Supreme Court No. 100156-8
(COA No. 80227-5-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMALL BAKER,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Jamall Baker, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review dated August 2, 2021, pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b). A copy is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. A guilty plea is valid only when it is entered knowingly, intelligently, and voluntarily with an understanding of the sentencing consequences. The Court of Appeals agreed Mr. Baker received incorrect information about multiple sentencing consequences when he pled guilty to first degree murder, but deemed this misadvice harmless. Based on this Court's precedent, is Mr. Baker entitled to withdraw his plea due to the incorrect information he received about the punishment he faced at the time he entered his guilty plea?

2. The right to effective assistance of counsel includes representation by a lawyer who understands the law and accurately advises the accused of the consequences of a guilty plea. Here, defense counsel affirmatively misled Mr. Baker about the sentencing consequences of his plea, including telling

him the wrong length of community custody, mistakenly explaining the potential for a sentence of life without parole, and incorrectly saying his out-of-state burglary convictions count in his offender score even though they rest on a statute that is not legally comparablee. The Court of Appeals recognized most of these errors, and even corrected some of them, but refused to treat counsel's deficient performance as prejudicial. When defense counsel gave incorrect sentencing information, including wrong information about the term of community custody that leads to a longer sentence, does this deficient performance cause prejudice, demonstrate constitutional error, and does the Court of Appeals decision refusing relief conflict with this Court's precedent?

C. STATEMENT OF THE CASE

After telling the police a few different stories, Elmer Sampson insisted Jamall Baker was responsible for killing Nicky Schnoover, minimizing his own role in the shooting. CP 77. Shortly after Mr. Baker's arrest, he had a seizure and went into cardiac arrest at the jail. CP 109. He lost his pulse and spent several days in a coma. *Id.* When he returned to the jail,

he continually asked to see a psychiatrist and yelled about demons. CP 109, 112; Competency Hearing Ex. 1, p. 3.

Over the next two years, the lawyers and court questioned Mr. Baker's competency to stand trial numerous times. 4/2/08RP 3; 1/30/09RP 4, 7; 5/7/09RP 6; 6/26/09RP 3-4. Once the court declared him competent, Mr. Baker entered a guilty plea to the charged offense of first degree murder. 2/19/10RP 54; 3/10/10RP 2. In exchange for his plea, the prosecution agreed not to add a firearm enhancement and not to charge him with other allegations Mr. Sampson made that Mr. Baker was involved in a drive-by shooting. CP 55, 77.

Mr. Baker's trial attorney was Max P. Harrison, WSBA 12243, who passed away several years ago, and is not available to provide a declaration regarding his efforts to represent Mr. Baker as part of the guilty plea advice he gave. *See* Max Harrison Obituary by the Herald (Everett), Sept. 27, 2015, https://www.legacy.com/obituaries/heraldnet/obituary.aspx?n=max-pritchard-harrison&pid=175947519.

When he pled guilty, the judge and attorneys told him that his conviction would be a predicate to trigger a "two-strikes"

sentence of life without the possibility of parole, even though the governing statute limits "two-strikes" life sentences to certain sex offenses and Mr. Baker was not accused of such behavior. 3/10/10RP 7-8. They also told him he would receive a 36-month community custody term even though the community custody statute dictated a range from 24-48 months. 3/10/10RP 5. He agreed his two California burglary convictions would be used in his offender score, even though case law holds that California burglaries are not legally comparable to burglary as defined in Washington. CP 58.

Mr. Baker filed a belated pro se notice of appeal. CP 116, 124. The Court of Appeals granted him permission to file a late notice of appeal after he explained that his lawyer did not accurately informed of his right to appeal and the seizure he suffered when he was arrested caused significant memory problems. Motion to Enlarge Time to File Notice of Appeal, Decl. of Jamall Baker.

E. ARGUMENT

1. The Court of Appeals misapplied precedent holding that a guilty plea may be withdrawn if premised on misadvice about the sentencing consequences of the plea.

a. A guilty plea is not constitutionally valid when premised on incorrect information about the sentencing consequences of conviction.

Due process requires that an accused person understands a guilty plea's consequences and enters the plea knowingly and voluntarily. *State v. A.N.J.,* 168 Wn.2d 91, 117, 225 P.3d 956 (2010); *Boykin v. Alabama,* 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); U.S. Const. amend. XIV.

