SUPREME COURT NO. 92129-6

COA NO. 71313-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

MARLON ALDRIDGE,

Respondent.

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

The Honorable Douglass North, Judge

ANSWER TO STATE'S PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTY

Respondent Marlon Aldridge, the appellant below, asks this Court to deny the State's Petition for Review and affirm the Court of Appeals.

II. COURT OF APPEALS DECISION

The State's petition seeks review of the Court of Appeals' unpublished decision in State v. Aldridge, 186 Wn. App. 1028, 2015 WL 2358568 (no. 71313-2-I, filed May 11, 2015). A copy of the decision is attached to the State's petition.

III. ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals correctly determined that Aldridge must be permitted to withdraw his guilty plea because he was misadvised that the mandatory minimum sentence under RCW 9.94A.540(1)(b) for assaults likely to result in death necessarily applied to him?

IV. STATEMENT OF THE CASE

Aldridge pled guilty to first-degree assault. CP 78. The information alleged he assaulted the victim with "force and means likely to produce great bodily harm or death." CP 1. He was advised he would be subject to the mandatory minimum sentence under RCW 9.94A.540(1)(b), which applies when the force or means used was likely to result in death or intended to kill the victim. CP 71; 2RP 15.

Aldridge pled guilty "as charged in the information" and stated, "with intent to inflict great bodily harm I did assault Reginald Carey by shooting him with a firearm." CP 78. Aldridge stipulated to the facts contained in the certification for determination of probable cause and prosecutor's summary for purposes of imposing a standard range sentence. CP 80. According to the probable cause certificate, Aldridge got in a fight. CP 4. Another man hit Aldridge, knocking him to the ground where he hit his head on the curb. CP 4. Aldridge responded by shooting the man in the groin. CP 4.

Aldridge moved to withdraw his plea on the grounds that he was incorrectly advised the mandatory minimum sentence would apply. 3RP 22, 61-62. The court denied the motion. The Court of Appeals initially affirmed, holding that by pleading guilty to first-degree assault, Aldridge necessarily admitted facts supporting the mandatory minimum sentence.

However, the Court of Appeals subsequently granted Aldridge's motion to reconsider in light of State v. McChristian, 158 Wn. App. 392, 402-03, 241 P.3d 468 (2010), rev. denied, 171 Wn.2d 1003 (2011), and in In re Personal Restraint of Tran, 154 Wn.2d 323, 329, 111 P.3d 1168 (2005). The Court also relied on United States v. Guerrero-Jasso, 752 F.3d 1186, 1191 (9th Cir. 2014), which Aldridge had raised in a Statement of Additional Authority, to hold that, by pleading guilty "as charged,"

Aldridge did not admit the additional facts necessary to support the mandatory minimum sentence.

The State then filed its own motion to reconsider, arguing the Court of Appeals had overlooked In re Personal Restraint of Fuamaila, 131 Wn. App. 908, 131 P.3d 318 (2006) and In re Personal Restraint of Richey, 162 Wn.2d 865, 175 P.3d 585 (2008). Aldridge filed an answer, pointing out that Fuamaila and Richey are inapposite. The Court of Appeals denied the State's motion to reconsider, and the State has asked this Court to grant review. Aldridge now files this Answer to the State's petition under RAP 13.4(d).

V. REASONS WHY THE STATE'S PETITION FOR REVIEW SHOULD BE DENIED

REVIEW IS UNNECESSARY BECAUSE THE COURT OF APPEALS OPINION IS DIRECTLY IN LINE WITH WASHINGTON PRECEDENT.

The mandatory minimum sentence is a direct consequence of a plea. Wood v. Morris, 87 Wn.2d 501, 513, 554 P.2d 1032 (1976). Misinformation about the direct consequences of a guilty plea renders the plea involuntary. State v. Mendoza, 157 Wn.2d 582, 584, 141 P.3d 49 (2006). An involuntary plea is a manifest injustice that requires the person be permitted to withdraw the plea. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). The Court of Appeals correctly determined

Aldridge was misadvised about application of the mandatory minimum sentence and held that he must be permitted to withdraw his plea.

