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JUN 25 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

No. 45392-4-II

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAMES JOHN CHAMBERS, JR., Petitioner

PETITION FOR REVIEW

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A. IDENTITY OF THE PETITIONER

James John Chambers, Jr. (Petitioner herein) requests that this Court accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner requests that the Court review the decision of Division II of the Court of Appeals affirming the trial court's order denying his motion to withdraw his guilty plea, and the decision of Division II of the Court of Appeals denying the Petitioner's (pro se) motion for reconsideration. A copy of the decisions (No. 45392-4-II) is in the Appendix, attached hereto and incorporated herein.

C. ISSUES PRESENTED

- (1.) Does the decision of the Court of Appeals conflict with decisions of the Supreme Court when it holds that the Petitioner was not disadvantaged by the trial court denying his motion to withdraw his guilty plea, rather than whether the Petitioner's plea was voluntary?
- (2.) Does the decision of the Court of Appeals conflict with decisions of the Supreme Court when it holds that the Petitioner's remedy is unjust when the record does not support that conclusion?

D. STATEMENT OF THE CASE

The Appellant's case, as well as the Appellant himself, has suffered a long and arduous journey seeking to correct a facially invalid guilty plea, as well as a facially invalid judgment and sentence. There is significant case history to review.

1. *In Re James John Chambers, Court of Appeals, Division II, No. 38074-9-II.*

Appellant sought relief via a personal restraint petition from the judgment and sentence entered in Pierce County Superior Court cause number 99-1-00817-2. On January 14, 2009, Division II of the Court of Appeals granted the Appellant's petition in part, allowing him to withdraw his guilty pleas to Counts III and IV of the Information charging him with two (2) counts of First Degree Unlawful Possession of a Firearm. See, Chambers, No. 38074-9-II, page 1, 3-4. Division II stated and found the following:

[Appellant] contends that he cannot be guilty of first degree possession of a firearm because that crime requires him to have been previously convicted of a "serious offense." RCW 9.41.040(1)(a). He contends that his prior conviction, for unlawful manufacture of marijuana, was a Class C felony, and that under RCW 9.41.010(12)(b), a "serious offense" for a drug conviction must be for a Class B felony or higher. Thus, he contends that his prior conviction was not for a "serious offense" and he cannot be guilty of first degree unlawful possession of a firearm.

The State responds that unlawful manufacture of controlled substances is a Class B felony and therefore is a "serious offense" under RCW 9.41.010(12)(b). But not all unlawful manufacturing of controlled substances is a Class B felony. Only unlawful manufacturing of narcotic drugs, amphetamines or methamphetamines

is a Class B felony. RCW 69.50.401(2)(a) and (b). Unlawful manufacturing of other Schedule I controlled substances, such as marijuana, is a Class C felony. RCW 69.50.401(2)(c). Thus, [Appellant] Chambers did not have a prior conviction for a Class B felony, and had not been previously convicted of a “serious offense” under RCW 9.41.010(12)(b) and could not be guilty of first degree unlawful possession of a firearm under RCW 9.41.040(1)(a). *His judgment and sentence* [under Pierce County Superior Court cause number 99-1-00817-2] *is invalid on its face as to Counts III and IV. And because it is invalid as to those counts, his petition is not time-barred by RCW 10.73.090(1).* *In Re The Personal Restraint of LaChapelle*, 153 Wn.2d 1, 6, 100 P.3d 805 (2004).

Because [Appellant] *Chambers’ judgment and sentence is invalid on its face as to Counts III and IV, we remand to the trial court for further proceedings consistent with this order.* Accordingly, it is hereby

ORDERED that [Appellant] Chambers’ petition is granted as to Counts III and IV. His judgment and sentence is remanded to the trial court to address those counts. In all other respects, [Appellant] Chambers’ petition is denied.

See, Chambers, Court of Appeals No. 38074-9-II, page 3-4 (emphasis added). Repeatedly, Division II of the Court of Appeals found the Appellant’s judgment and sentence “invalid on its face” as to Counts III and IV under Pierce County Superior Court cause number 99-1-00817-2.

Accepting discretionary review, the Washington State Supreme Court summarily amended Division II’s order, remanding Appellant’s motion to withdraw his plea of guilty to the trial court with the following instruction—“The motion to withdraw should be considered by the trial court in relation to counts I and II at the same time as that court considers the Court of Appeals [sic] remand as to counts III and IV.” See, In Re The

Personal Restraint Petition of James John Chambers, 171 Wn.2d 1035, 217 P.3d 1159 (2009).

2. State v. Chambers, 163 Wn.App. 54, 256 P.3d 1283 (Div. II, 2011).

Pursuant to the rulings and remands of both Division II of the Court of Appeals and the Washington State Supreme Court (see, §III.A., supra.), the Appellant sought relief in the trial court, again. Appellant brought his motion to withdraw his guilty plea on Pierce County Superior Court cause number 99-1-00817-2, citing that the judgment and sentence was facially invalid. The State of Washington opposed the motion, arguing *inter alia* that cause number 99-1-00817-2 was part of an indivisible plea agreement with two other cases, or cause numbers¹, and that the Appellant would have to withdraw his pleas of guilty to all the cases, not just 99-1-00817-2. The trial court agreed with the Appellant, stating that cause number 99-1-00817-2 was not part of an indivisible plea agreement with cause numbers 99-1-02235-3 and 99-1-05307-1, and allowed the Appellant to withdraw his guilty plea to cause number 99-1-00817-4. See, State v. Chambers, 163 Wn.App. 54, 56-60, 256 P.3d 1283 (Div. II, 2011)². Because all the evidence in cause number 99-1-00817-4

¹ Pierce County Superior Court cause numbers 99-1-02235-3 and 99-1-05307-1.