"A guilty plea is not knowingly made when it is based on misinformation regarding sentencing consequences." *In re Pers. Restraint of Quinn*, 154 Wn. App. 816, 835-36, 226 P.3d 208 (2010); *see also State v. Wakefield,* 130 Wn.2d 464, 472, 925 P.2d 183 (1996) ("At all times, the defendant must understand the consequences of pleading guilty"); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988), *overruled on other grounds State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011) ("A defendant

must understand the sentencing consequences for a guilty plea to be valid").

b. Mr. Baker was not accurately advised of the plea's consequences.

At the time Mr. Baker pled guilty, he was misinformed that his plea would subject him to an automatic sentence of life without parole if convicted of one more strike offense, as the Court of Appeals agreed. Slip op. at 5. He was informed that he faced a mandatory 36 months of community custody, when he in fact faced a term of 24 to 48 months, as the Court of Appeals acknowledged. Slip op. at 6. He was misinformed that his two prior convictions in California for burglary were comparable to Washington burglaries and increased his offender score, as case law holds. *See State v. Thomas*, 135 Wn. App. 474, 478, 486, 144 P.3d 1178 (2006). This misinformation undermines the intelligence and voluntariness necessary for his plea to satisfy due process.

The Court of Appeals agreed the court and attorneys were wrong when they told Mr. Baker his guilty plea fell under the "two-strike" life sentence law and one additional conviction for a

strike-eligible offense would result in a mandatory sentence of life without the possibility of parole. Slip op. at 5. But the Court of Appeals brushed aside this misadvice as collateral, since it did not change the sentence he was serving. *Id.*

The Court of Appeals also recognized the court and attorneys were wrong when they told Mr. Baker he faced 36 months of community custody when in fact, he faced a range of 24 to 48 months. Slip op. at 6-7. But despite acknowledging this misadvice, and the change in the law that requires Mr. Baker receive a term that can be 24 months or 48 months, the Court of Appeals remanded the case for Mr. Baker to receive a new term of community custody and refused to limit this term to 36 months or less, to avoid prejudice. Slip op. at 9 n.1.

Thus, the Court of Appeals decision expressly allows Mr. Baker to receive more punishment than he was told he would receive while refusing to treat this error as relevant to the validity of his guilty plea. Slip op. at 9 n.1.

c. Mr. Baker is entitled to withdraw his guilty plea because he is now subjected to additional punishment he was never advised of when he pled guilty.

In *Quinn*, the Court of Appeals ruled that misadvice about the imposition of community custody undermines the validity of a guilty plea because it is punishment that flows directly from the plea. 154 Wn. App. at 837. Because the petitioner in *Quinn* was affirmatively misadvised about the length of community custody he faced, he "was misinformed about the consequences of pleading guilty. Therefore, his guilty plea was not knowingly, intelligently, and voluntarily made. He is entitled to withdraw it." *Id*. at 841.

This Court similarly ruled that misadvice about the length or existence of community custody terms is a basis to withdraw a guilty plea in *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003), and *State v. Ross*, 129 Wn.2d 279, 285-87, 916 P.2d 405 (1996). Community custody "imposes significant restrictions on a defendant's constitutional freedoms." *Ross*, 129 Wn.2d at 286. When the plea that is being enforced is not the plea to which the defendant agreed due to incorrect information

about community custody, the plea is not intelligent and voluntary. *Id.* at 288.

By recognizing that at the least, Mr. Baker was not accurately informed of the community custody that will be enforced against him, and that he was misadvised of the sentencing consequences of his conviction in several instances, but refusing any relief, the Court of Appeals decision is contrary to this Court's precedent, conflicts with other Court of Appeals decisions, and merits review.

2. Counsel's inaccurate legal advice that forms the basis of a guilty plea constitutes ineffective assistance of counsel.

When a person "enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S. Ct. 366, 369, 88 L. Ed. 2d 203 (1985) (internal citation omitted); U.S. Const. amends. VI, XIV; Const. art. I, § 22. Defense counsel must accurately inform the accused of the sentencing consequences of the charges. *Padilla v. Kentucky*, 559 U.S. 356, 373, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

Counsel's failure to research the operative sentencing laws and accurately explain the consequences of pleading guilty undermines the validity of a guilty plea if there is a reasonable probability that counsel's incorrect advice affected the outcome. *Lafler v. Cooper*, 566 U.S. 156, 163, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012).

