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No. 97992-8
Court of Appeals No. 78775-6

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AMRO ELTOUM-IBRAHIM,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Amro Eltoum-Ibrahim asks this Court to accept review of the opinion of the Court of Appeals in *State v. Eltoum-Ibrahim*, 78775-6-1, pursuant to RAP 13.4.

B. OPINION BELOW

Mr. Eltoum-Ibrahim appealed his convictions of residential burglary and violation of a no contact order. He noted his guilty plea wrongly stated the maximum penalty he faced was 10 years when, in fact, it was legally impossible for the court to impose any sentence greater than 14 months. He also argued his conviction n couth counts violated double jeopardy.

In an opinion that raises significant constitutional questions, the Court of Appeals rejected his arguments and affirmed.

C. ISSUES PRESENTED

1. A guilty plea violates due process and is invalid if it is not knowing, intelligent, and voluntarily. If a defendant is

misadvised of the direct consequences of a plea, including the applicable maximum sentence for the offense, the resulting plea is not knowing, voluntary and intelligent. Was Mr. Eltoum-Ibrahim's guilty plea invalid where he was erroneously advised that the maximum penalty he faced was ten years when in fact he could not receive a sentence greater than 14 months?

2. Both the Fifth Amendment and article I, section 9 protect a defendant against double jeopardy. Did the trial court violate this protection when it entered convictions for both residential burglary and violation of a no contact order based upon the same underlying conduct?

D. STATEMENT OF THE CASE

In March 2018, police received a report of a residential burglary involving Mr. Eltoum-Ibrahim. CP 6. Although Mr. Eltoum- Ibrahim was a tenant at the apartment, responding officers determined that Mr. Eltoum-Ibrahim was restricted from entering the apartment by a no contact order listing his

wife, Marlin Morse, as the protected party. CP 6. Ms. Morse was out of the country at the time of the incident. *See* CP 6.

Upon arrival, police discovered Mr. Eltoum-Ibrahim was experiencing heart problems and did not know how he got inside the apartment. CP 4. He was transported to Northwest Hospital by ambulance and later booked into the King County Jail. *See* CP 4, 9. The State charged Mr. Eltoum-Ibrahim with residential burglary and misdemeanor violation of a no contact order. CP 1-2.

The parties agreed to a global plea bargain, in which Mr. Eltoum-Ibrahim pleaded guilty to both offenses as charged in exchange for the State's recommendation that Mr. Eltoum-Ibrahim be granted a first time felony offender waiver and released with credit for time served. CP 39; RP 28-29. The sentencing court, however, apparently unpleased with Mr. Eltoum-Ibrahim's allocution, denied the agreed requested waiver, instead imposing the low end standard range of 12 months and one day for the burglary. RP 37-39. The court additionally sentenced Mr. Eltoum-Ibrahim to 364

days for the violation of a no contact order, suspending the jail time but imposing two years of probation, to run consecutive to the felony sentence. CP 64-65.

E. ARGUMENT

1. Mr. Eltoum-Ibrahim's guilty plea was not voluntary as he was misadvised of the maximum sentence.

a. A guilty plea must be knowing and voluntary.

The Fourteenth Amendment's Due Process Clause requires 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); *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006) (citing *In re Personal Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004)). When a person pleads guilty,

> He . . . stands witness against himself and he is shielded by the Fifth Amendment from being compelled to do so – hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial – a waiver of his constitutional right to trial before a jury or a

> judge. Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.

Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970).

A guilty plea cannot be voluntary where the defendant is misadvised of a direct consequence. *State v. Turley*, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A direct consequence is one that has a "definite, immediate and largely automatic effect on the range of the defendant's punishment." *Ross,* 129 Wn.2d at 284 (internal quotation omitted). It is undebatable that the length of a sentence is a direct consequence of a guilty plea. *Mendoza,* 157 Wn.2d at 590, (2006); *State v. Codiga*, 162 Wn.2d 912, 925, 175 P.3d 1082 (2008) ("it seems well-settled that the length of the sentence is a direct consequence of the plea[.]").