² On or about July 2, 2010, Appellant sought to withdraw his guilty plea under Pierce County Superior Court cause number 99-1-05307-1, arguing that the trial court had entered an illegal exceptional sentence. The trial court denied the Appellant's motion,

was destroyed by the State, the case was dismissed. The State appealed the trial court's rulings. Id. Division II of the Court of Appeals, having found as a matter of law that the Appellant entered into an indivisible plea deal involving all three (3) cases, reversed the trial court and remanded the matter back to the trial court "in which [Appellant] Chambers may seek to withdraw his indivisible guilty plea on all nine counts under cause numbers 99-1-00817-2 and 99-1-05307-1." Chambers, 163 Wn.App. at 62.

3. State v. Chambers, 293 P.3d 1185 (2013).

Appellant sought discretionary review of the decision of Division II of the Court of Appeals, which the Washington State Supreme Court granted. See, State v. Chambers, 173 Wn.2d 1006, 266 P.3d 879 (2012). Appellant sought review of (1) Division II's finding that the Appellant had entered into an agreement that combined Pierce County Superior Court cause numbers 99-1-00817-2, 99-1-02235-3, and 99-1-05307-1 into an indivisible plea "package"; and (2) the trial court's refusal to grant Appellant relief from an illegally imposed exceptional sentence in cause number 99-1-05307-1. On the issue of whether the Appellant "agreed" to

and the Appellant appealed. Division II of the Court of Appeals consolidated the Appellant's appeal from Pierce County Superior Court cause number 99-1-05307-1 with the State's appeal from Pierce County Superior Court cause number 99-1-00817-2. Division II of the Court of Appeals did not reach the merits of Appellant's appeal, declaring the issue moot in light of its ruling that the Appellant had entered into a single, indivisible plea deal. See, Chambers, 163 Wn.App. at 61, footnote 9.

a single, indivisible plea “package,” the Supreme Court affirmed the findings and analysis of Division II of the Court of Appeals. On the issue of whether Appellant’s sentence in cause number 99-1-05307-1 was illegally imposed, the Supreme Court ruled against the Appellant. See, State v. Chambers, 176 Wn.2d 573, 293 P.3d 1185, 1188 – 1193 (2013).

In its conclusion and ruling, the Supreme Court stated:

We hold that the agreement [Appellant] Chambers entered into was indivisible based on the parties’ objective manifestation of intent. Further, we hold that Chambers fails to establish that his sentence for the November crimes [cause number 99-1-05307-1] resulted in a complete miscarriage of justice because he received the exact sentence that he stipulated to and the judge had the legal authority to impose it. Accordingly, we [1] affirm the Court of Appeals’ holding as to the indivisibility of the plea agreement and [2] dismiss [Appellant] Chambers’ PRP challenging his sentence for the November crimes [cause number 99-1-05307-1].

Chambers, 293 P.3d at 1193 (emphasis added).

4. Appellant’s Motion To Withdraw His Plea Of Guilty.

On May 10, 2013, Appellant appeared before the Pierce County Superior Court on his motion to withdraw his guilty plea. The trial court denied the Appellant’s motion to withdraw his guilty plea because “I just don’t see him as disadvantaged, is the bottom line to me.” Appendix D, RP 31, ln. 3-5.

The trial court’s idea that the Appellant was not “disadvantaged,” or “was not harmed,” by his pleas of guilty to Counts III and IV in cause

number 99-1-00817-2 seemed to be the focus of whether injustice would result in granting the Appellant's motion:

THE COURT: Let me put it this way: If he were to have chosen to go back and say, okay, we'll take these two charges in the first degree, we'll amend them to charges in the second degree, and I'll plead to the package with the amended charges, there would have been no additional jeopardy to him. He wouldn't have been paying a bigger price by way of sentence to get his deal.

Appendix B, RP 15, ln. 16-23.

THE COURT: So he's [the Appellant's] not suffering some injustice as a result of...of this whole arrangement."

Appendix B, RP 16, ln. 1-2 and 4.

THE COURT: The argument being, if he was willing to plead as he did, he would certainly be willing to plead to something that was less serious than what he ultimately plead to, and so it is totally disingenuous to say he's disadvantaged by the way this has worked out.

Appendix B, RP 16, ln. 22 though RP 17, ln. 2.

THE COURT: If you look at the bottom line of what both the Court of Appeals and the Supreme Court is trying to accomplish is the idea is that you – if there is a mistake that it made, you rectify the mistake. You ensure that the defendant is no worse off than he would have been had the mistake not happened. You don't give him a gift for a mistake having been made.

The thing you are guarding against is [sic] he is not any worse off. I am having trouble seeing where he is worse off in this regard if the State's analysis is utilized.

Appendix C, RP 25, ln. 4 – 14.

THE COURT:Did [the Appellant] Mr. Chambers get a fair shake in this whole process? If he didn't, how do we go about rectifying it without giving him a gift in the process? I, therefore, see this as two critical issues, one, is this a package deal, even though these pleas took place sequentially and not all at one time, and is there a just result in the end. In the end, regardless of whether the State can or can't prove its case on the homicide, if they were to ultimately need to bring it or the evidence has been lost or whatever else, the deal that was contemplated during the course of this case, what has been the incentive for [the Appellant] Mr. Chambers to plead, has remained the same the whole time. To suggest now that he ought to be able to get something better than he bargained for is simply a denial of justice in this circumstance.

Appendix D, RP 30, ln. 3 – 18.

THE COURT:I just don't see him as disadvantaged, is the bottom line to me. I am going to deny the request [of Appellant to withdraw his plea of guilty].

Appendix D, RP 31, ln. 3 – 5.