"An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland." *Hinton v. Alabama*, 571 U.S. 263, 274, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014)..

Defense counsel erroneously insisted that Mr. Baker's plea triggered a mandatory sentence of life without parole if he was convicted of another strike offense and misadvised him about the length of community custody that applied to him. 3/10/10RP 5, 7. He told him he faced a flat 36-month term of community custody when this statute did not apply to him, and he in fact faces a discretionary 24 to 48 months of community custody. 3/10/10RP 1, 5; *In re Pers. Restraint of Alston*, 7 Wn.

App. 2d 462, 464, 434 P.3d 1066 (2019); former RCW 9.94A.701 (2006).

In addition, counsel arranged a guilty plea that included California burglary convictions that subjected him to a higher standard range. CP 58. Yet case law holds that California defines burglary in a broader manner than Washington, rendering this offense not legally comparable. *Thomas*, 135 Wn. App. at 478, 486. "In Washington, the entry must be independently unlawful," unlike burglary in California. *Id*. California also includes a broader range of property as subject to a burglary prosecution. *Id*. at 478.

When an out of state conviction rests on a broader legal definition, it is not legally comparable and may not increase a person's punishment. *See In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 257, 111 P.3d 837 (2005) (explaining that without legal comparability, factual comparability cannot be proven if the defendant lacked "incentive" to challenge critical facts).

Despite published case law in existence at the time of Mr. Baker's conviction plainly stating the broader nature of California's burglary statute, defense counsel agreed Mr.

Baker's California burglary convictions counted in his offender score. Counsel did not contest the comparability of two prior California burglary convictions.

This deficient performance could not have been strategic or tactical. The prosecution explained it had no choice but to recommend a higher sentence for Mr. Baker than his co-defendant because Mr. Baker had criminal history requiring a higher offender score than his co-defendant. 3/30/10RP 66. This elevated standard range was not based on some joint or agreed effort to give Mr. Baker more time. *Id*.

Counsel's failure to know the law is presumptively deficient and leads to clear prejudice by requiring a higher standard range and more significantly more punishment. An ineffective assistance of counsel claim requires only a reasonable probability of a different result. *In re Pers. Restraint of Crace*, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012).

This Court should grant review due to the Court of Appeals failure to accurately access counsel's deficient performance in obtaining a guilty plea that results in Mr. Baker serving a sentence longer than he should be legally eligible for,

which readily satisfies the possible prejudice required to establish ineffective assistance of counsel.

F. CONCLUSION

Based on the foregoing, Petitioner Jamall Baker respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 31st day of August 2021.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAMALL SHONREE BAKER, Appellant.	No. 80227-5-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Jamall Baker pleaded guilty to first degree murder in 2010 after being found competent to stand trial. He appealed his conviction almost a decade later, contending that cognitive impairments and memory loss had affected his understanding of his right to appeal. We granted his motion to enlarge the time to appeal. Because we find his guilty plea was knowing and voluntary, we affirm but remand for Baker to be resentenced under the 24 to 48 month community custody range in effect at the time of his crime and to strike some of the community custody provisions and legal financial obligations.

FACTS

In February 2008, Baker was arrested for the murder of Nicky Schoonover. He was then brought to the emergency room for an overdose after apparently ingesting multiple substances around the time of his arrest. In April, the court ordered Baker to be evaluated by Western State Hospital for competency. A psychologist at Western State Hospital ultimately evaluated Baker three times, and an independent psychologist also evaluated Baker in

January 2010. Both psychologists concluded that although Baker suffered from mental illness, he was competent to stand trial. On February 19, 2010, the court ordered that Baker was competent.

In March 2010, Baker pleaded guilty to one count of murder in the first degree. Before entering his plea, Baker was informed that this was his first strike under the "two strikes law" and that if he was convicted of one additional crime that counted as a strike, he would be subject to a sentence of life without the possibility of release. He was also informed he would face 36 months of community custody. As part of his plea, Baker stipulated that his two prior California burglary convictions were comparable to Washington crimes, making them admissible for purposes of his offender score.

The court accepted Baker's plea and sentenced him to 325 months. The court ordered 36 months of community custody and imposed various conditions, and it ordered Baker to pay a $100 crime lab fee, community custody supervision costs, and interest on all legal financial obligations. Baker appeals.

