No. 102325-1
COA No. 56569-2-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.
NICOLE M. WILLYARD,

Appellant.

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

The Honorable John C. Skinder, Judge
Cause No. 03-1-00645-2

ANSWER TO PETITION FOR REVIEW

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2. Whether review is warranted under RAP 13.4(b) where the Court of Appeals properly recognized a distinction between a nonexistent crime and an existent crime that is later determined to be invalid.

3. Whether the Court of Appeals properly followed this Court's precedent regarding the analysis of indivisible pleas and whether review of that issue is appropriate where the Court of Appeals found that the determination was irrelevant to the outcome of this case.

B. STATEMENT OF THE CASE

The petitioner, Nicole Willyard was charged with unlawful possession of a controlled substance for an incident that occurred in April of 2003. CP 2. In an amended information, the prosecutor added a count of bail

jumping pursuant to former RCW 9A.76.170. CP 3. Willyard pled guilty to the bail jumping charge on October 21, 2003. CP 13. In exchange for the plea, the State agreed to recommend a sentence of 14 months, concurrent with charges in the Thurston County cause number 03-1-01829-9, and agreed to dismiss the charge of unlawful possession of a controlled substance. CP 15.

On the judgment and sentence, Thurston County cause number 03-1-01829-9, unlawful possession of a controlled substance was listed as an "other current conviction listed under different cause numbers used in calculating the offender score." CP 5. Willyard was sentenced pursuant to the agreement to a term of 14 months concurrent with cause number 03-1-01829-9. CP 7-8.

Almost 18 years later, in July of 2021, Willyard filed a motion for relief from judgment pursuant to. CP 21-29. Counsel for Willyard later filed a motion to withdraw guilty

plea pursuant to CrR 7.8. CP 51-58. The motion argued that the plea to bail jumping was indivisible with Willyard's pleas to unlawful possession of a controlled substance and obstructing in cause number 03-1-00645-2. CP 55-56. The State's response addressed each of the cause numbers and acknowledged that State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), rendered the judgment in cause number 03-1-01829-9 facially invalid. CP 84.

The trial court considered Willyard's motions in 03-1-01829-9 and 03-1-00645-1 during the same hearing. RP 1.[1] In response to the defense claim that the plea was to an unconstitutional and invalid crime, the trial court noted

> Not when the plea was accepted. I understand your argument that you are now looking back from 2021 back at 2003. But in 2003 it was a crime, there was a plea, it was accepted by the court. There is nothing to indicated in any way, shape, or form it wasn't.

[1] The Verbatim Report of Proceedings for this case is the same as the Verbatim Proceedings from No. 56579-0-II and covers the hearing that occurred December 20, 2021.

RP 9. Defense counsel analogized the effect of the Blake decision to "rotting wood behind the drywall" in a house that is later discovered by kids punching a hole in the wall, to argue that the plea was invalid at the time it was entered. RP 11.

The trial court responded,

> You know, our State Supreme Court isn't kids punching a hole in the drywall. They are the top jurists in our state that have gone through an analysis and have reached a legal conclusion that changes the understanding of not just that court but the history of jurisprudence in the State of Washington.

RP 11.

The trial court asked defense counsel how withdrawal of the guilty pleas to obstructing and bail jumping was a just outcome stating,

> How is that a just outcome to come to the Court 18 years after the fact and say now that the plea should be withdrawn based upon a court case from 2021, and now the remedy, the equitable remedy of the court, is to allow withdrawal of pleas in two separate cause numbers which ultimately would end the case

> in both of those cases based on the passage of time? How is that appropriate, just, equitable, whatever the term you want to use?

RP 13. The prosecutor argued that the appropriate remedy was to vacate the unlawful possession conviction and argued that the defense proposed remedy was unjust. RP 16.

The trial court noted that the issue was whether there was an appropriate basis to allow Willyard to withdraw her pleas and ruled,

> I don't find that there is. And I say that based on going through the case law I just don't find it. And if I did, I would agree that with your attorney's argument that, if the Court got to that point, then that argument about things being a package deal, indivisible plea agreement, that analysis then comes to bear. But I don't find that you carry the burden to show that withdrawal of a guilty plea is the right legal appropriate remedy.