5. State v. Chambers, 45392-4-II (Consolidated with Nos. 45399-1-II and 45402-5-II.

In affirming the trial court's denial of Petitioner's motion to withdraw his plea of guilty to the cases, the Court of Appeals held that the Petitioner failed to establish that he suffered a manifest injustice which permits a withdrawal of his plea(s) of guilty, and that allowing the Petitioner to withdraw his plea(s) of guilty resulted in an unjust remedy. See, State v. Chambers, 45392-4-II, pages 4-8 (attached hereto as Appendix A).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The decision of the Court of Appeals to affirm the trial court's denial of Petitioner's motion to withdraw his plea of guilty conflicts with prior decisions of the Supreme Court; specifically, in not finding that the trial court abused its discretion in denying the Petitioner relief, that the Petitioner failed to argue that his plea was involuntary, and that the remedy the Petitioner sought was unjust.

(1.) The Trial Court Abused Its Discretion When It Denied The Petitioner's Motion To Withdraw His Plea Of Guilty On The Basis The Petitioner Was Not "Disadvantaged."

As outlined below, the Petitioner's original plea to two (2) counts of Unlawful Possession of a Firearm in the First Degree was involuntary. However, the trial court was only interested in whether the Petitioner was "disadvantaged" by his plea, or "disadvantaged" by allowing a withdrawal of his plea. See, Appendix B, C and D. This inquiry, however, has nothing to do with whether the Petitioner's plea was constitutionally flawed, i.e. involuntary. Examining whether Petitioner was disadvantaged was an abuse of discretion—a decision that was manifestly unreasonable, based on untenable grounds, or made for untenable reasons. A decision is made on untenable grounds if unsupported by the record, or reached applying the wrong legal standard. See generally, State v. Runquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995). The correct standard was whether the Petitioner's plea was involuntary. The trial court did not base its decision on the correct standard.

(2.) The Court Of Appeals Erred In Holding That The Petitioner Did Not Seek To Prove, Or Prove, That His Pleas Of Guilty Were Not Voluntary.

The Court of Appeals held that the Petitioner did not seek a withdrawal of his guilty plea(s) on a claim that his plea was not made

voluntarily³. This is error. An involuntary plea is presumptively prejudicial on direct appeal. The Petitioner was misinformed of the direct consequences of his plea when he pled guilty to an offense for which he factually could not be convicted. The Court of Appeals misapplied the law to the Petitioner in affirming the trial court's denial of his motion.

Constitutional due process requires that the Defendant's guilty plea be "knowing, voluntary, and intelligent." State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 390 (2006), *citing* In Re Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). See also, CrR 4.2(f). CrR 4.2(f) provides that once a guilty plea is accepted, the court must allow withdrawal of the plea only "to correct a manifest injustice." CrR 4.2(f). See also, Mendoza, 157 Wn.2d at 587. Generally, "manifest injustice" is found where a defendant is denied effective counsel, where a defendant fails to ratify a plea, where a defendant makes an involuntary plea, or where the prosecution breaches

³ The Court of Appeals held "[p]roperly construed, Chambers's [sic] challenge to the voluntariness of his guilty pleas to first degree unlawful possession of a firearm was not that he had been misadvised about the sentencing consequences of those crimes but, rather, that those charges lacked a factual basis with which to support his guilty pleas. But Chambers did not move to withdraw his guilty plea on this ground, and he does not argue it on appeal." Page 6. However, Chambers' motions to the trial court were based upon State v. Turley, 149 Wn.2d 395, 68 P.3d 338 (2003), a case about withdrawal of involuntary pleas. However, as noted above, the Court was only concerned over what disadvantage was suffered by the Petitioner, and no inquiry was made into whether the plea(s) were voluntary or not. See, Appendix B, C and D. Further, the Petitioner did brief the issue of withdrawal of his involuntary plea in his Opening Brief. See, Appendix E. Also, whether a defendant's plea of guilty is involuntary is a "manifest error affecting a constitutional right" for purposes of RAP 2.5(a)(3). See, Mendoza, 157 Wn.2d at 589, *citing* State v. Walsh, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001). The issue was properly before the Court of Appeals, and before the instant Court.

the plea agreement. See, Mendoza, 157 Wn.2d at 587, *citing State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). “[A] defendant may also challenge the voluntariness of a plea when the defendant was misinformed about the sentencing consequences resulting in a more onerous sentence than anticipated.” Id. Specifically:

a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence of the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

Mendoza, 157 Wn.2d at 591 (emphasis added). “[A] sentencing consequence is [a direct consequence of a plea] when ‘the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.’” Id., at 588. Length of sentence is a direct consequence of pleading guilty. Id., at 590. When determining whether a plea is constitutionally valid or not valid, the Court is not to engage in a subjective inquiry into the defendant’s risk calculation and the reasons underlying his or her decision to accept the plea bargain. Id. at 590-591.

When the Court of Appeals, in State v. Chambers, No. 38074-9-II, determined that his pleas of guilt to two (2) counts of Unlawful Possession of a Firearm in the First Degree were facially invalid due to the Petitioner not having a prior conviction of a “serious offense,” the Court of Appeals revealed *how* the Petitioner’s plea was involuntary—without the “serious

offense” predicate crime, the most Petitioner could have been convicted of was Second Degree Unlawful Possession of a Firearm, and a lower sentencing range commensurate to that charge and his felony score. By being misinformed of the lack of the predicate offense and the degree of crime he should have pled to, his plea was involuntary which directly affected the length of sentence. The appellant met his burden on the issue of voluntariness.

