Supreme Court No. 90114-7
(COA No. 69697-1-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

VINCENT PETTIE,

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.

Vincent Pettie, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3(a)(1) and RAP 13.4(b).

B. COURT OF APPEALS DECISION

Mr. Pettie seeks review of the Court of Appeals decision dated March 3, 2014, a copy of which is attached hereto as Appendix A.

C. ISSUE PRESENTED FOR REVIEW

This Court has previously warned trial judges that they must not participate in plea negotiations directly or indirectly.[1] The Court of Appeals opinion construes *Watson* to mean that a judge may not expressly tell the accused person to take the plea offer. Here, the trial court sua sponte engaged Mr. Pettie in a lengthy conversation about the benefits of pleading guilty, warned him about another case where the defendant in a similar situation regretted not pleading guilty, cautioned him that it would be easy for the prosecution to obtain a conviction, and negotiated with the prosecution to get Mr. Pettie a better plea offer.

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[1] *State v. Watson,* 159 Wn.2d 162, 165, 149 P.3d 360 (2006)**Error! Bookmark not defined.**.

Does the Court of Appeals opinion conflict with *Watson*'s prohibition on judicial involvement in plea negotiations and should this Court grant review to clarify when a judge's indirect encouragement of a guilty plea constitutes undue coercive pressure and undermines the voluntariness of the plea?

D. STATEMENT OF THE CASE.

Vincent Pettie was present when John Jackson assaulted Anthony Narancic with a pipe. CP 8. Mr. Pettie was accused of momentarily holding Mr. Narancic, which assisted Mr. Jackson. CP 8. Both men were jointly charged with first degree assault. CP 1; 9/10/12RP 3. After selecting a jury and hearing testimony from several witnesses, Mr. Jackson decided to plead guilty. 9/11/12RP 88-89, 104, 120; 9/12/12RP 131. Judge Michael Hayden recessed the trial and accepted Mr. Jackson's guilty plea. 9/12/12RP 135-36.

After Mr. Jackson pled guilty, Judge Hayden engaged Mr. Pettie in unsolicited conversation directed at encouraging him to plead guilty. 9/12/12RP 144-49. The judge warned Mr. Pettie that at trial, he would permit the prosecution to seek a conviction on the inferior degree offense of second degree assault, which would be "a lot easier" for the

State to prove and would result in the same persistent offender life sentence for Mr. Pettie. 9/12/12RP 147-48.

Mr. Pettie responded by telling Judge Hayden, "I just really didn't do anything." 9/12/12RP 148. Judge Hayden again told Mr. Pettie that his job was to make sure Mr. Pettie was aware of the potential consequences of going to trial. *Id.* Judge Hayden told Mr. Pettie a story about another defendant who had not wanted to plead guilty because he did not believe he committed the charged crime. 9/12/12RP 150-51. When that other defendant was convicted, the judge had no discretion over his persistent offender sentence and had to impose a term of life without the possibility of parole. 9/12/12RP 151.

Judge Hayden told the prosecution that he thought Mr. Pettie should receive less time as an accomplice, asked for details of the plea offer, and directed Mr. Pettie to discuss it with his lawyer. 9/12/12RP 148-49. He told Mr. Pettie it was a "very serious decision" that he needed to make. 9/12/12RP 152. After a brief recess, Mr. Pettie entered a guilty plea. 9/12/12RP 153-61.

Mr. Pettie pled guilty to burglary in the second degree and assault in the third degree. 9/12/12RP 154, 157-58; CP 14, 22. He agreed to a jointly-recommended exceptional sentence of the statutory

maximum term for each offense that would be consecutively imposed, resulting in a 15 year sentence. 9/12/12RP 156; CP 17.

Immediately after he entered his guilty plea, Mr. Pettie told his lawyer he wanted to withdraw the plea.10/5/12RP 3-4. Mr. Jackson also asked to withdraw his plea. 10/5/12RP 5, 8-9. Mr. Pettie argued that he should be permitted to withdraw his plea contingent on Mr. Jackson's plea as a manifest injustice, because Mr. Pettie felt he had no choice but to plead guilty after Mr. Jackson claimed in his own plea that Mr. Pettie was a knowing participant in the assault. 10/5/12RP 14-15, 20; 11/1/12RP 5, 19. The court denied both defendants' motions to withdraw their pleas and imposed the sentence of 15 years as recommended by the plea agreement. 12/12/12RP 4-5.