RP 22. The trial court found that the "possession of methamphetamine charge" should be vacated and dismissed. RP 22; CP 61-68. The trial court then noted,

> *State v. Blake* is an historic decision. Our case law I think is being redeveloped again to deal with new and continuing issues that really flow from *State v. Blake*. But in the Court's view, you haven't satisfied that test for when withdrawal of a plea is appropriate.

RP 23.

The Court of Appeals held that Willyard's motion to withdraw her guilty plea was time barred and that the trial court should have transferred the motion to the court of appeals as a personal restraint petition (PRP). State v. Willyard, No. 56569-2-II (Unpublished Opinion), at 2. The Court of Appeals noted that the only conviction in this cause number was for bail jumping, therefore, "the time bar exception for a constitutionally invalid statute does not apply to Willyard's motion." Unpublished Opinion, at 8.

The Court of Appeals also noted that Blake did not invalidate bail jumping convictions, therefore, Blake did not constitute a significant change in the law material to this case which qualified as an exception to the time bar. Id. at

9. The Court of Appeals also addressed Willyard's argument that the plea in this case was indivisible from the plea in cause number 03-1-01829-9, citing to State v. Olsen, 26 Wn.App.2d. 722, 530 P.3d 249 (2023) (holding that constitutional invalidity of unlawful possession of a controlled substance conviction entitled offender to an order vacating the conviction but not withdrawing the plea). Unpublished Opinion, at 11-12. The Court noted that Willyard had not shown that she was entitled to withdraw her guilty plea even if indivisible, but then noted that the record did not show that the bail jumping plea was indivisible from her plea to unlawful possession of a controlled substance. Id. at 12.

Willyard now seeks review of that decision.

C. ARGUMENT

A petition for review will be accepted by this Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Willyard argues that the Court of Appeals' reliance on Olsen conflicts with prior precedent regarding nonexistent crimes, the finding that Blake is not material to a decision other than UPCS conflicts with prior precedent, and that the Court of Appeals' decision regarding indivisible pleas illustrates an ambiguity in the law. None of those reasons provide a basis upon which review should be accepted.

1. The Court of Appeals properly held that the motion to withdraw plea in this matter was time barred.

The only proper issue before the trial court was the facial invalidity created by Blake which was limited to the inclusion of the offense in 03-1-01829-9 in the offender score calculation in this case.

RCW 10.73.090(1) provides that no collateral attack on a conviction may be brought more than one year after the judgment becomes final, providing that the judgment is valid on its face and rendered by a court of competent jurisdiction. RCW 10.73.090(3) defines "final" as being the later of the date the decision is filed with the trial court, the date that the appellate court enters a mandate or the date that the United States Supreme Court denies a timely petition for certiorari. RCW 10.73.090(3).

The time bar is mandatory, unless one of the exceptions in RCW 10.73.100 applies. In re the Pers. Restraint of Bonds, 165 Wn.2d 135, 140, 196 P.3d 672 (2008). RCW 10.73.100 provides a list of six exceptions to the one-year time limit. A claim that a plea was involuntary

due to misinformation does not fall within the exception to the one-year time bar. In re Pers. Restraint of Snively, 180 Wn.2d 28, 320 P.3d 1107 (2014). Facial invalidity is not a "super exception" to the one-year time limit. In re Pers. Restraint of Adams, 178 Wn.2d 417, 309 P.3d 451 (2013). The existence of a facial invalidity only authorizes the court to address the facial invalidity. *Id*. at 425. The court is precluded from considering other time barred claims. Snively, at 28 (community placement ordered for indecent liberties properly struck from the judgment and sentence, but the facial invalidity did not allow the defendant to pursue his otherwise time barred claim to withdraw his guilty plea on the grounds he was misadvised of the community custody term); In re Pers. Restraint of West, 154 Wn.2d 204, 215, 110 P.3d 1122 (2005) (correcting an erroneous portion of a sentence does not affect the finality of those portions of the judgment and sentence what was correct and valid when imposed).