The Court of Appeals further erred when it basically declared “no harm, no foul” to the Petitioner’s misinformed guilty pleas to the two (2) counts of First Degree Unlawful Possession of a Firearm, basically applying the trial court’s analysis of whether he was “disadvantaged.” This was done when the Court of Appeals points out that the standard range sentences for either First Degree or Second Degree Unlawful Possession of a Firearm were less than the concurrent sentences for Unlawful Possession of a Controlled Substance with Intent to Deliver (149 months) and Unlawful Manufacturing of a Controlled Substance (144 months). See, Appendix A, pages 5-6. This, however, violates the precedent in Mendoza, supra.; specifically:

Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

Mendoza, 157 Wn.2d at 591. The range of sentence, its practical effect on the Petitioner, and whether there is advantage or disadvantage, are not a part of the calculus, as the Court of Appeals erroneously applied. Rather, the focus is whether the Petitioner was “*correctly informed of all the direct consequences of his guilty plea,....*” Id., (emphasis added). When the Court of Appeals, in In Re James John Chambers, No. 38074-9-II (2009), found his convictions facially invalid, they basically found that the Petitioner was misinformed about the direct consequences of his plea. The Petitioner met his burden that his plea was involuntarily entered.

(3.) The Court Of Appeals Erred When It Found That Granting Petitioner’s Motion Would Have Resulted In An Unjust Remedy To The State’s Prejudice.

Further, the Court of Appeals held that the Petitioner’s remedy of withdrawal of his guilty plea(s) would have been unjust to the State because of destroyed evidence and “difficulty to now prosecute him for an alleged murder that took place in 1999.” Chambers, No. 45392-4-II, Page 8 (Appendix A). However, there is nothing in the record to support that assertion or holding. Before the trial court, the State never claimed that it was prejudiced by lost evidence or an inability to further prosecute the Petitioner. On the contrary, the trial court was advised:

The State is not without remedy either. They have, from the outset, have been hinting that any sort of tampering with the pleas in this case is Mr.

Chambers' tampering all of them, and that frees up Mr. Chambers to be exposed to a felony murder charge.

Appendix F, RP 6. The Respondent did not deny that this remedy exists for them. Rather, the Respondent made it clear before the trial court that it considered the Appellant to be prejudiced (to their benefit) should the Appellant successfully withdraw his plea of guilty:


MR. SCHACHT: The State certainly would not characterize the equities favoring the defendant [should Appellant's plea be withdrawn]. In fact, exactly the opposite.

Appendix F RP 15. The Respondent, simply, did not establish a record that Petitioner's remedy was unjust before the trial court, and it was error of the Court of Appeals to find an unjust remedy without a supporting record.

G. CONCLUSION

For the reasons outlined above, the Petitioner James John Chambers respectfully requests that the Court GRANT his Motion For Discretionary Review.

DATED THIS 11th day of June, 2015.


STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Petitioner

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named person(s) with a true, correct and complete copy of this document:

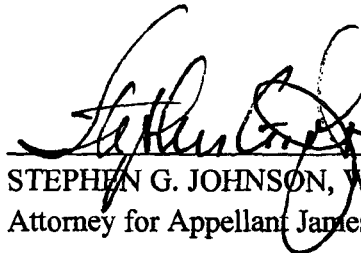
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DATED THIS 11th day of June, 2014, in Pierce County, WA.


STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant James John Chambers, Jr.

APPENDICES

Appendix A—Decision of the Court of Appeals

Appendix B—Report of Proceedings, Pages 15-16

Appendix C—Report of Proceedings, Page 25

Appendix D—Report of Proceedings, Pages 30-31

Appendix E—Opening Brief of Appellant, pages 11-13

Appendix F—Report of Proceedings, Page 6

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APPENDIX A

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAMES JOHN CHAMBERS,

Appellant.

No. 45392-4-II

Consolidated with
Nos. 45399-1-II; 45402-5-II

UNPUBLISHED OPINION

WORSWICK, J. — James John Chambers moved under CrR 7.8 to withdraw his 1999 guilty pleas to several charges that were included in an indivisible plea agreement under three different cause numbers, which motion the trial court denied. Chambers appeals, asserting that because his pleas are facially invalid, the trial court erred by denying his motion. In a statement of additional grounds for review (SAG), Chambers argues that the trial court failed to comply with remand instructions when denying his CrR 7.8 motion to withdraw his guilty pleas. We affirm.

FACTS

In 1999, Chambers entered into an indivisible plea agreement under three different Pierce County Superior Court cause numbers. *State v. Chambers*, 176 Wn.2d 573, 577-78, 583, 293 P.3d 1185 (2013). In cause number 99-1-00817-2, Chambers pleaded guilty to unlawful possession of a controlled substance with intent to deliver, unlawful manufacturing of a controlled substance, and two counts of first degree unlawful possession of a firearm (February

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crimes).¹ *Chambers*, 176 Wn.2d at 577-78. In cause number 99-1-02235-3, Chambers pleaded guilty to unlawful possession of a controlled substance (May crime). *Chambers*, 176 Wn.2d at 578. Finally, in cause number 99-1-05307-1, Chambers pleaded guilty to failure to remain at an injury accident, unlawful possession of a firearm, unlawful manufacture of a controlled substance, and two counts of first degree possession of stolen property (November crimes). *Chambers*, 176 Wn.2d at 578-79.

In 2008, Chambers filed a personal restraint petition with this court that challenged the validity of his sentence with respect to his February crimes. *Chambers*, 176 Wn.2d at 579; *In re Pers. Restraint of Chambers*, No. 38074-9-II, (Wash. Ct. App. Jan. 15, 2009). We granted Chambers's 2008 petition in part, holding that his judgment and sentence was invalid on its face as to his convictions for two counts of first degree unlawful possession of a firearm. Order Granting Petition in Part, *In re Chambers*, No. 38074-9-II. Our Supreme Court accepted discretionary review from our order granting Chambers's petition in part and ordered the trial court to consider withdrawing Chambers's guilty pleas as to all his February crimes. *In re Pers. Restraint of Chambers*, 171 Wn.2d 1035 (2009).