Misadvisement regarding the length of sentence renders a plea involuntary even where the true maximum

and resulting sentence are less than that represented in the plea agreement. *Mendoza*, 157 Wn.2d at 591. Moreover, a defendant is not required to show the misinformation was material to his decision to plead guilty:

> We have . . . declined to adopt an analysis that focuses on the materiality of the sentencing consequence to the defendant's subjective decision to plead guilty. . . . .
>
> Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

Id. at 590-91 (internal citations omitted).

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).

b. Mr. Eltoum-Ibrahim was misinformed of the maximum possible sentence in his guilty plea.

The Statement on Plea of Guilty provided:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I	12+-14 Months DOC	N/A	10 years $ 20,000
			years $
			years $

CP 19.

RCW 9A.20.021(a) provides the maximum terms for various degrees of felony convictions. Class B felony offenses, such as residential burglary, may be punished up to ten years in prison. However, as the Supreme Court ruled in *Blakely v. Washington*, 542 U.S. 296, 301-02, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), while a certain term imprisonment may be permitted under RCW 9A.20.021, it is not the statutory maximum sentence for the charged offense. Instead, the Court noted the maximum sentence was "the maximum

sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant."* (Emphasis in the original.) *Id.*

The maximum sentence is the maximum permissible sentence the court could impose as a consequence of the guilty plea. *Id*. Here, the standard range is the maximum possible sentence the court could impose for the offenses of which Mr. Eltoum-Ibrahim was convicted. 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 commit "free crimes" that go unpunished and renders the standard range to be unduly trivial. RCW 9.94A.535(2). Mr. Eltoum-Ibrahim's standard range fully accounted for his criminal history of this nature and an exceptional sentence based on unscored criminal convictions would be unreasonable and unauthorized.

There were no circumstances in Mr. Eltoum-Ibrahim's case which would have permitted the imposition of any sentence above the standard range. Thus, the "maximum term" was not ten years as the plea stated. Instead, the maximum was the top-end of the respective standard range, 14 months. Mr. Eltoum-Ibrahim was misadvised 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), *review denied*, 161 W.2d 1013 (2007).

Knotek is directly on point. There the court acknowledged that before pleading guilty, a defendant needs to understand the "direct consequences of her guilty plea, not

the maximum potential sentence if she went to trial. . . ." *Id.* at 424 n.8. *Knotek* further agreed that *Blakely* "reduced the maximum terms of confinement to which the court could sentence Knotek post-*Blakely* as a result of her pre-*Blakely* plea—[to] the top end of the standard ranges . . . ." *Id*. at 425. Thus, where a defendant is told the maximum sentence is 10 years when in fact it is the 14-month top of the standard range the defendant is misadvised of the consequences of the plea.[1]

Instead of following *Knotek*, the opinion concludes this Court's opinion in *State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008). Opinion at 4-5. *Weyrich*, a *per curiam* case decided without oral argument, was not asked to and did not address the impact of *Blakely*. The Court was not asked to consider whether "the statutory maximum" is that which the verdict or guilty plea permits.

[1] *Knotek*, concluded the appellant waived the right to challenge her guilty plea because the defendant was subsequently 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." *Id*. at 426. In the case at bar, no discussion of *Blakely* ever occurred.

"A direct consequence is one that has a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Bradley*, 165 Wn.2d at 939 (Internal quotations omitted). As *Knotek* recognized, without an aggravator the statutory maximum is not a direct consequence of the plea. 137 Wn. App. at 424 n.8.

The reasoning of *Blakely* and its progeny require a jury finding as to an aggravating factor because that finding alters the maximum punishment – that is without that finding the "maximum" possible penalty is the top of the standard range. At best, the "statutory maximum" is merely theoretical and wholly inapplicable to a case such as Mr. Eltoum-Ibrahim's in which no aggravating factor was charged or agreed to in the plea. A sentence of 10 years for a crime without a charged aggravator legally unavailable. Thus, to tell a person the maximum punishment is 10 years, when in fact that punishment cannot legally apply absolutely misadvises them of the direct consequences of their plea.