ANALYSIS

Baker challenges the validity of his plea agreement. He contends that his plea was not knowing, intelligent, and voluntary because he was misinformed about the sentencing consequences, and he contends that this misinformation constituted ineffective assistance of counsel. He also challenges his community custody term and several community custody conditions and legal financial obligations imposed by the trial court.

Validity of Guilty Plea

Baker first contends that his plea was invalid because misinformation about Washington's three strikes policy, the community custody term he was facing, and the inclusion of his out-of-state offenses in his offender score rendered his plea involuntary. We disagree. Baker also contends that we should consider this claim in light of his "fragile mental state" at the time. However, Baker does not appeal the court's findings, based on four psychological reports, that he was competent. Accordingly, we treat his competence as a verity on appeal. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

To be valid, a guilty plea must be knowing, voluntary, and intelligent. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006); see also CrR 4.2(d). "A plea is knowing and voluntary only when the person pleading guilty understands the plea's consequences, including possible sentencing consequences." State v. Buckman, 190 Wn.2d 51, 59, 409 P.3d 193 (2018). There is a strong public interest in the enforcement of voluntarily and intelligently made plea agreements. State v. Codiga, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008).

In analyzing whether a defendant was informed of the consequences of their plea, we distinguish between direct and collateral consequences of the plea by asking "'whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.'" State v. A.N.J., 168 Wn.2d 91, 114, 225 P.3d 956 (2010) (internal quotation marks omitted) (quoting State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). On direct

appeal, "a defendant who is misinformed of a direct consequence of pleading guilty is not required to show the information was material to his decision to plead guilty" to have their plea withdrawn. Mendoza, 157 Wn.2d at 589. However, misinformation about a collateral consequence will invalidate a plea only if the defendant shows that they "materially relied on that misinformation when deciding to plead guilty." In re Pers. Restraint of Reise, 146 Wn. App. 772, 787, 192 P.3d 949 (2008).

Furthermore, a defendant can establish that a guilty plea was involuntary or unintelligent where they relied on inadequate assistance from their attorney. State v. Sandoval, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). To establish ineffective assistance of counsel, the defendant must show "first, objectively unreasonable performance, and second, prejudice to the defendant." Sandoval, 171 Wn.2d at 169. "'The reasonableness of counsel's performance is to be evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances.'" In re Pers. Restraint of Davis, 152 Wn.2d 647, 673, 101 P.3d 1 (2004) (quoting Kimmelman v. Morrison, 477 U.S. 365, 384, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986)).

1. Strike Advisement

Baker first contends that his plea is invalid because he was misinformed about the three strikes law. Before entering his guilty plea, the court and the attorneys advised Baker that this was a first strike under the two strikes law. In actuality, Baker's conviction was the first of three strikes because his crime did

not trigger the two strikes provision. Former RCW 9.94A.030(29)(a), (33)(a)-(b) (2006); RCW 9.94A.570.

Because the court and the lawyers misstated the strikes law, Baker was clearly misinformed about a sentencing consequence. However, whether he had one strike or two strikes remaining is a collateral consequence of his sentencing, because the sentencing effect depends on possible future crimes rather than being "'definite, immediate and largely automatic.'" A.N.J., 168 Wn.2d at 114 (internal quotation marks omitted) (quoting Barton, 93 Wn.2d at 305). Because Baker does not contend that he "materially relied on that misinformation when deciding to plead guilty," this misinformation about a collateral consequence does not render his guilty plea invalid. Reise, 146 Wn. App. at 787.

Similarly, Baker does not establish ineffective assistance of counsel requiring a withdrawal of the plea. While the misinformation from his counsel was objectively unreasonable and deficient assistance, Baker does not allege that he was prejudiced by this deficient assistance. Thus, Baker's plea is not invalidated by the erroneous strike advisement.

Baker disagrees and contends that Padilla v. Kentucky, 559 U.S. 356, 365-66, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), rejected the distinction between direct and collateral consequences. However, Padilla specifically addressed ineffective assistance of counsel claims in the context of deportation as a consequence of conviction. Padilla, 559 U.S. at 365. Furthermore, even after Padilla, a defendant still must show prejudice to prevail on an ineffective

assistance of counsel claim. Sandoval, 171 Wn.2d at 169. Padilla therefore does not change our analysis.

2. Community Custody Term

Baker next contends that misinformation about his community custody term renders his plea invalid.