On remand, the trial court granted Chambers's motion to withdraw his guilty pleas to all his February crimes. *See State v. Chambers*, 163 Wn. App. 54, 60, 256 P.3d 1283 (2011), *aff'd*, 176 Wn.2d 573 (2013). Additionally, "[b]ecause the State had destroyed the evidence to support

¹ For clarity, and for consistency with prior decisions addressing Chambers's plea agreement, this opinion will hereafter refer to Chambers's convictions under cause number 99-1-00817-2 as "February crimes"; conviction under cause number 99-1-02235-3 as "May crime"; and convictions under cause number 99-1-05307-1 as "November crimes."

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the February crimes, the trial court dismissed the case on the State's motion." *Chambers*, 163 Wn. App. at 60. The State appealed the trial court's order granting Chambers's motion to withdraw his guilty pleas to his February crimes, arguing that Chambers's guilty pleas to those crimes were part of an indivisible agreement to plead guilty to his May and November crimes. *Chambers*, 163 Wn. App. at 60-61. We agreed with the State, reversed the trial court's order granting Chambers's motion to withdraw his guilty pleas to the February crimes, and remanded "for further proceedings, in which Chambers may seek to withdraw his indivisible guilty plea on all nine counts." *Chambers*, 163 Wn. App. at 62. Our Supreme Court accepted review and affirmed our holding that the trial court had erred by granting Chambers's motion to withdraw his guilty pleas as to his February crimes, agreeing that those pleas were part of an indivisible plea agreement. *Chambers*, 176 Wn.2d at 580-83.

After our Supreme Court issued its opinion, Chambers moved under CrR 7.8 to withdraw his guilty pleas as to all of the charges contained in his indivisible plea agreement. The trial court denied Chambers's motion, concluding that Chambers's had failed to demonstrate a manifest injustice allowing him to withdraw his guilty pleas. Chambers appeals the trial court's order denying his motion to withdraw his guilty pleas.

ANALYSIS

Chambers contends that the trial court erred by denying his CrR 7.8 motion to withdraw his guilty pleas to his February, May, and November crimes due to the facial invalidity of his judgment and sentence with respect to his February crimes of first degree unlawful possession of a firearm. We disagree and affirm the trial court's order denying Chambers's motion to withdraw his guilty pleas.

We review a trial court's decision to grant or deny a motion to withdraw a guilty plea for an abuse of discretion. *State v. Forest*, 125 Wn. App. 702, 706, 105 P.3d 1045 (2005). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). A defendant is permitted to withdraw a guilty plea under CrR 4.2(f) "whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 7.8 governs postjudgment motions to withdraw a guilty plea and provides in relevant part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

-
- (4) The judgment is void; or
 - (5) Any other reason justifying relief from the operation of the judgment.

A defendant seeking to withdraw his or her guilty plea in a postjudgment must meet the requirements for a plea withdrawal under both CrR 4.2(f) and CrR 7.8. *State v. Lamb*, 175 Wn.2d 121, 128, 285 P.3d 27 (2012). In other words, to succeed on a postjudgment motion to withdraw a guilty plea, the defendant must demonstrate *both* (1) that withdrawal of the plea is necessary to correct a manifest injustice, *and* (2) that relief from the final judgment is justified by one of the reasons enumerated in CrR 7.8(b).

I. MANIFEST INJUSTICE

A manifest injustice allowing a defendant to withdraw a guilty plea is "an injustice that is obvious, directly observable, overt, [and] not obscure." *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1966)). A defendant carries a heavy burden in demonstrating a manifest injustice permitting the withdrawal

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of a guilty plea, which “burden is justified by the greater safeguards protecting a defendant at the time [the defendant] enters [his or] her guilty plea.” *State v. Wilson*, 162 Wn. App. 409, 414, 253 P.3d 1143 (2011). One of the ways in which a defendant may meet the burden of demonstrating a manifest injustice is by showing that the plea was not voluntary. *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). A guilty plea is not voluntary if the defendant was misinformed about the direct sentencing consequences of pleading guilty. *State v. A.N.J.*, 168 Wn.2d 91, 113-14, 225 P.3d 956 (2010).

Chambers asserts that he met the requirement of showing a manifest injustice because (1) his guilty plea convictions for first degree unlawful possession of a firearm required him to serve “nearly double the amount of time in custody than he would have received had he been properly charged and sentenced,” and (2) he was misinformed about the direct sentencing consequences of his guilty pleas. Br. of Appellant at 10. On both points we disagree.

First, the record belies Chambers’s assertion that his first degree unlawful possession of a firearm convictions required him to serve more time in confinement than if he had been properly charged and sentenced for second degree unlawful possession of a firearm. Although Chambers is correct that the trial court sentenced him to 116 months for each of his first degree unlawful possession of a firearm convictions and that the statutory maximum sentence for second degree unlawful possession of a firearm was 60 months, Chambers was ordered to serve his 116 month sentences for first degree unlawful possession of a firearm concurrent with each other *and concurrent with* his 149 month sentence for unlawful possession of a controlled substance with intent to deliver conviction and his 144 month sentence for unlawful manufacturing of a controlled substance. Former RCW 9.41.040(2)(b) (1997); former RCW

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9A.20.021(1)(c) (1982). Accordingly, in light of Chambers's concurrent sentences for his February crimes, the trial court's imposition of 116 month sentences for each of Chambers's first degree unlawful possession of a firearm convictions did not require him to serve any more time in confinement than if the trial court had sentenced him to the statutory maximum of 60 months for second degree unlawful possession of a firearm.²