A voluntary guilty plea requires a defendant be informed of the consequences of *his* plea, not a hypothetical party pleading guilty to the same offense. *State v. Buckman*, 190 Wn.2d 51, 60, 409 P.3d 193 (2018). The defendant in *Buckman* was informed both of the standard range and that the statutory maximum was a life sentence, which was not true as to Mr. Buckman because he was 17 years old at the time of the offense. *Id*. at 59. In this case, Mr. Eltoum-Ibrahim was informed that the maximum was 10 years – which, while applicable to a hypothetical defendant – was not applicable to Mr. Eltoum-Ibrahim.

Informing a person of a wholly irrelevant statutory cap which cannot apply to them in any way ensures the guilty plea is voluntary or knowing. Indeed, the opposite is true. Informing the defendant of an inapplicable sentence and telling them that it is the maximum sentence they faces when in fact it is not, actually serves to undercut the validity of the plea.

Mr. Eltoum-Ibrahim was not properly informed of the consequences of her plea and she must be permitted to withdraw it. The Court of Appeals opinion is contrary to *Blakely*, *Buckman*, and *Knotek* and presents a significant constitutional issue. This Court should accept review of this claim pursuant to RAP 13.4.

2. Convictions for both the residential burglary and violation of a no contact order violated the constitutional prohibition on double jeopardy.

The trial court violated Mr. Eltoum-Ibrahim's right not to be subjected to double jeopardy when it entered convictions for both the residential burglary and the underlying violation of a no contact order. Both the federal and state constitutions protect an individual against double jeopardy. U.S. Const. amend. V; Const. art. I, § 9. A double jeopardy occurs where a court enters multiple convictions for the same offense. *State v. Womac*, 160 Wn.2d 643, 650, 160 P.3d 40 (2007) (citing *In re Personal Restraint of Percer*, 150 Wn.2d 41, 48-49, 75 P.3d 488 (2003)).

Where a defendant is charged under two criminal statutes, courts look to legislative intent as reflected in the statutory language to determine whether the charged crimes constitute the same offense. *In re Francis*, 170 Wn.2d 517, 523, 242 P.3d 866 (2010) (citing *State v. Freeman*, 153 Wn.2d 765, 770-72, 108 P.3d 753 (2005)).

RCW 9.52.050 provides that "other crimes" committed "in the commission of a burglary" do not merge ("anti-merger statute") and thus do not violate double jeopardy. However, this statute is not applicable in this case as Mr. Eltoum-Ibrahim was not "in the commission of a burglary" when he violated the no contact order. Namely, he did not enter the residence with intent to commit a violation of the no-contact order. Rather, he committed a violation of a single provision of the no contact order when he came within 500 feet of Ms. Morse's home. While the existence of the no contact order arguably rendered his subsequent entry into the home "unlawful" – thereby satisfying the "unlawful entry" component of residential burglary, it did not constitute the

separate intent to commit a violation of the order inside her home.

The extent to which violation of a no-contact order can serve as a predicate offense for a burglary was squarely addressed in *State v. Stinton*, 121 Wn. App. 569, 89 P.3d 717 (2004). The no-contact order in that case – as here – included various, distinct provisions, one of which prohibited Mr. Stinton from coming within a certain proximity to the protected party's residence, and a second provision prohibiting Mr. Stinton from harassing or threatening the protected party. *See id.* at 575. Noting that each provision prohibited "separate and distinct conduct," the court found that the violation of the no-contact order could serve as a predicate ***because*** even after violating the provision of the order prohibiting him from coming onto the premises, Mr. Stinton entered the residence with the intent to violate the separate provision of the order "restraining him from making harassing contact." *Id*. Crucially, *Stinton* explicitly disavowed the idea that the initial violation could serve to support the

burglary, agreeing that "it is improper to prove [Mr. Stinton's] intent to commit a crime therein merely with evidence that he unlawfully entered the premises." *Id.*

