to inform the defendant of the "direct consequences" of his plea. A "direct consequence is one that has a definite, immediate and largely automatic

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[5] Knotek concluded the appellant waived the right to challenge her guilty plea because the defendant was later advised that no exceptional sentence was available and, at the time of sentencing, she "clearly understood that Blakely had eliminated the possibility of exceptional life sentences and, thus, had substantially lowered the maximum sentences that the trial court could impose." Knotek, 136 Wn. App. at 426. This was not true in this case.

effect on the range of the defendant's punishment." Bradley, 165 Wn.2d at 939 (internal quotations omitted). It is the applicable maximum sentence, not the hypothetical statutory maximum as set by the legislature.

The Kennar Court also looked to the plea agreement form set forth in CrR 4.2(g) to support its holding. 135 Wn. App. at 74. However, that form also does not state that the statutory maximum term must be held out as the maximum applicable term. See CrR 4.2(g) & Form. Rather, the form indicates the "standard range" sentence and the "maximum term and fine" should be supplied. *Id.* The form provides, in relevant part:

> (b) Each crime with which I am charged carries a maximum sentence, a fine, and a ***Standard Sentence Range*** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1					
2					
3					

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Veh. Hom., see RCW 9.94A.533(7), (P16) Passenger(s) under age

The "maximum term," *i.e.*, the maximum applicable term, is not coextensive with the statutory maximum term that could be applied on other hypothetical defendants.

Without an aggravator, the *statutory* maximum is not a direct consequence of the plea. Knotek, 137 Wn. App. at 424 n.8. Kennar incorrectly assumes the statutory maximum is a direct consequence required by CrR 4.2.

As explained earlier, when a plea agreement is based on affirmative misinformation, the defendant is entitled to withdraw the guilty plea. A.N.J., 168 Wn.2d at 114-18. It matters not whether the misinformation was material to Mr. Hutton's decision to plead guilty. Mendoza, 157 Wn.2d at 590-91. Because Mr. Hutton was affirmatively misinformed of the actual maximum sentence that could be imposed, his plea was involuntary and the Court of Appeals should have remanded with instruction that he be permitted to withdraw it.

The Court of Appeals' decisions in Knotek and Kenner about what constitutes the "maximum" sentence are in conflict. This Court should grant review to resolve split. RAP 13.4(b)(2). The issue is also one of substantial public interest because it will recur. RAP 13.4(b)(4). Review should be granted.

E. CONCLUSION

For the foregoing reasons, Mr. Hutton respectfully requests that this Court review his petition for discretionary review.

Respectfully submitted this 28th day of March, 2018.

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Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER ILANDERS HUTTON, Appellant.	No. 75548-0-I DIVISION ONE UNPUBLISHED OPINION FILED: January 29, 2018

LEACH, J. — Christopher Ilanders Hutton appeals his conviction for first degree murder. He challenges the voluntariness of his guilty plea on two grounds. He claims that he received misinformation about the trial court's authority to require him to register as a felony firearm offender and about the maximum sentence the court could impose. Because the applicable firearm registration requirement is a collateral, and not a direct, consequence of Hutton's guilty plea, misinformation about its application to him did not make his plea involuntary. And the court correctly informed Hutton of the statutory maximum sentence in addition to the standard range sentence. We affirm.

FACTS

On June 11, 2015, Christopher Hutton chased Jaebrione Gary into an open apartment. Hutton pistol-whipped Gary in the head, shoved him to the ground, and shot him three times, killing him. Hutton pleaded guilty to

premeditated murder in the first degree. On July 22, 2016, the trial court sentenced Hutton to 416 months of confinement. Hutton appeals.

STANDARD OF REVIEW

Generally, a party may raise on appeal only those issues raised at the trial court.[1] But an appellant may raise an issue for the first time on appeal if it involves a manifest error affecting a constitutional right.[2] This test, however, presupposes a trial court error. This court must preview the merits of the claimed constitutional violation to determine whether the argument is likely to succeed.[3] Only if an error did occur does this court address whether the error caused actual prejudice and was therefore manifest.[4] Constitutional error is manifest when a defendant's guilty plea is involuntary because he misunderstood the sentencing consequences of his plea.[5]

ANALYSIS

"Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent."[6] A defendant must be informed of the direct consequences of his plea.[7] Otherwise, his plea is involuntary.[8]

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[1] In re Det. of Brown, 154 Wn. App. 116, 121, 225 P.3d 1028 (2010).
[2] RAP 2.5(a)(3).
[3] Brown, 154 Wn. App. at 121-22.
[4] State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007).
[5] State v. Mendoza, 157 Wn.2d 582, 589, 141 P.3d 49 (2006).
[6] In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004).
[7] State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).
[8] State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003).