Second, we disagree with Chambers's assertion that he was misinformed about the direct sentencing consequences of his guilty pleas. Chambers's statement on plea of guilty clearly shows that he was aware that the statutory maximum penalty for first degree unlawful possession of a firearm, the crimes to which he had pleaded guilty, was ten years of confinement. Former RCW 9.41.040(2)(a); former RCW 9A.20.021(1)(b). Properly construed, Chambers's challenge to the voluntariness of his guilty pleas to first degree unlawful possession of a firearm was not that he had been misadvised about the sentencing consequences of those crimes but, rather, that those charges lacked a factual basis with which to support his guilty pleas. But Chambers did not move to withdraw his guilty plea on this ground, and he does not argue it on appeal. Because Chambers's guilty plea convictions for first degree unlawful possession of a firearm did not require him to serve any more time than if he had been convicted of second degree unlawful possession of a firearm, and because he was properly informed of the direct sentencing consequences of pleading guilty to first degree unlawful possession of a firearm, the trial court

² Chambers does not contend, and the record does not appear to support, that his offender score would have differed had he been charged and sentenced for second degree unlawful possession of a firearm. Former RCW 9.94A.360 (1998).

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did not abuse its discretion by concluding that he failed to show a manifest injustice warranting the withdrawal of his guilty pleas.

II. UNJUST REMEDY

Even assuming that Chambers had met his burden of demonstrating a manifest injustice with regard to his first degree unlawful possession of a firearm convictions and sentences, the trial court nonetheless did not abuse its discretion by denying his motion to withdraw his guilty pleas to all the charges in his indivisible plea agreement because withdrawal of Chamber's guilty pleas under these circumstances would be unjust to the State.

When a defendant demonstrates a manifest injustice with respect to some of the charges included in an indivisible plea agreement, the defendant has the initial choice of remedy between withdrawal of the entire plea agreement and specific performance. *State v. Turley*, 149 Wn.2d 395, 400-401, 69 P.3d 338 (2003); *but see State v. Barber*, 170 Wn.2d 854, 873-74, 248 P.3d 494 (2011) (excluding remedy of specific performance where the parties agreed to an illegal sentence based upon a mutual mistake). However, a trial court is not bound by the defendant's choice of remedy. *Turley*, 149 Wn.2d at 401. Rather, "[o]nce the defendant has opted for one of the available remedies, the State 'bears the burden of demonstrating that the defendant's choice of remedy is unjust.'" *Turley*, 149 Wn.2d at 401 (quoting *State v. Miller*, 110 Wn.2d 528, 536, 756 P.2d 122 (1988), *overruled on other grounds by Barber*, 170 Wn.2d 854). This burden requires the State to show that "compelling reasons exist not to allow the defendant's choice" of remedy. *Turley*, 149 Wn.2d at 401. And the State may base this showing on any or all of the charges included in the indivisible plea agreement. *Turley*, 149 Wn.2d at 401. "The trial court then

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determines whether those reasons are compelling and [whether] the defendant's choice of withdrawal or specific performance is unjust." *Turley*, 149 Wn.2d at 401.

Here, the State presented compelling reasons why withdrawal of Chambers's guilty pleas would be unjust. First, the State asserted that withdrawal of the indivisible plea agreement would be unjust because the evidence that could be used to prosecute Chambers for his February crimes had been destroyed. Under *Miller*, this reason alone was sufficient for the trial court to deny Chambers's motion to withdraw his guilty pleas. 110 Wn.2d at 535 ("plea withdrawal may be unfair if the prosecutor has detrimentally relied on the bargain and has lost essential witnesses or evidence") (citing *United States v. Jerry*, 487 F.2d 600 (3d Cir. 1973); *Farnsworth v. Sanford*, 115 F.2d 375 (5th Cir. 1940)). Additionally, the State asserted that withdrawal of Chambers's guilty pleas would be unjust because the State had relied on the agreement in deciding not to prosecute him for murder in regard to his November crimes and it would be difficult to now prosecute him for an alleged murder that took place in 1999. This is also a compelling reason to deny Chambers's motion to withdraw his guilty pleas. Because the State presented compelling reasons why withdrawal of Chambers's guilty pleas would be unjust, the trial court did not abuse its discretion by denying Chambers's motion to withdraw his guilty pleas.

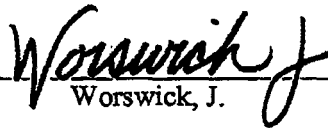
III. SAG

In his SAG, Chambers argues that the trial court erred by denying his motion to withdraw his guilty pleas because our prior decision in *Chambers*, 163 Wn. App. 54, and our Supreme Court's affirmance of that decision in *Chambers*, 176 Wn.2d 573, required the trial court to grant his withdrawal motion. But Chambers misreads our holding in that case. We did not direct the trial court to *grant* his motion to withdraw his pleas as he asserts in his SAG. Rather, we

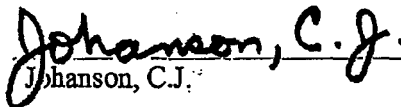
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reversed the trial court's order granting Chambers's motion to withdraw his guilty pleas to his February crimes and remanded for further proceedings, stating that on remand "Chambers *may seek* to withdraw his indivisible guilty plea" agreement with respect to all of his charges. *Chambers*, 163 Wn. App. at 62 (emphasis added). Similarly, in affirming our decision, our Supreme Court did not direct the trial court to grant Chamber's withdrawal motion. Accordingly, this argument lacks merit. We affirm the trial court's order denying Chambers's motion to withdraw his guilty pleas.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, J.