It is true that, relying on *Stinton*, *State v. Spencer* went further, finding evidence of entry was sufficient to support a conviction for residential burglary as the violation was a continuous course of conduct. 128 Wn. App. 132, 114 P.3d 1222 (2005). As noted by *State v. Brown*, however, *Spencer* addressed "the elements of the burglary statute, not double jeopardy." 159 Wn. App. 1, 13, 248 P.3d 518 (2010). Additionally, both the plain language of RCW 26.50.110 and caselaw suggest that "the statute aims to punish each violation of the statute, rather than a continuing course of conduct." *Id*. at 12.

The violation of the no-contact order in Mr. Eltoum-Ibrahim's case was singular. The underlying no-contact order contains various provisions, including prohibiting Mr. Eltoum-Ibrahim from coming within 500 feet of Ms. Morse's residence. CP 85-87. *Stinton* suggests that, if Mr. Eltoum-

Ibrahim entered the house with the intent to violate any other provision of the order, that intention would be sufficient to support a residential burglary. Nothing in this case suggests Mr. Eltoum-Ibrahim acted with such intent. Ms. Morse was out of the country when the incident occurred and there is no evidence that Mr. Eltoum-Ibrahim believed she was at the residence, intended to contact her directly, or intended to violate any other provisions of the order. In fact, Mr. Eltoum was in medical distress and did not know how he came to be in the apartment at all. CP 4. The single violation was nevertheless used as the predicate offense to establish the burglary; the court entered multiple convictions, and imposed two, consecutive sentences. These two convictions violated double jeopardy, and the violation of the no contact order must be vacated. *Womac*, 160 Wn.2d at 659 (remedy for double jeopardy violation is to vacate conviction and sentence).

The opinion of the Court of Appeals presents a significant constitutional question and is contrary to *Womac*. This Court should accept review under RAP 13.4.

F. CONCLUSION

Pursuant to RAP 13.4 and for the reasons above, this Court should grant review in this case.

Respectfully submitted this 18th day of December, 2019.

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. AMRO MUSTAFA ELTOUM-IBRAHIM, Appellant.	No. 78775-6-I DIVISION ONE UNPUBLISHED OPINION FILED: November 18, 2019

LEACH, J. — Amro Eltoum-Ibrahim challenges his guilty plea as not voluntary. He claims that the court misinformed him about the maximum sentence he could receive. He also contends that his convictions for violation of a no-contact order and burglary violate his right against double jeopardy. Because the court correctly informed Eltoum-Ibrahim of the standard range sentence and the statutory maximum sentence applicable to him, he fails to establish that he made a misinformed guilty plea. And Washington's burglary antimerger statute allows convictions for both burglary and the predicate crime. So Eltoum-Ibrahim fails to show a double jeopardy violation. We affirm.

BACKGROUND

In mid-March, 2018, Amro Eltoum-Ibrahim pleaded guilty to assault in the fourth degree against his wife.[1] After convicting him, Seattle Municipal Court imposed an order prohibiting him from threatening, contacting his wife, or "knowingly" entering, coming, or remaining "within 500 feet" of her residence.

Five days later, on March 31, 2018, police responded to a call and found Eltoum-Ibrahim inside his wife's apartment. The officers saw the front door heavily "damage[d] and ajar, having been forced open." They arrested Eltoum-Ibrahim on suspicion of burglary. His wife was out of the country at the time.

The State charged Eltoum-Ibrahim with residential burglary with domestic violence and domestic violence misdemeanor violation of a court order. In the prosecutor's summary, the State described the facts of the offense as follows: "Eltoum-Ibrahim broke through the entry door to the apartment of his estranged wife . . . in violation of the post-conviction" no-contact order.