Registration Requirement for Felony Firearm Offenders

A. The Trial Court Erred in Informing Hutton That the Firearm Offender Registration Requirement Did Not Apply to Him

First, Hutton challenges the voluntariness of his guilty plea based on the fact that the trial court misinformed him that he was not a felony firearm offender and it could not require him to register. We agree with Hutton that he is a felony firearm offender and the court erred in informing him otherwise. But the registration requirement is a collateral consequence of his guilty plea. Thus, the misinformation does not make his plea involuntary.[9]

An individual convicted of a "felony firearm offense" is a "felony firearm offender"[10] A "felony firearm offense" is "[a]ny felony offense if the offender was armed with a firearm in the commission of the offense" in addition to select enumerated offenses.[11] When the legislature first enacted the felony firearm offender statute in 2013, it required that the trial court consider whether to impose the registration requirement in any circumstance in which the offender

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[9] Although Hutton was not prejudiced, a lack of prejudice does not affect the voluntariness of Hutton's plea. "A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision." Isadore, 151 Wn.2d at 302 (declining "to adopt an analysis that requires the appellate court to inquire into the materiality of mandatory community placement in the defendant's subjective decision to plead guilty").

[10] RCW 9.41.010(8).

[11] The remaining felony firearm offenses are any felony offense that violates chapter 9.41 RCW, drive-by shooting, theft of a firearm, and possessing a stolen firearm. RCW 9.41.010(9).

committed a felony firearm offense.[12] But it provided the court with discretion to decide whether to ultimately impose the requirement.[13] The legislature amended the statute in 2016 with an effective date of June 9, 2016. This amendment added subsection (3), which requires the trial court to impose the registration requirement in certain circumstances.[14] Because Hutton pleaded guilty on April 28, 2016, the amendment did not apply to him. Thus, while the trial court had

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[12] LAWS OF 2013, ch. 183, § 3(1); former RCW 9.41.330(1) (2013).

[13] LAWS OF 2013, ch. 183, § 3(1); former RCW 9.41.330(1) (2013).

> (1) On or after July 28, 2013, whenever a defendant in this state is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense, the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement.
>
> (2) In determining whether to require the person to register, the court shall consider all relevant factors including, but not limited to:
>
> (a) The person's criminal history;
>
> (b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and
>
> (c) Evidence of the person's propensity for violence that would likely endanger persons.

[14] LAWS OF 2016, ch. 94, § 1(3); RCW 9.41.330(3).

> (3) When a person is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense that was committed in conjunction with any of the following offenses, the court must impose a requirement that the person comply with the registration requirements of RCW 9.41.333:
>
> (a) An offense involving sexual motivation;
>
> (b) An offense committed against a child under the age of eighteen; or
>
> (c) A serious violent offense.

discretion to decide whether to ultimately require Hutton to register, it did not have discretion to decide whether to consider if it should impose the requirement on Hutton.

Here, Hutton pleaded guilty to first degree murder. In the plea agreement, he stipulated to the facts included in the certification for determination of probable cause and prosecutor's summary. The probable cause statement establishes that he used a firearm to pistol-whip and murder the victim. Consistent with Hutton's argument, because he was "armed with a firearm in the commission of the offense," he committed a felony firearm offense.[15] Thus, RCW 9.41.330(1) required the trial court to consider whether to impose the registration requirement on Hutton.

The record shows, however, that the court did not consider whether to require Hutton to register. In fact, Hutton's guilty plea form shows that the court affirmatively told Hutton that the requirement did not apply to him.[16] The court misinformed him that it could not require him to register as a felony firearm offender. This error, however, does not make Hutton's plea involuntary.

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[15] RCW 9.41.010(9)(e).

[16] Both Hutton and the trial court judge initialed the paragraphs on Hutton's guilty plea form that did not apply to him. The court improperly initialed the paragraph stating that the offense was a felony firearm offense for which it could impose a registration requirement.

B. The Registration Requirement Is a Collateral Consequence of Hutton's Guilty Plea

While a criminal defendant must be informed of all the direct consequences of his plea, he need not be informed of the collateral consequences.[17] "'The distinction between direct and collateral consequences of a plea turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.'"[18] Hutton asserts that the firearm registration requirement under RCW 9.41.330(1) is a direct consequence of his guilty plea because if the court had properly considered whether to impose it, it could have immediately enhanced his punishment. We disagree.

A sentencing condition is immediate if the "'effect on the range of [a] defendant's punishment'" is immediate.[19] For example, our Supreme Court has held that community placement is a direct consequence of a defendant's guilty plea, in part, because it flows immediately from the guilty plea.[20] By contrast, a discretionary habitual criminal proceeding is not immediate because it requires additional proceedings separate from the guilty plea.[21] Here, the trial court could

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[17] State v. Ward, 123 Wn.2d 488, 512, 869 P.2d 1062 (1994).
[18] Ward, 123 Wn.2d at 512 (internal quotation marks omitted) (quoting State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)).
[19] Ross, 129 Wn.2d at 285 (quoting Ward, 123 Wn.2d at 512).
[20] Ross, 129 Wn.2d at 285.
[21] Ross, 129 Wn.2d at 285.

have considered a duty to register under RCW 9.41.330(1) during sentencing or in a separate proceeding. The requirement is therefore not immediate.