We concur:


Johanson, C.J.


Melnick, J.

APPENDIX B

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE
STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	SUPERIOR COURT
Plaintiff,)	NOS. 99-1-00817-2
)	99-1-02235-3
vs.)	99-1-05307-1
)	
JAMES J. CHAMBERS, JR.,)	APPELLATE COURT
)	NO. 45392-4-II
Defendant.)	
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VERBATIM REPORT OF PROCEEDINGS

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2013, the above-captioned cause came on duly for hearing
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in and for the County of Pierce, State of Washington; the
following proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF:	JAMES S. SCHACHT Deputy Prosecutor
FOR THE DEFENDANT:	STEPHEN G. JOHNSON Attorney at Law

Reported by
Angela McDougall, CSR, RMR, 82167

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2 the time he has to spend or the severity of the sentence
3 he would receive on the package of things he was
4 pleading guilty to becomes lower, the equities run in
5 his favor. He's buying off on -- he's paying less of a
6 price for the same commodity, the dismissal or the
7 withholding of the murder charge.

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10 characterize the equities as favoring the defendant. In
11 fact, exactly the opposite. I guess one way of
12 answering that question is this: What was before
13 Your Honor in 2010 was a plea agreement. Whether or not
14 the defendant could have the relief he was seeking at
15 that time --

16 THE COURT: Let me put it this way: If he were
17 to have chosen to go back and say, okay, we'll take
18 these two charges in the first degree, we'll amend them
19 to charges in the second degree, and I'll plead to the
20 package with the amended charges, there would have been
21 no additional jeopardy to him. He wouldn't have been
22 paying a bigger price by way of sentence to get his
23 deal.

24 MR. SCHACHT: I understand. I believe that is
25 correct. That goes back to what I was arguing.

1 THE COURT: So he's not suffering some
2 injustice as a result of --

3 MR. SCHACHT: Right.

4 THE COURT: -- of this whole arrangement.

5 MR. SCHACHT: The irony is that of ten charges
6 that he pled guilty to, the only two that he is
7 attacking are the two firearm possession charges, which
8 ultimately did not have an impact on the amount of time
9 that he served, other than it added points. It would
10 have added the same points that a second degree firearm
11 charge would add. What I was -- what I was trying to
12 get to in answering the Court's question is this: In
13 2010 the defendant brought to court -- actually, going
14 back to 2008, he brought the same motion to get out of
15 his guilty plea. At that time what he was seeking, both
16 I believe in 2008 and in 2010, was a different remedy
17 than he seeks now.

18 The reason he's seeking that now is he believes
19 that he can shorten his sentence substantially because
20 the State's evidence is now not available.

21 THE COURT: Let me play devil's advocate to
22 your position. Isn't he entitled to that because it was
23 the State's mistake that set in motion this whole chain
24 of problems. If he had been properly charged, we never
25 would be in this position. He would have been able to

APPENDIX C

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE
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STATE OF WASHINGTON,)	
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FOR THE DEFENDANT:	STEPHEN G. JOHNSON Attorney at Law

Reported by
Angela McDougall, CSR, RMR, 82167

1 is what the Supreme Court is talking about specifically,
2 is that one charge which now appears to be a stipulated
3 exceptional sentence by inference.

4 THE COURT: If you look at the bottom line of
5 what both the Court of Appeals and the Supreme Court is
6 trying to accomplish is the idea is that you -- if there
7 is a mistake that is made, you rectify the mistake. You
8 ensure that the defendant is no worse off than he would
9 have been had the mistake not happened. You don't give
10 him a gift for a mistake having been made.

11 The thing you are guarding against is he is not
12 any worse off. I am having trouble seeing where he is
13 worse off in this regard if the State's analysis is
14 utilized.

15 MR. JOHNSON: Your Honor, going back to some of
16 the original briefing in this case, one element of the
17 case law that is out there is a defendant cannot plead
18 guilty to an illegal sentence. Cannot plead guilty --
19 in this particular case, it was the two charges of
20 unlawful possession of a firearm.

21 THE COURT: He can knowingly plead guilty to a
22 crime he didn't commit under In Re Barr.

23 MR. JOHNSON: That was not an In Re Barr plea.
24 That goes to whether or not Mr. Chambers' plea was
25 knowing, intelligently made, and whether or not he made

APPENDIX D

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1 My reading of what the Supreme Court has done
2 and said goes back to what I was saying earlier, which
3 is the touchstone of all this is: Did Mr. Chambers get
4 a fair shake in this whole process? If he didn't, how
5 do we go about rectifying it without giving him a gift
6 in the process? I, therefore, see this as two critical
7 issues, one, is this a package deal, even though these
8 pleas took place sequentially and not all at one time,
9 and is there a just result in the end. In the end,
10 regardless of whether the State can or can't prove its
11 case on the homicide, if they were to ultimately need to
12 bring it or the evidence has been lost or whatever else,
13 the deal that was contemplated during the course of this
14 case, what has been the incentive for Mr. Chambers to
15 plead, has remained the same the whole time. To suggest
16 now that he ought to be able to get something better
17 than he bargained for is simply a denial of justice in
18 this circumstance.

19 I know you can argue that he is not getting
20 something that he didn't deserve, but in the Court's
21 mind, the result from the Supreme Court is a unified
22 package, and they haven't identified for me any
23 injustice, even though arguably they are only referring
24 to some of the counts, one would have liked to have
25 believed if there was some injustice perceived somewhere

1 up or down the line, they would have remanded to the
2 Court of Appeals or given me the benefit of their wisdom
3 to show me how Mr. Chambers is disadvantaged. I just
4 don't see him as disadvantaged, is the bottom line to
5 me. I am going to deny the request.