"Whenever any criminal or penal statute shall be amended . . . all offenses committed or penalties . . . incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment . . . , unless a contrary intention is expressly declared in the amendatory . . . act." RCW 10.01.040. Under the statute in effect at the time of the crime in 2008, Baker faced a range of 24 to 48 months of community custody. Former RCW 9.94A.715(1) (2006); former RCW 9.94A.030(41) (2006) (classifying murder in the first degree as a serious violent offense); former WAC 437-20-010 (2007). However, in 2009, the legislature amended the law to impose a fixed 36-month community custody term. LAWS OF 2009, ch. 375, § 5. The legislature expressly provided that this amendment would "appl[y] retroactively and prospectively." LAWS OF 2009, ch. 375, § 20. In State v. Snedden, 166 Wn. App. 541, 544-45, 271 P.3d 298 (2012), we affirmed that the amendment applied retroactively because the legislature expressed its intention that it would do so. However, in State v. Coombes, 191 Wn. App. 241, 253, 361 P.3d 270 (2015), we held that this was an unconstitutional ex post facto law and that therefore a defendant who committed a crime before the amendment needed to be sentenced under the discretionary range.

Here, Baker was accurately informed about the law as it existed at the time of his sentencing. See State v. Kinsey, noted at 98 Wn. App. 1024, 1999 WL 1101259, at *3. (because "Kinsey was misinformed as to the meaning of the law *as it existed at the time of his plea*," there was "no unfairness or impracticality" in determining that plea was invalid on basis of later case explaining this meaning (emphasis added)). Thus, Baker's plea is not involuntary on this basis. Nor does his attorney's explanation of the law constitute ineffective assistance of counsel because it was not defective advice to describe the law as it existed. State v. Butler, 17 Wn. App. 666, 675, 564 P.2d 828 (1977) (legal advice "within the range of competence required of attorneys representing defendants in criminal cases" does not render plea involuntary).

3. Inclusion of Out-of-State Burglaries

Baker next contends that he was misadvised about the comparability of his out-of-state burglaries. However, the record does not support this conclusion.

"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). As part of his plea agreement, Baker "affirmatively acknowledge[d]" that his California burglary convictions were comparable to Washington burglaries and therefore would count in his offender score. He also agreed that "[a]ny challenge . . . to the criminal history or scoring will constitute a breach" of his plea agreement.

Baker contends that he was misinformed and given ineffective assistance of counsel because he was told that the California burglary convictions counted

in his offender score. However, he makes no citation to the record that indicates he was misinformed. To the contrary, the record indicates that he agreed to their inclusion as part of a deal that involved the State's agreement to forego charging Baker with a firearm enhancement as well as five separate additional crimes. The court then properly sentenced Baker to the standard range based on Baker's stipulation that his offenses were comparable. State v. Foster, 140 Wn. App. 266, 276, 166 P.3d 726 (2007) (defendant's stipulation that out-of-state conviction was comparable relieved the State of its burden to prove comparability). Without any evidence that Baker was misinformed about the nature of the deal he was accepting, we cannot conclude that his plea was invalid. Similarly, he cannot overcome the "strong presumption that counsel was effective" in stipulating to the comparability of these convictions when this decision was part of an agreement that brought significant benefit to Baker. Foster, 140 Wn. App. at 273.

We conclude that none of Baker's asserted errors render his plea invalid.

Community Custody Term

Baker challenges the length of his community custody term. As discussed above, Baker is constitutionally entitled to be sentenced under the 24 to 48 month community custody range in effect at the time of his crime. The State concedes, and we agree, that on remand the court must resentence Baker in accordance with the law in effect at the time of the crime. In re Pers. Restraint of

Alston, 7 Wn. App. 2d 462, 472, 434 P.3d 1066 (2019).[1]

Community Custody Conditions

Baker next challenges several of the conditions of his community custody. We address these in turn.

1. Alcoholics Anonymous/Narcotics Anonymous Requirement

The court ordered Baker to attend Alcoholics Anonymous or Narcotics Anonymous meetings as part of his community custody. Baker contends that this order violates the establishment clause of the First Amendment to the United States Constitution because these programs are religious. While we have held that mandating attendance at such a program would violate the establishment clause, we did so when presented with evidence that these programs were religious. In re Pers. Restraint of Garcia, 106 Wn. App. 625, 630, 24 P.3d 1091, 33 P.3d 750 (2001). Here, there is no information about these programs in the record, and we are not equipped to take judicial notice that these programs are universally religious today. See ER 201 (explaining when a court may take judicial notice). Accordingly, we do not strike this requirement.