The situation that was before the trial court in this situation is similar to that in In re Pers. Restraint of Smalls, 182 Wn. App. 381, 335 P.3d 381 (2014), *review denied*, 182 Wn.2d 1015 (2015). In that case, the defendant pled guilty to murder and assault. In a collateral attack, the defendant argued that an invalidity in his assault conviction opened the door to withdrawal of his plea on both crimes. Id. at 384. As the State did with the UPCS charge in this case, the State conceded the invalidity in the assault conviction. Id. at 384. Division I of this Court held that "because [Smalls] identifies no facial error relating to his murder conviction, RCW 10.73.090(1) bars this challenge. Small's sole remedy, which, he has not requested, is correction of his sentence for this conviction." Id. at 384.

As was the case in Smalls, the invalidity of the UPCS count in Willyard's other case does not create a facial invalidity in the bail jumping conviction in this cause number. For that reason, the only appropriate remedy

before the trial court was to vacate the controlled substance conviction as was done by the trial court. The State's concession that there was a facial invalidity in the controlled substance charge did not open the door to Willyard's motion to withdraw her plea with regard to the bail jumping. The only appropriate remedy in this case would be resentencing due to the inclusion of the UPCS in the offender score, however, due to the passage of time, the entire sentence had been served, rendering any question of resentencing for the bail jumping charge both inappropriate and moot. In re Personal Restraint of Cross, 99 Wn.2d 373, 376-377, 662 P.2d 828 (1983); State v. Harris, 148 Wn. App. 22, 26-27, 197 P.3d 1206 (2008).

The decision of the Court of Appeals finding that the motion in this case, where the only conviction on the face of the judgment and sentence was for bail jumping, was time barred, was correct. That decision does not conflict with prior precedent from this Court. In In re Pers. Restraint

of Yung-Cheng Tsai, 183 Wn.2d 91, 105-107, 351 P.3d 138 (2015), this Court held that *Padilla v. Kentucky*, was a significant change in the law for purposes of RCW 10.73.100(6). The decision is not related to Willyard's plea to bail jumping. Importantly, the case involved a failure of defense counsel to correctly advise of immigration consequences at the time of the plea. The situation is distinguishable from *Blake*, where the only proper advice at the time of the plea would be to note that unlawful possession of a controlled substance existed. Moreover, the Court of Appeals noted the potential defect in the offender score, following this Court's decision in Snively, at 32. Unpublished Opinion, at 9-10, n.6. There is no basis upon which review should be accepted.

2. The Court of Appeals correctly noted the distinction between an existent crime, later determined to be invalidated, and a crime that was non-existent at the time of a plea.

"Due process requires that a guilty plea may be accepted only upon a showing the accused understands the nature of the charge and enters the plea intelligently and voluntarily." State v. A.N.J., 168 Wn.2d 91, 117, 225 P.3d 956 (2010). A plea is knowing and voluntary only when the person pleading guilty understands the plea's consequences, including possible sentencing consequences. In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 594-95, 316 P.3d 1007 (2014). A guilty plea may be considered involuntary when it is based on misinformation regarding a direct consequence of the plea, which includes the statutory maximum and the applicable standard sentence range. State v. Kennar, 135 Wn. App. 68, 74-75, 143 P.3d 326 (2006). When a guilty plea is based on misinformation regarding a direct consequence of the plea, the defendant may move to withdraw the plea based on involuntariness. State v. Weyrich, 163 Wn.2d 554, 557, 182 P.3d 965 (2008). The defendant

bears the burden of establishing that their guilty plea was invalid. State v. Easterlin, 159 Wn.2d 203, 209, 149 P.3d 366 (2006).