Eltoum-Ibrahim agreed to plead guilty to residential burglary and violation of the court order. The statement he signed described the standard range for the burglary as from 12 months and a day to 14 months' incarceration. It identified any potential enhancements as "N/A." For the "Maximum Time and Fine" possible, it said 10 years and $20,000. The form also included a paragraph that read,

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[1] Eltoum-Ibrahim stipulated to the facts of the State's certification of probable cause and the prosecutor's summary.

> If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase or a mandatory sentence of life imprisonment without possibility of parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this charge is binding on me.
>
> At the guilty plea hearing, the court said,
>
> Count I, that's the felony form, at the bottom of page 2, indicates there that the maximum penalty for this charge is 10 years imprisonment and a $20,000 fine with a standard range, based on your criminal history, from 12 months and a day to 14 months in custody. Count II is a gross misdemeanor, and so carries the maximum penalty of 364 days in custody and a $5,000 fine.

Eltoum-Ibrahim answered, "Yes, Your Honor." The court asked, "Do you understand the penalties for each of the charges?" He answered, "Yes, Your Honor."

The court discussed the sentencing recommendations. It told Eltoum-Ibrahim he could request that the sentence run concurrently to the sentence for a municipal court sentence. After describing the recommendations, the court asked, "Do you understand fully what everybody's position is going to be at the time of sentencing?" Eltoum-Ibrahim replied, "Yes, Your Honor." Finally, the court said, "And do you understand that the judge will listen to that recommendation for each of the charges, but he's under no obligation to follow it, and in the end, can do whatever they feel is appropriate for each matter?" Eltoum-Ibrahim replied, "Yes, Your Honor."

He pleaded guilty to both counts. In his statement, he said that on March 31, 2018, he "unlawfully entered and remained in the dwelling of [his wife] with

intent to commit a crime therein." The trial court imposed a judgment and sentence for both counts. Eltoum-Ibrahim appeals.

ANALYSIS

Eltoum-Ibrahim challenges the validity of his guilty plea and asserts that the judgment and sentence violated double jeopardy. His arguments fail.

Knowing, Intelligent, and Voluntary Plea

Eltoum-Ibrahim contends that his guilty plea was not voluntary because the court misadvised him about the maximum sentence for the offenses. He asks this court to allow him to withdraw his plea.

The Fourteenth Amendment's due process clause requires that a defendant's guilty plea be knowing, voluntary, and intelligent.[2] For a plea to be voluntary, the defendant must be informed of the direct consequences of his plea.[3] CrR 4.2(d) requires that the superior court determine that a plea "is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea" before accepting it. And the court must be "satisfied that there is a factual basis for the plea."[4]

One direct consequence is the length of the sentence the defendant faces.[5] A defendant facing a "more onerous sentence than anticipated" may successfully challenge his plea.[6] Under State v. Weyrich,[7] the trial court must

[2] State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006); Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).
[3] State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003).
[4] CrR 4.2(d).
[5] Mendoza, 157 Wn.2d at 587.
[6] Mendoza, 157 Wn.2d at 587.

inform the defendant of the statutory maximum for the charged crime because it is a direct consequence of a guilty plea.

Eltoum-Ibrahim did not challenge his guilty plea below. Generally, a party may raise on appeal only those issues raised at the trial court.[8] But RAP 2.5(a)(3) allows a party to raise an issue for the first time on appeal if it involves a manifest error affecting a constitutional right. To assert manifest error, the issue before this court must affect the party's constitutional rights, and he must demonstrate that he suffered actual prejudice.[9] To show actual prejudice, the party must make a "'plausible showing . . . that the asserted error had practical and identifiable consequences in the trial of the case.'"[10] If a defendant establishes that his guilty plea was involuntary, the constitutional error is manifest if he also demonstrates that he pleaded guilty because he misunderstood the sentencing consequences of his plea.[11]

Eltoum-Ibrahim had no prior felonies and an offender score of two. The standard range for a class B felony for a person in this category is 12 months plus one day to 14 months.[12] The maximum penalty for a class B felony is 10 years in prison and a $20,000 fine.[13] Eltoum-Ibrahim's plea statement properly described the applicable sentencing range and the maximum statutory penalty.