2. Drug Areas

The court's community custody order directed Baker to "[s]tay out of drug areas as defined by the supervising Community Corrections Officer." The State

[1] Baker contends in passing that he must be sentenced to 36 months or fewer on remand but does not cite to any case supporting this. "We will not consider an inadequately briefed argument." Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011). However, we note that after a remand, "a more severe sentence establishes a rebuttable presumption of vindictiveness," violating the defendant's due process. State v. Franklin, 56 Wn. App. 915, 920, 786 P.2d 795 (1989).

concedes, and we agree, that this is unconstitutionally vague. On remand, the condition must either be stricken or clarified. See State v. Irwin, 191 Wn. App. 644, 652, 655, 364 P.3d 830 (2015) (striking condition barring defendant from "'frequent[ing] areas where minor children are known to congregate, as defined by the'" supervising corrections officer, because without clarifying language or an illustrative list, condition was unconstitutionally vague).

3. Possession and Consumption of Alcohol

Baker next challenges the community custody provision directing him not to "purchase, possess[,] or consume alcohol" and not to "frequent establishments where alcohol is the chief commodity for sale." The statute in effect at the time permitted the court to prohibit the consumption of alcohol as a condition of community custody, but the State concedes that the additional requirements related to alcohol needed to be crime related.[2] Former RCW 9.94A.505(8) (2006) (permitting crime-related prohibitions and affirmative conditions); former RCW 9.94A.700(5)(d) (2003) (permitting prohibition on alcohol consumption). Because the court entered no findings that the crime was alcohol-related, the conditions other than alcohol consumption must be stricken.

[2] The State contends we should not address Baker's contentions that certain community custody provisions are not crime-related because he did not object to these provisions at sentencing. While we have declined to consider arguments that conditions are not crime-related where the defendant agreed to the conditions, State v. Casimiro, 8 Wn. App. 2d 245, 249, 438 P.3d 137, review denied, 193 Wn.2d 1029 (2019), generally, erroneous sentences may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Here, Baker did not agree to the State's sentencing recommendation as part of his plea agreement, and we consider all of his challenges to community custody conditions.

4. Substance Abuse Treatment

The court ordered Baker to participate in substance abuse treatment as directed by the corrections officer. This provision was authorized under former RCW 9.94A.700(5)(e) (2003) as a crime-related provision. However, the court left blank a box indicating that a chemical dependency contributed to Baker's crime. On remand, the court should enter this finding or strike the condition.

5. Mental Health Treatment

The court also ordered Baker to participate in mental health treatment. Under former RCW 9.94A.505(9) (2006), "[t]he court may order an offender . . . to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person . . . and that this condition is likely to have influenced the offense." The court did not enter findings to this effect. On remand, the court should do so or strike the condition.

6. Drug Paraphernalia

Finally, the court prohibited Baker from "possess[ing] drug paraphernalia." In State v. Sanchez Valencia, 169 Wn.2d 782, 794-95, 239 P.3d 1059 (2010), the Washington Supreme Court held that a provision barring the possession of "'any paraphernalia'" was void for vagueness and noted that "'an inventive probation officer could envision any common place item as possible for use as drug paraphernalia.'" Similarly, we hold that this condition is void for vagueness and direct the trial court to strike or clarify the condition on remand.

Legal Financial Obligations

Finally, Baker contends that the court erred by imposing crime lab fees, interest on nonrestitution legal financial obligations, and community custody supervision fees. Baker is indigent. At sentencing, the trial court indicated that it did not wish to impose any additional financial obligations beyond the victim penalty assessment, restitution, DNA (deoxyribonucleic acid) fee, and crime lab fee. Crime lab fees and nonrestitution interest may no longer be imposed on an indigent defendant. RCW 10.01.160(3); RCW 43.43.690; RCW 3.50.100(4)(b). Community custody supervision fees are discretionary legal financial obligations. RCW 9.94A.703(2). Accordingly, the court should strike these costs on remand. State v. Dillon, 12 Wn. App. 2d 133, 152, 456 P.3d 1199, review denied, 195 Wn.2d 1022 (2020).

We affirm but remand for resentencing.

WE CONCUR:

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. 80227-5-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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