However, post plea changes in the law do not render a plea involuntary. Brady v. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L.Ed.2d 747 (1970) ("[A] voluntary plea of guilty intelligently made in light of then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise.") Whether a plea is voluntary is determined by ascertaining whether the defendant was sufficiently informed of the direct consequences of the plea that existed *at the time* of the plea. State v. Lamb, 175 Wn.2d 121, 129, 285 P.3d 27, 31 (2012). In *Lamb,* a defendant pleaded guilty to second degree burglary. Lamb, at 124. At the time, Lamb's juvenile adjudications did not result in the termination of his right to bear firearms. Id. The legislature later amended the law prohibiting possession by persons

adjudicated guilty of crimes of violence, including second degree burglary. Id. at 124-25. The court held that failure to advise Lamb of the loss of the right to possess firearms does not render his plea involuntary as the loss of the right was not, at the time of the plea, a consequence of a plea of guilty. Id. at 129.

If a motion for withdrawal of plea is made after judgment, it shall be governed by CrR 7.8, which states that a court "may relieve a party from a final judgment" for several reasons including mistake, newly discovered evidence, fraud, a void judgment, or any other reason justifying relief." Stockwell, at 595. A motion to withdraw a plea after judgment is a collateral attack. State v. Buckman, 190 Wn.2d 51, 60, 409 P.3d 193 (2018). On collateral review, the petitioner must show not only error, but also actual and substantial prejudice. Id. at 65. Specifically, the defendant must "show that a rational person in their circumstances would have declined to plead guilty and

would more likely than not have gone to trial." Id. at 58. A bare allegation that a petitioner would not have pleaded guilty if he had known all of the consequences of the plea is not sufficient to establish prejudice. Id. at 67.

In Buckman, the Court held that when the trial court misinformed Buckman of a statutory maximum sentence of the possibility of life in prison rather than 114 months for a juvenile, this misinformation rendered Buckman's plea involuntary. Id. at 60. However, despite demonstrating error, the court denied Buckman's motion to withdraw his plea as he could not prove prejudice. A claim that had he "been correctly informed … he would never have pled guilty" was not enough to show that were it not for the constitutional error, a rational person in his situation would more likely than not have rejected the plea and proceeded to trial. *Cf* Lee v. United States, 137 S. Ct. 1958, 1963, 198 L. Ed. 2d 476 (2017) (finding it was not irrational for a defendant facing possible deportation to proceed to trial in

the face of overwhelming evidence of guilt, where defendant amply established—and the government did not dispute—that "deportation was the determinative issue" in defendant's decision-making).

At the time of Willyard's plea, Willyard was properly advised of all of the consequences. Even this Court had ruled that RCW 69.50.4013 was a valid charge and those rulings were controlling at the time of Olsen's guilty pleas. *See*, State v. Cleppe, 96 Wn.2d 373, 635 P.2d 435 (1981); State v. Bradshaw, 152 Wn.2d 528, 98 P.3d 1190 (2004). In In re Pers. Restraint of Newlun, 158 Wn. App. 28, 35, 240 P.3d 795 (2010), the Court of Appeals considered whether a guilty plea to two counts of identity theft was involuntary because, subsequent to the guilty plea, this Court clarified the unit of prosecution for the offense in State v. Leyda, 157 Wn.2d 335, 337-338, 138 P.3d 610 (2006). Citing to the United States Supreme Court decision in Brady, the Newlun Court found that "a voluntary

plea of guilty intelligently made in light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise." Newlun, at 35, *citing*, United States v. Broce, 488 U.S. 563, 572, 109 S. Ct. 757, 102 L.Ed.2d 927 (1989), *quoting*, Brady, at 757.

This Court has adopted the rationale of Brady, stating, "Whether a plea is voluntary is determined by ascertaining whether the defendant was sufficiently informed of the direct consequences of the plea that existed *at the time* of the plea." Lamb, at 129. The fact that this Court found that convictions based on unlawful possession of a controlled substance are unconstitutional in Blake, at 170, many years after Willyard's guilty plea, does not render her plea involuntary, misinformed or otherwise invalid. This is especially true in this case, where the plea was to the charge of bail jumping.

In Olsen, the Court of Appeals indicated that "a voluntary plea of guilty intelligently made in light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise." Olsen, at 729-730, *citing*, United States v. Broce, at 572. The Olsen Court distinguished the UPCS situation from cases which involved a nonexistent crime, because the crime of UPCS was an existent crime which was later invalidated. Olsen, at 728. That distinction was correct.