The Court of Appeals concluded that the judge's involvement in plea discussions was appropriate moderating between the parties and that the plea was in Mr. Pettie's best interest. Slip op. at 8. Therefore he did not prove his plea was involuntary. *Id.* at 9.

The facts are further set forth in the Court of Appeals opinion, pages 1-2 and, Appellant's Opening Brief, passim. The facts as outlined in each of these pleadings are incorporated by reference herein.

E. ARGUMENT.

This Court should accept review to address conflicting decisions over the trial court's authority to pressure a person to accept a guilty plea.

1. *A guilty plea must be voluntarily entered without judicial pressure*

It is well-established that a criminal defendant's waiver of his right to trial by jury and entry of a guilty plea must be an intentional relinquishment of a known right, indulging in every presumption against waiver. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); U.S. amends. 6, 14. An involuntarily entered plea establishes a manifest injustice permitting withdrawal of the plea. *State v. Turley*, 149 Wn.2d 395, 398, 69 P.3d 338 (2003).

When a trial court coerces or pressures a person to plead guilty, the plea is rendered involuntary. *State v. Wakefield*, 130 Wn.2d 464, 473, 925 P.2d 183 (1996); *see also ABA Standards for Criminal Justice: Pleas of Guilty*, 3rd Ed., Standard 14-3.3(c) (1999);[2] ABA standards caution judges against involvement in plea discussions:

> The judge should not through word or demeanor, either directly or indirectly, communicate to the defendant or

[2] Available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_toc.html (last viewed April , 2014).

> defense counsel that a plea agreement should be accepted or that a guilty plea should be entered.

14-3.3(c). Similarly, judges are expressed directed not to be involved in soliciting a plea by statute: "The court shall not participate in any discussions under this section." RCW 9.94A.421.

This Court took the unusual step of granting review and issuing a per curiam opinion in *State v. Watson,* 159 Wn.2d 162, 165, 149 P.3d 360 (2006), solely for the purpose of instructing judges that it is "wholly inappropriate" to advise a defendant to take a plea. This Court reminded judges that "[t]rial judges are to refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty." *Id.* at 164-65. Because the defendant in *Watson* had pled guilty several months after the judge had opined she should pled guilty, the pressure was too attenuated to demonstrate undue judicial pressure but the Watson opinion attempted to set clear rules for judges in the future. *Id.* at 165.

Unlike *Watson*, Mr. Pettie immediately pled guilty after the judge's pressure to accept a plea and then quickly asked to withdraw the plea. 10/5/12RP 3-4. The Court of Appeals distinguished *Watson* as

applying only where there was an express statement from the judge that the accused person should take the plea. Slip op. at 7.

The Court of Appeals discounted the coercive effect of the judge's active involvement in plea negotiations, which included the judge's efforts to supercede the legal advice offered by his attorney and to warn Mr. Pettie about other people he had seen regret a decision to reject a guilty plea. This direct involvement in encouraging and soliciting a guilty plea is contrary to *Watson*'s prohibition on direct and indirect involvement in plea negotiation and review should be granted to explain the judge's role when a judge solicits a plea.

2. *The Court of Appeals decision is contrary to Watson.*

The judge inserted himself into plea discussions, contrary to this Court's holding in *Watson* by actively encouraging Mr. Pettie to plead guilty.

When Mr. Pettie told the judge he did not want to plead guilty because, "I just really didn't do anything," the judge launched into a lengthy warning to Mr. Pettie about the consequences of going ahead with trial. 9/12/12RP 148. The judge told Mr. Pettie the cautionary tale of another defendant who spurned a plea offer because he did not feel he had committed the crime for which he was charged. 9/12/12RP 150-

51. Similarly to Mr. Pettie, this other person had faced a "three-strike" life sentence and when he was convicted of the charge, the judge had no discretion to give him less time. *Id.* The judge emphasized that it was not his job to tell Mr. Pettie what to do, but it was his job to "let you know . . . what you are facing." *Id.* at 151.