The duty to register under RCW 9.41.330(1) is also neither direct nor automatic. In State v. A.N.J.,[22] our Supreme Court declined to decide whether a statutory duty to register as a sex offender is a direct consequence of a plea. It held, however, that the registration obligation is "significant," "automatic," and "known" before a defendant enters his guilty plea. Although the issue remains undecided, this suggests that sex offender registration may be more akin to a direct consequence than a collateral consequence.

By contrast, the requirement to register as a felony firearm offender under RCW 9.41.330(1) is less definite and less automatic of a consequence than sex offender registration. For example, a person convicted of a sex offense must register as a sex offender.[23] But a person convicted of a felony firearm offense must register under RCW 9.41.330(1) only if the trial court exercises its discretion to impose the requirement. Thus, unlike the registration obligation for a sex offender, the registration requirement for a felony firearm offender is neither definite nor automatic. Because the registration requirement is not immediate, definite, and automatic, it is a collateral consequence of Hutton's guilty plea.

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[22] 168 Wn.2d 91, 115, 225 P.3d 956 (2010).
[23] RCW 9A.44.130(1)(a).

Misinformation about a collateral consequence does not make a defendant's guilty plea involuntary.[24] But affirmative misinformation about a collateral consequence may create a manifest injustice and necessitate allowing withdrawal of the plea "if the defendant materially relied on that information when deciding to plead guilty."[25] Hutton, however, does not claim that the court's registration misrepresentation materially influenced his decision to plead guilty. Thus, any misinformation about registration did not make Hutton's plea involuntary and does not constitute manifest constitutional error.

Maximum Sentence

Hutton also challenges the voluntariness of his plea based on his claim that the court misinformed him about the maximum sentence that it could have imposed. The relevant maximum sentence is a direct consequence of a defendant's guilty plea.[26] Here, the court informed Hutton that first degree murder carried a standard range sentence of 312 to 416 months and a maximum statutory term of life and a $50,000 fine. Hutton cites Blakeley v. Washington[27] to support the proposition that the maximum sentence is the "sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Hutton contends that the relevant maximum sentence is

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[24] In re Pers. Restraint of Reise, 146 Wn. App. 772, 787, 192 P.3d 949 (2008).

[25] Reise, 146 Wn. App. at 787.

[26] State v. Weyrich, 163 Wn.2d 554, 557, 182 P.3d 965 (2008).

[27] 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

therefore the high end of the standard sentencing range that is based on the seriousness of the offense and the defendant's offender score, not the statutory maximum sentence for the offense. He maintains that because the trial court informed him of the statutory maximum for first degree murder, it misinformed him of a direct consequence and rendered his plea involuntary.

We rejected this argument in State v. Kennar.[28] "In short, CrR 4.2 requires the trial court to inform a defendant of both the applicable standard sentence range and the maximum sentence for the charged offense as determined by the legislature."[29] "The Washington Supreme Court adopted CrR 4.2 to ensure conformance to the constitutional requirement that a plea of guilty be made voluntarily, intelligently, and knowingly."[30]

This court also explained that Blakely defines "statutory maximum" for sentencing purposes, not for plea-entry purposes.[31] We noted that the standard sentencing range applicable to a defendant at the time of sentencing may be

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[28] 135 Wn. App. 68, 143 P.3d 326 (2006).

[29] Kennar, 135 Wn. App. at 75.

[30] Kennar, 135 Wn. App. at 73.

[31] Kennar, 135 Wn. App. at 75. In Apprendi v. New Jersey, the United States Supreme Court held that for Sixth Amendment purposes, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). In Blakely, the Court clarified that the facts reflected in the verdict or admitted by the defendant dictate the "statutory maximum" for Apprendi purposes. 542 U.S. at 303.

different than that stated in the guilty plea form.[32] For example, the guilty plea form advises the defendant that the sentencing range could change if the defendant is convicted of any new crimes before sentencing or if the court discovers additional criminal history.[33] Thus, the court must advise a defendant of the statutory maximum at the plea-entry stage to ensure that he is fully informed. We follow our decision in Kennar; the fact that the trial court informed Hutton of the statutory maximum is not manifest constitutional error.

CONCLUSION

Hutton fails to show manifest constitutional error. His guilty plea was not involuntary because the court misinformed him about its authority to require him to register as a firearm offender, a collateral consequence of his plea, or because it informed him of the statutory maximum in addition to the maximum applicable term. We affirm.

Leach, J.

WE CONCUR:

Becker, J.

[32] Kennar, 135 Wn. App. at 75-76.
[33] Kennar, 135 Wn. App. at 76.

FILED
2/27/2018
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER ILANDERS HUTTON, Appellant.	No. 75548-0-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Christopher Hutton, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

Leach, J.
Judge

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 75548-0-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: March 28, 2018

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