Most of the cases which discuss "nonexistent crimes" rely on or discuss State ex rel. Evans v. Bhd. of Friends, 41 Wn.2d 133, 143, 247 P.2d 787 (1952), for the proposition that a finding that a statute is unconstitutional and therefore void equates to a finding that the crime charged was non-existent does not adequately consider the rationale of that case and subsequent cases discussing that rationale.

In State ex rel. Evans v. Bhd. of Friends, this Court relied on the U.S. Supreme Court's 1886 opinion Norton v. Shelby County, 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886), where Justice Field wrote "An unconstitutional act is not a law; if confers no rights; it imposes no duties it affords no protection; it creates no office; it is, in legal contemplation, as *inoperative as though it had never been passed.*" Evans, at 143 (*quoting*, Norton, 442 (emphasis added).

However, the US Supreme Court and other Federal and State Courts have repeatedly questioned Norton's validity. *See* Dobbert v. Florida, 432 U.S. 282, 298, 97 S. Ct. 2290, 53 L. Ed. 2d 344 (1977) ("It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination is an operative fact and may have consequences which cannot justly be ignored"). In

Dobbert, the defendant made a claim that a law was ex post facto based on the fact that a statute had been declared unconstitutional. Dobbert argued that there was no "valid" death penalty in effect at the time of his crime in Florida. The Supreme Court stated, "Whether or not the old statute would, in the future, withstand collateral attack, it clearly indicated Florida's view of the severity of murder and of the degree of punishment which the legislature wished to impose upon murderers." Dobbert, at 297. The fact that the statute was later found to be unconstitutional did not mean that the statute was nonexistent.

In United States v. Poli, 628 F.2d 779, 782 (2nd Cir., 1980), the Court rejected a contention that a statute later declared unconstitutional should be treated as though it never existed. The Court stated,

> The view that an unconstitutional law should be treated as having had no effects whatsoever from the date of its enactment, see e.g. Norton v. Shelby County, 118 U.S. 425, 442, 6 S. Ct. 1121, 1125-1126, 30 L.Ed. 178 (1886), has

> been replaced by a more realistic approach which recognizes "the actual existence of the statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored."

Id. *citing*, Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 374, 60 S. Ct. 317, 318, 84 L.Ed 329 (1940).

The United States Supreme Court has since noted,

> The process of reconciling the constitutional interests reflected in a new rule of law with reliance interests founded upon the old is among the most difficult of those which have engaged the attention of the courts, state and federal …. Consequently, our holdings in recent years have emphasized that the effect of a given constitutional ruling on prior conduct is subject to no set principle of absolute retroactive invalidity but depends upon consideration of particular relations … and particular conduct … of rights claimed to have become vested, of status, or prior determinations deemed to have finality; and of public policy in light of the nature both of the statute and of its previous application.

Lemon v. Kurtzman, 411 U.S. 192, 198-199, 93 S. Ct. 1463, 36 L.Ed.2d 151 (1973).

This Court has acknowledged that the U.S. Supreme Court has abandoned the doctrine discussed in Norton, calling it "antiquated authority." W.R. Grace & Co. v. Dep't of Revenue, 137 Wn.2d 580, 594 n.10, 973 P.2d 1011 (1999).

Because a statute being held unconstitutional does not currently as a matter of law require it be "inoperative as though it had never been passed," relying on Evans to make the claim that Willyard pled guilty to a nonexistent crime is not appropriate. The rationale of Brady applies. Willyard's pleas were knowing, intelligent and voluntary at the time that they were entered. The Court of Appeals correctly found that the Blake decision did not provide a basis for Willyard to withdraw her guilty pleas.

Even if this Court determined that the plea in this case was indivisible from cause number 03-1-01829-9, a single charge in a plea agreement being declared void by operation of law does not render a plea agreement invalid.

In State v. Knight, 162 Wn.2d 806, 812-813, 174 P.3d 1167 (2008), this Court held that regardless of whether a plea was indivisible, a challenge based on double jeopardy principles did not invalidate the plea agreement. The Court noted, "since the plea agreement has been fully satisfied here, the indivisibility of the plea has no bearing on our analysis." Id. at 813.