The judge told Mr. Pettie that he would let the State present a lesser offense of second degree assault, even though he was charged with first degree assault, and if convicted of the lesser offense, he would receive a sentence of life without the possibility of parole. 9/12/12RP 147-48.

The judge directly involved himself in negotiations. He asked the prosecution about its offer to Mr. Pettie and suggested he should receive less time as an accomplice. 9/12/12RP 149. After the judge directed Mr. Pettie to talk to his lawyer about pleading guilty and told him he needed to make a "very serious decision," Mr. Pettie opted to plead guilty. Mr. Pettie immediately signed a guilty plea form and answered the plea colloquy questions. 9/12/12RP 153-58.

Mr. Pettie's answers during the plea colloquy show he remained reluctant to enter the plea and he was doing so because he had been told told it was in his best interest. When asked whether anyone made

threats or promises to force him to plead guilty, Mr. Pettie responded, "[o]ther than the plea negotiations." 9/12/12RP 156. The prosecutor asked Mr. Pettie if he was entering the plea in a voluntary fashion, and Mr. Pettie said, "Yes I am pleading like it is there." *Id.* When asked if the description of his involvement in the crime was true, Mr. Pettie said, "I accept that statement, ma'am." *Id.*

The judge again told Mr. Pettie he knew it was a very difficult decision and asked whether he understood he could not come back later. 9/12/12RP 159. Mr. Pettie said he understood "what could happen, and said, "As much as I know what I know, I still have no choice in the matter." *Id.*

The Court of Appeals relied on *State v. Pouncey*, 29 Wn.App. 629, 635-37, 630 P.2d 932, *rev. denied*, 96 Wn.2d 1009 (1981), a decision predating *Watson*. *Pouncey* is far afield from the judge's involvement with Mr. Pettie. In *Pouncey*, the judge only spoke to the lawyers, not the accused person. *Id.* at 630. The judge moderated a discussion about plea negotiations without directly communicating with the defendant. Although the judge encouraged the parties to reach a plea agreement, he did not personally solicit such an agreement. *Id.* at 637.

The Court of Appeals misconstrued the breadth of *Pouncey* and interpreted it in a manner that conflicts with *Watson*. The opinion illogically extends a judge's authority to pressure an accused person to accept a guilty plea so long as the judge refrains from overt statements that he believes the defendant should take the plea.

Judge Hayden pressured Mr. Pettie to plead guilty explicitly and directly, in-person, unlike *Pouncey*. This type of coercion is barred by statute, is contrary to this Court's plain directive in *Watson* that judges must "refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty," and undermines the voluntariness of the plea. 159 Wn.2d at 164-65; RCW 9.94A.421. This Court should accept review and reverse the decision of the Court of Appeals.

F. CONCLUSION.

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

DATED this 2nd day of April 2014.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,	)	No. 69697-1-I
	)	DIVISION ONE
v.	)	
VINCENT OLIVER PETTIE, Appellant.	)	UNPUBLISHED OPINION
	)	FILED: March 3, 2014

SPEARMAN, A.C.J. — Vincent Pettie moved to withdraw his plea after he pleaded guilty to third degree assault and second degree burglary. The trial court denied the motion. He appeals, contending the trial court's involvement rendered the plea involuntary. He also claims in a statement of additional grounds that (1) he should be permitted to withdraw his plea because he received ineffective assistance of counsel; (2) the trial court improperly imposed an exceptional sentence; and (3) the court improperly calculated the statutory maximum penalty as the presumptive standard range. We conclude his claims lack merit and affirm.

FACTS

On October 4, 2011, Vincent Pettie and John Wesley Jackson, Jr. entered the office of Anthony Narancic's boarding house, where Jackson had rented two rooms, to recover Jackson's $800 security deposit. Narancic had told Jackson

that the deposit would not be returned due to damage caused to the rooms. Finding Narancic inside the office, Jackson repeatedly struck him on the head and shoulders with a metal club covered by a sock. Pettie's alleged involvement included holding Narancic while Jackson struck him and driving Jackson away from the office. Police arrested Jackson later that day, and Narancic identified Pettie in a photo montage.