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[7] 163 Wn.2d 554, 557, 182 P.3d 965 (2008).
[8] In re Det. of Brown, 154 Wn. App. 116, 121, 225 P.3d 1028 (2010).
[9] State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001).
[10] State v. WWJ Corp., 138 Wn.2d 595, 603, 980 P.2d 1257 (1999) (quoting State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992)).
[11] Mendoza, 157 Wn.2d at 589.
[12] RCW 9.94A.510, .515.
[13] RCW 9A.20.021.

So he does not show that the court misinformed him. He entered into the plea agreement voluntarily.

Eltoum-Ibrahim asserts that the guilty plea "contained multiple inconsistent and erroneous statements of the possible maximum penalties" primarily because it provided that no enhancements to the standard range were applicable but also indicated that a mandatory sentence of life in prison "may be required by law." This assertion does not help him. The plea agreement and the court, during the plea hearing, ensured that Eltoum-Ibrahim understood the sentencing range that applied to him. And it informed him of the statutory maximum, as required by Weyrich.

The paragraph in his plea agreement that refers to a potential mandatory sentence of life is not part of the sentencing information. It states that the life sentence might apply if the circumstances changed and he was convicted of new crimes or the court learned of additional criminal history before sentencing. This paragraph notified him that a change in circumstances between his plea and sentencing could change the sentence the court could impose. It did not misinform him of the applicable sentence.

Eltoum-Ibrahim asserts that this court should view State v. Knotek[14] as controlling. But Knotek does not apply for two reasons. First, Division Two decided it before the Washington Supreme Court decided Weyrich, holding that courts must notify a defendant of both the applicable sentencing maximum and

[14] 136 Wn. App. 412, 425, 149 P.3d 676 (2006).

the statutory maximum prior to accepting a guilty plea.[15] Second, in Knotek, the court was considering the impact of a United States Supreme Court's decision issued after the defendant's guilty plea and before sentencing.[16] Here, nothing intervened to change the accuracy of the sentencing information provided to Eltoum-Ibrahim. So Knotek does not help him.

Eltoum-Ibrahim also asserts that State v. Buckman[17] requires this court to allow him to withdraw his plea. Because Buckman was 17 at the time of the crime, the court determined he should have been informed about the statutory maximum that applied to minors, not the one that applied to adults.[18] But, here, the court correctly identified a maximum sentence that applied to Eltoum-Ibrahim as an adult.

Double Jeopardy

Eltoum-Ibrahim asserts that convictions for both residential burglary and violation of the no-contact order violate his right against double jeopardy.

The United States Constitution and the Washington Constitution protect a defendant from double jeopardy.[19] They prohibit the State from punishing an

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[15] Weyrich, 163 Wn.2d at 557. Eltoum-Ibrahim did not discuss or cite to Weyrich.

[16] Knotek, 136 Wn. App. at 425 (discussing Blakely v. Washington, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)).

[17] 190 Wn.2d 51, 59-60, 409 P.3d 193 (2018).

[18] Buckman, 190 Wn.2d at 55-56, 59-60.

[19] U.S. CONST. amend. V; WASH. CONST. art. I, § 9; In re Pers. Restraint of Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004).

offender multiple times for the same offense.[20] Claims of double jeopardy are questions of law that we review de novo.[21]

When a defendant's act supports convictions under two criminal statutes, a court considering a double jeopardy challenge "must determine whether, in light of legislative intent, the charged crimes constitute the same offense."[22] In this analysis, Washington courts first ask whether, "in light of legislative intent, the charged crimes constitute the same offense."[23] Second, if legislative intent is not clear, a court may apply the same-elements test described in Blockburger v. United States.[24] Third, the court may look to the merger doctrine.[25] The merger doctrine

> only applies where the Legislature has clearly indicated that in order to prove a particular degree of crime[,] the State must prove not only that the defendant committed that crime but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes.[26]