6 MR. SCHACHT: Your Honor, I'll prepare a -- an
7 order to carry out the Court's ruling and submit it to
8 counsel. My intention is to make it a simple order
9 denying the motions.

10 THE COURT: That's fine. I am sure we will
11 hear from other reviewing courts on this round of
12 decision making.

13 Thank you. It is an interesting situation. It
14 was well briefed and well argued.

15 MR. SCHACHT: Thank you, Your Honor.

16 THE COURT: If there is nothing else, we'll
17 stand adjourned.

18 (Matter concluded.)

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APPENDIX E

statutory maximum” since he was sentenced to the upper end of the wrong charge. This means that the more restrictive burden in Stockwell may not necessarily apply to the Appellant, but rather that the other standard of “certain errors on direct appeal are presumed prejudicial in a PRP” applies in Appellant’s matter. Stockwell, 179 Wn.2d at 605³ (Gordon-McCloud, J., concurring).

An involuntary plea is presumptively prejudicial on direct appeal.

Constitutional due process requires that the Defendant’s guilty plea be “knowing, voluntary, and intelligent.” State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 390 (2006), *citing* In Re Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). See also, CrR 4.2(f). CrR 4.2(f) provides that once a guilty plea is accepted, the court must allow withdrawal of the plea only “to correct a manifest injustice.” CrR 4.2(f). See also, Mendoza, 157 Wn.2d at 587. Generally, “manifest injustice” is found where a defendant is denied effective counsel, where a defendant fails to ratify a plea, where a defendant makes an involuntary plea, or where the prosecution breaches the plea agreement. See, Mendoza, 157 Wn.2d at 587, *citing* State v.

³ “In fact, the rule established in In re Personal Restraint of Richardson, 100 Wash.2d 669, 679, 675 P.2d 209 (1983), overruled on other grounds by State v. Dhaliwal, 150 Wash.2d 559, 568, 79 P.3d 432 (2003), State v. Kitchen, 110 Wash.2d 403, 413, 756 P.2d 105 (1988), and In re Personal Restraint of Gunter, 102 Wash.2d 769, 774, 689 P.2d 1074 (1984), and restated in In re the Personal Restraint of St. Pierre, 118 Wash.2d 321, 328, 823 P.2d 492 (1992)— that errors which are presumptively prejudicial on direct appeal will generally be presumed prejudicial in a PRP— is still good law.”

Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). “[A] defendant may also challenge the voluntariness of a plea when the defendant was misinformed about the sentencing consequences resulting in a more onerous sentence than anticipated.” Id. Specifically:

a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence of the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

Mendoza, 157 Wn.2d at 591 (emphasis added). “[A] sentencing consequence is [a direct consequence of a plea] when ‘the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.’” Id., at 588. Length of sentence is a direct consequence of pleading guilty. Id., at 590. When determining whether a plea is constitutionally valid or not valid, the Court is not to engage in a subjective inquiry into the defendant’s risk calculation and the reasons underlying his or her decision to accept the plea bargain. Id. at 590-591.

Again, there is nothing in the record to indicate that the Appellant was ever informed that he did not have the predicate offense to support a conviction of First Degree Unlawful Possession of a Firearm. Nor has the Respondent State of Washington ever produced any evidence that the Appellant knew he was pleading to a charge he could not have been

convicted of at trial; viz. no evidence that the Appellant made a valid In Re Barr⁴ plea. As such, Appellant's plea was involuntary.

In either analysis, the Appellant's plea of guilty to two (2) counts of First Degree Unlawful Possession of a Firearm was actually and substantially prejudicial and involuntary entitling him to post-conviction relief.

3. The Burden Of Proving That The Respondent State Of Washington Would Be Prejudiced By The Granting Of Appellant's Motion Was Not Met.

Where the defendant's sentence is invalid, it is the defendant's choice of remedy to seek either specific enforcement of the plea agreement or withdrawal of the guilty plea. See, State v. Turley, 149 Wn.2d 395, 399, 69 P.3d 338 (2003), *citing* State v. Miller, 110 Wn.2d 528, 536, 756 P.2d 122 (1988). See also, State v. Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002). The State then bears the burden of showing that the chosen remedy is unjust and that compelling reasons exist to not allow that remedy. Turley, at 401, Miller at 535. The Appellant elects to withdraw his guilty pleas.

The Respondent State of Washington did not present any evidence or argument that the Appellant's chosen remedy was unjust to the

⁴ In Re Barr, 102 Wn.2d 265, 684 P.2d 712 (1984).

APPENDIX F

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1 originally an illegal sentence. Mr. Chambers opted for
2 withdrawal.

3 We also feel that the Court has already ruled
4 on the question of whether or not Mr. Chambers'
5 withdrawal works an injustice. The Court had previously
6 observed that there is an injustice that works against
7 Mr. Chambers being sentenced to an illegal sentence. He
8 should not -- he should not have pled to or been
9 sentenced on an illegal sentence versus the State's
10 ability to preserve its case and move forward. As the
11 Court might remember, all evidence in 817-2 had been
12 destroyed.

13 The State is not without remedy either. They
14 have, from the outset, have been hinting that any sort
15 of tampering with the pleas in this case is
16 Mr. Chambers' tampering all of them, and that frees up
17 Mr. Chambers to be exposed to a felony murder charge.

18 The State has its ability to pursue justice as
19 it sees it against Mr. Chambers. In the face of
20 withdrawing his pleas of guilty, we believe that,
21 pursuant to rulings from Division II, Supreme Court,
22 prior case law, State vs Turley, that the Court should
23 grant Mr. Chambers' motion to withdraw his guilty pleas.

24 Thank you.

25 THE COURT: Mr. Schacht.

APPENDIX G

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