Jackson and Pettie were both charged with first degree assault. Pettie had two previous convictions for second degree attempted robbery; thus, a conviction for first degree assault or second degree assault (if the latter were to be submitted to the jury for consideration as a lesser included offense) would result in his third strike under the Persistent Offender Accountability Act ('POAA') of the Sentencing Reform Act of 1981, chapter 9.94A RCW. Shortly after trial began, Jackson reached a plea agreement.

After Jackson's plea, the prosecutor notified Pettie that the State would request a jury instruction on the lesser included offense of second degree assault. The trial court set out to clarify Pettie's understanding of the lesser included offense when Pettie said he did not know what it meant:

> THE COURT: The reason I want to bring [the lesser included offense] up to you is, particularly as to you, that's very important because I understand your [sic] facing your third strike.
>
> MR. PETTIE: Yes.
>
> THE COURT: So, you might, indeed, prevail and persuade the jury that this wasn't an assault [in the first degree] case because the injury wasn't enough.
>
> MR. PETTIE: Right.

> THE COURT: So, the jury could say it's okay, it's an Assault II case. And if they decide it was, and you were an accomplice, it's still your third strike.

Verbatim Report of Proceedings (VRP) (9/12/12) at 147-48. Then Pettie stated, "I just didn't really do anything." Id. at 148. The court responded:

> That's between you and your lawyer. It's my job to tell you the consequences here. It's not for me to tell you what to do about it. But, it is my job to make sure you are informed of the potential consequences of deciding to go ahead with the trial. When you said you don't know about the lesser included, that raises a red flag for me that you need to know about the lesser included.

Id. at 148-49. The trial court also told Pettie about a defendant who had been before the court in the past and had asserted his innocence. That defendant had been convicted and sentenced to life without parole because the court did not have discretion when the crime was the defendant's third strike. Id. at 150-51. The trial court later stated, "I want to be real clear. This is your life. It is not my job to tell you what to do. I cannot persuade you one way or another what to do. It's between you and your lawyer." Id. at 151. He told Pettie "obviously this is a very serious decision." Id. at 152. Right before Pettie entered his guilty plea, the court stated:

> You may full well think you did absolutely nothing wrong. It's up to the jury to decide whether that's true or not. You and your lawyer have to talk about all of the evidence that will be presented, and your lawyer gives you advice about what he thinks the likely outcome will be. And based upon his advice as to what the likely outcome would be, given what he anticipates all the evidence will be, you need to make your decision.
>
> I want you to be clear that coming in on Assault II for you is the same thing as coming in on Assault I for you, given the circumstances. For anyone else, it would be much different

> because Assault I and Assault II have very, very different standards of ranges. Counsel, what do you want to do? Are we calling the jury back in? Has he made up his mind? Does he need more time?

Id. at 152-53. During a recess, the State and Pettie reached a plea agreement in which Pettie pleaded guilty to second degree burglary and third degree assault, avoiding his third strike. The parties agreed to the statutory maximum sentence for both charges: 120 months for the burglary count and 60 months for the assault count, to run consecutively. Pettie stated during a colloquy that he was making his plea knowingly and voluntarily. The court then confirmed the same. Pettie's plea agreement included a signed statement of guilt.

Shortly thereafter, both Pettie and Jackson brought motions to withdraw their guilty pleas. Pettie stated that he initially thought Jackson would exculpate him at trial, and Jackson's guilty plea fundamentally changed his trial strategy. Jackson's plea statement stated, "[Pettie] knew what I was doing and he held Mr. Narancic in place while I assaulted Mr. Narancic." VRP (9/12/12) at 136. Pettie argued that to allow only Jackson to withdraw his plea would result in a manifest injustice. The court denied both defendants' motions and imposed on Pettie the 180-month sentence recommended by the plea agreement.