The decision of the Court of Appeals was consistent with decisions of this Court. Willyard's argument to the contrary is misplaced. In In re Pers. Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2003), this Court looked at whether felony murder could be predicated on assault based on the statute that was in effect at the time of the crime. The crime did not exist at the time of the offense, unlike the situation in this case. In In re Pers. Restraint of Thompson, 141 Wn.2d 712, 715, 10 P.3d 380 (2000), the petitioner was convicted of a provision of the statute that was not enacted until two years after the crime. Again, the

crime did not exist at the time of the offense. Similarly, in In re Pers. Restraint of Knight, 4 Wn.App.2d 248, 253, 421 P.3d 514 (2018), Knight pled guilty to the charge of attempted manslaughter and the Court held that a person could not attempt to commit manslaughter, therefore the crime of conviction did not exist. The Court of Appeals' holding that whether or not the plea was indivisible from the controlled substance plea was irrelevant because Willyard was not entitled to withdraw her pleas on any offense was correct. None of these cases support Willyard's claim that review should be accepted under RAP 13.4(b).

3. The Court of Appeals' discussion of indivisible pleas does not provide a basis upon which this Court should accept review because the standard set forth by this Court in *Bradley* is clear.

In State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003), this Court recognized that where when a guilty plea was involuntary because a defendant is misinformed about the direct consequences of one count, but not another, the

entire plea agreement may be withdrawn under CrR 4.2(f) if there is a showing that the plea was part of a package deal. When looking at whether the pleas were part of a package deal, the Turley Court noted that Turley pleaded guilty to two charges contemporaneously, one document contained the plea and conditions for both charges, and the trial court accepted the pleas to both charges in a single hearing without separating the consequences based on the individual charges. Id. at 400.

The issue of the time bar was never raised in Turley, nor was the matter decided under the standards of a collateral attack. Subsequent to Turley, our courts have consistently held that a facial invalidity does not open the door to otherwise time barred claims. Smalls, at 387; Snively, at 30; Adams, at 423-424. In In re Pers. Restraint of Bradley, 165 Wn.2d 934, 205 P.3d 123 (2009), this distinguished facts from the Turley inquiry. The Court found that charges that were charged and pled to in

separate documents and committed on different days did not necessarily require a finding that the pleas were part of a package deal just because the pleas were entered on the same day. Id. at 942-943. The Court noted that cross-referencing each case in documents does not alone establish that the pleas were indivisible, noting that references merely noted concurrent sentences which were mandatory under RCW 9.94A.589(1)(a). Id. at 943.

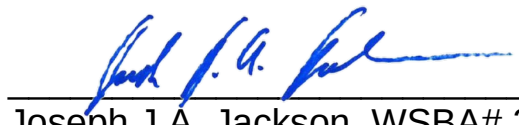
The focus, according to this Court, is to "examine the documents produced … at sentencing for objective manifestations of intent." Id. at 942. The standard does not require clarification. Moreover, in this case, whether the pleas were indivisible had no bearing on the outcome. In a collateral attack, the petitioner must still demonstrate actual and substantial prejudice, which Willyard could not do because her pleas were voluntary at the time they were entered. Olsen, at 735, n.4, *citing*, Buckman, at 60. There is no reason that this Court should accept review.

D. CONCLUSION

Willyard seeks to extend the holding of State v. Blake to proportions which are not consistent with principals of finality. The law does not support Willyard's contentions. The Court of Appeals correctly held that Willyard's motion was time barred and that regardless of the argument that the plea in this case was indivisible with her other case, Willyard could not demonstrate that she was entitled to withdraw her plea. That decision does not conflict with prior precedent. There is no basis under RAP 13.4(b) upon which this Court should accept review.

I certify that this document contains 4,781 words, not including those portions exempted from the word count, as counted by word processing software, in compliance with RAP 18.17.

Respectfully submitted this 29th day of September 2023.



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DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, in The Supreme Court, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Dated this 29th day of September 2023.

Signature: Stephanie Johnson

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

September 29, 2023 - 3:42 PM

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