The elements of residential burglary include the "intent to commit a crime against a person or property therein" and "ent[ry] or remain[ing] unlawfully in a dwelling other than a vehicle."[27] An antimerger statute applies to burglary. This statute reflects the legislature's expression of its intent that the predicate crime

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[20] State v. Freeman, 153 Wn.2d 765, 770-71, 108 P.3d 753 (2005).
[21] Freeman, 153 Wn.2d at 770.
[22] Orange, 152 Wn.2d at 815.
[23] Freeman, 153 Wn.2d at 770 (quoting Orange, 152 Wn.2d at 815).
[24] 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932); Freeman, 153 Wn.2d at 772.
[25] Freeman, 153 Wn.2d at 772-73.
[26] State v. Frohs, 83 Wn. App. 803, 806, 924 P.2d 384 (1996).
[27] RCW 9A.52.025(1).

and the burglary do not merge.[28] The State may prove the predicate crime against a person required by the residential burglary statute by establishing an offender's violation of a protective order.[29]

Eltoum-Ibrahim pleaded guilty to two crimes as part of his plea agreement with the State. He admitted that he entered his wife's apartment intending to commit a crime. He also admitted that he violated a protective order when he did this. Because the legislature clearly intended burglary not to merge with the underlying criminal conduct, the trial court's judgment and sentence do not violate double jeopardy.

Eltoum-Ibrahim asserts that the antimerger statute does not apply because the record does not establish that he entered the apartment with intent to commit a separate crime. So, he claims, while his entry into the home violated the prohibition from entering his wife's residence and satisfies the "'unlawful entry' component of residential burglary, it did not constitute the separate intent to commit a violation of the order inside her home." He appears to be challenging the evidence supporting his guilty plea. This argument does not help his double jeopardy claim.

He relies on State v. Stinton,[30] a case that did not involve a double jeopardy analysis. In Stinton, Division Two determined that a violation of a no-

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[28] "Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately." RCW 9A.52.050; see State v. Hoyt, 29 Wn. App. 372, 378, 628 P.2d 515 (1981).

[29] State v. Spencer, 128 Wn. App. 132, 140-41, 114 P.3d 1222 (2005).

[30] 121 Wn. App. 569, 89 P.3d 717 (2004).

contact order could also serve as the predicate offense for burglary.[31] The court in Stinton noted that the defendant violated the prohibition against entry and the prohibition against harassment, two separate provisions of the no-contact order.[32] The court did not hold that the State must establish that the defendant violated two provisions of a no-contact order in order to avoid offending double jeopardy with convictions for residential burglary and a violation of a no-contact order.

Also, Eltoum-Ibrahim appears to attack the sufficiency of the evidence of residential burglary supporting the court's acceptance of his plea. This argument does not establish that the two convictions violated double jeopardy. Eltoum-Ibrahim did not challenge the evidentiary support for the court's acceptance of the guilty plea below, and he does not do so explicitly here. He pleaded guilty to intending to commit a crime and to unlawful entry. He violated the no-contact order the moment he entered the 500-foot radius of his wife's apartment. He also broke in, damaged her door, and remained. So even if he intends to challenge the factual basis of his plea, his claim fails.

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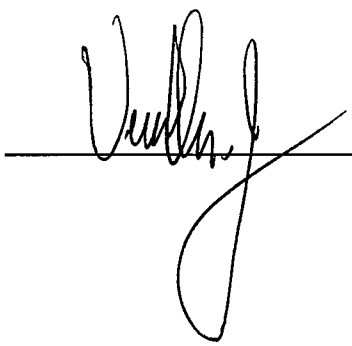
[31] Stinton, 121 Wn. App. at 574-75.
[32] Stinton, 121 Wn. App. at 575.

CONCLUSION

We affirm. The convictions for residential burglary and violation of a no-contact order do not violate double jeopardy.

Leach, J.

WE CONCUR:



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