For the first time on appeal, Pettie claims that his guilty plea was involuntary because the trial court impermissibly pressured him into entering a plea agreement. In his statement of additional grounds, Pettie also claims (1) his attorney provided ineffective assistance of counsel, (2) the trial court improperly imposed an exceptional sentence, and (3) the court improperly used the statutory maximum penalty as the presumptive standard range.

DISCUSSION

Motion to Withdraw Guilty Plea

We review a trial court's decision on whether to allow a defendant to withdraw a guilty plea for abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). A court must allow a defendant to withdraw a guilty plea as necessary to correct a manifest injustice. CrR 4.2(f). A manifest injustice occurs when a defendant's plea was involuntary. State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). A guilty plea is involuntary if it was obtained by mental coercion by agents of the state. Brady v. United States, 397 U.S. 742, 750, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). When a trial court pressures or coerces a defendant, that influence may render the guilty plea involuntary. State v. Wakefield, 130 Wn.2d 464, 473, 925 P.2d 183 (1996). Further, it is "wholly inappropriate" for the judge to suggest a defendant accept a plea deal. State v. Watson, 159 Wn.2d 162, 165, 149 P.3d 360 (2006).

On the other hand, a signed plea statement is strong evidence that the defendant entered the plea voluntarily. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). An accompanying written statement by the defendant that acknowledges the defendant read and understands the plea agreement and that its contents are true is prima facie evidence that the plea was voluntary. In re Keene, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980). A defendant who later tries to retract his admission of voluntariness will bear a heavy burden to convince a court that his admission was coerced. State v. Frederick, 100 Wn.2d 550, 558,

674 P.2d 136 (1983). This is especially the case where there are other reasons for pleading guilty. Id.

Pettie claims he involuntarily pleaded guilty due to pressure from the trial court. He contends the trial court's statements on the record convinced him to plead guilty, where he would otherwise have elected not to do so. Pettie relies primarily on Wakefield and Watson.

In Wakefield, the defendant accepted a plea arrangement "[i]mmediately" after the court promised that she would be sentenced within the standard range if she accepted the agreement. Wakefield, 130 Wn.2d at 469. A week prior, the trial court had mentioned to the defendant that a plea offer "would subject her to much less jeopardy" and urged the defendant to heed the advice of her attorneys to plead guilty. Id. at 473 (quoting Report of Proceedings (Dec. 8 1993) at 26). On appeal, the court only explicitly mentioned the sentencing promise when addressing the voluntariness of the plea, but not the statements made a week earlier. "We are mindful of the fact that a trial judge's promise of a standard range sentence could easily sway a defendant to plead guilty." Id. at 475. In Watson, the court on appeal affirmed the trial court's ruling that there was no undue pressure when the defendant entered his guilty plea in front of a new judge a month after the original trial judge made an impermissible statement. Watson, 159 Wn.2d at 165. The original judge had stated "I really think you should take their offer." Id. at 163. But the court granted review to emphasize that it was "wholly inappropriate" for the judge to advise the defendant to 'take [the State's plea] offer.' Id. at 165.

Here, we conclude that Pettie fails to establish that the trial court's actions rendered his plea involuntary. He claims the court convinced him that he must plead guilty by telling him it would be easier to prove second degree assault and that Pettie had a serious decision to make. He also points to the court's statements about a prior defendant who refused a plea agreement, was convicted of his third strike, and was ultimately sentenced to life without parole.

But here, unlike in Wakefield and Watson, the trial court merely informed Pettie of the consequences of proceeding with trial. After Jackson pleaded guilty, the trial court learned that Pettie did not know what the lesser included offense meant to his case and that he had received a plea offer that would allow him to avoid his third strike. Part of Pettie's planned defense was that Narancic's injuries were insufficient for a first degree assault conviction. The trial court said it raised a "red flag" that Pettie did not know about the lesser included offense because Pettie's planned defense could still result in a conviction for second degree assault. VRP (9/12/12) at 148, 149. Unlike in Wakefield, where the trial court promised a more lenient sentence and the defendant relied on such a promise, here the court offered no promise to Pettie. The court simply explained that a conviction for either assault in the first degree or assault in the second degree would be Pettie's third strike and used the example of another defendant to explain that the court does not have discretion in sentencing third-strike convictions. Additionally, unlike in Watson, the court did not urge Pettie to take the State's offer. Rather, the trial court repeatedly told Pettie that any decision should be made between him and his attorney.

This case involves facts more akin to those in State v. Pouncey, 29 Wn. App. 629, 630 P.2d 932 (1981). There, the trial judge met with both attorneys in his chambers and suggested, based on his understanding of the likelihood of a conviction, that the parties explore the possibility of a plea agreement. Id. at 632. Likewise, here the trial court suggested that the parties continue to work out a plea agreement after negotiations had already begun. The defendant in Pouncey was facing a mandatory minimum term if convicted of first degree robbery with a deadly weapon, and the judge noted he had no discretion in sentencing. Id. at 633. The appellate court concluded that the trial court acted as a 'moderator' and that the defendant pleaded guilty for fear of being convicted of more serious offenses with greater consequences. Id. at 637.

Moreover, here, the record reflects several "other apparent reasons," Frederick, 100 Wn.2d at 558, for which Pettie pleaded guilty. First, Jackson's guilty plea impacted the way Pettie viewed his case. In his first attempt to withdraw the guilty plea, Pettie's attorney said Jackson's plea statement implicating Pettie in the crime "essentially[] changed things." VRP (10/5/12) at 3. He stated that "it was because Mr. Jackson pled guilty and the manner in which Mr. Jackson pled guilty" that Pettie ultimately pleaded guilty. Id. at 4. Lastly, he stated that Pettie pleaded guilty "because of Mr. Jackson's plea, in the morning of September 12." Id. at 5. Second, if Pettie went to trial, he faced a possible life sentence without parole. Once he became aware of the lesser included charge, Pettie realized that the likelihood of a life sentence was much greater than he had originally anticipated. Jackson's guilty plea also altered his evaluation of the

likelihood of a conviction because his plea statement implicated Pettie, whereas Pettie had initially thought that Jackson would exculpate him.

In sum, we conclude Pettie has not overcome the heavy burden he must show to prove his guilty plea was involuntary.

Statement of Additional Grounds Claims

Pettie's first claim in his statement of additional grounds is that defense counsel provided ineffective assistance because his two prior convictions for second degree attempted robbery are not "most serious offenses" under RCW 9.94A.030(32). As a result, he contends, he was not facing his third strike under the POAA if he were to be convicted of either first or second degree assault. Pettie is incorrect. Under RCW 9.94A.030(32), "most serious offense" includes "any of the following felonies or a felony attempt to commit any of the following felonies: . . . (o) Robbery in the second degree." Pettie's 1993 and 2004 convictions for second degree attempted robbery are most serious offenses under the statute.

Next, Pettie claims that the trial court improperly imposed an exceptional sentence beyond the standard range. The claim is predicated on Pettie's first claim in his statement of additional grounds; he argues that an exceptional sentence was improper because he was not in fact facing a life sentence. But, as addressed above, the parties, in negotiating a plea agreement, correctly considered his prior convictions for second degree attempted robbery as "most serious offenses" under RCW 9.94A.030(32). The court may impose an exceptional sentence beyond the standard range if the parties stipulate to an

exceptional sentence. RCW 9.94A.535(2)(a); In re Breedlove, 138 Wn.2d 298, 310, 979 P.2d 417 (1999). Here, Pettie and the state stipulated that justice was best served by an exceptional sentence. Thus, the court had the authority to sentence Pettie to an exceptional sentence.

Finally, Pettie argues that the standard range was incorrect because the sentencing court used the statutory maximum penalty for the offenses as the presumptive standard sentencing range. This argument is not well taken. Pettie's offender score and the applicable standard range, as set forth in the judgment and sentence, were calculated correctly. The trial court, in its discretion, did not sentence Pettie within the standard range but instead imposed an exceptional sentence based on the plea agreement between Pettie and the State.

Affirmed.

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. 69697-1-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:

☒ respondent Lindsey Grieve, DPA
King County Prosecutor's Office-Appellate Unit

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: April 2, 2014