Aldridge was advised that the mandatory minimum sentence applied to him. CP 71; 2RP 15; 3RP 58. This was incorrect. The advice came in terms strongly suggesting that the mandatory minimum would automatically apply because he pled guilty to first-degree assault. Id. This was also incorrect.

a. Under Well-Established Washington Law, the Mandatory Minimum Sentence Does Not Automatically Apply to Every First Degree Assault.

The Court of Appeals recently re-affirmed the holdings of In re Pers. Restraint of Tran, 154 Wn.2d 323, 329-30, 111 P.3d 1168 (2005) and State v. McChristian, 158 Wn. App. 392, 402-03, 241 P.3d 468 (2010) in State v. Dyson, ___ Wn. App. ___, ___ P.3d ___, 2015 WL 4653226, at *6 (No. 32248-3-III, filed Aug. 6, 2015). The Court explained, "RCW 9.94A.540 requires additional evidence to impose the mandatory minimum sentence. Under the latter statute, the defendant must have employed force likely to result in death or intended to kill, not simply force likely to cause great bodily harm." Id. The Dyson court then cited Tran and McChristian for the proposition that "RCW 9.94A.540's five-year mandatory minimum does not automatically attach to a first degree assault conviction."

b. The Court of Appeals Correctly Determined the Factual Basis Was Insufficient to Impose the Mandatory Minimum Sentence on Aldridge.

It is also established precedent that a mandatory minimum sentence must be supported by facts either found by a jury or admitted by the defendant. Alleyne v. United States, ___U.S. ___, 133 S.Ct. 2151, 2161, 186 L.Ed.2d 314 (2013); Blakely v. Washington, 542 U.S. 296, 303-04, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Aldridge did not admit facts sufficient to trigger imposition of the mandatory minimum sentence.

The State claims Aldridge admitted using force or means likely to result in death. Petition for Review at 8. He did not. The statement on plea of guilty states only that he (1) intended to inflict great bodily harm and (2) shot the victim with a firearm. CP 78. The information, to which Aldridge pled guilty as charged, states that the force or means was likely to result in great bodily harm "or" death, but not both. CP 1. Thus, because Aldridge's plea did not provide a factual basis for the mandatory minimum, it could not be imposed.

The State argues the mandatory minimum sentence may be imposed so long as a person pleads guilty "to an information charging that prong." Petition for Review at 8. But the facts required for a mandatory minimum sentence are not a "prong" or an alternative means of committing first-degree assault. The first-degree assault statute provides:

"A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm: (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death." RCW 9A.36.011(1). The "prong" or alternative means can be committed by using force likely to produce great bodily harm or by using force likely to produce death. Only one of these triggers the mandatory minimum sentence. RCW 9.94A.540(1)(b). This is why Washington courts have repeatedly held that the elements of first-degree assault are insufficient to impose the mandatory minimum. Tran, 154 Wn.2d at 329-30; Dyson, 2015 WL 4653226, at *6; McChristian, 158 Wn. App. at 402-03.

Neither the information nor the guilty plea specifies use of force likely to produce death as opposed to great bodily harm. By pleading guilty, Aldridge admitted he did one or the other, not both. Without an admission of using force likely to produce death, there was no factual basis for imposing the mandatory minimum sentence.

Review is not warranted because the Court of Appeals' decision follows directly from Tran, Dyson, and McChristian, which interpreted the very statute at issue in this case. Moreover, the decision below is entirely consistent with the cases cited by the State in its motion to reconsider: In re Personal Restraint of Fuamaila, 131 Wn. App. 908, 131 P.3d 318

(2006) and In re Personal Restraint of Richey, 162 Wn.2d 865, 175 P.3d 585 (2008). In those cases, the defendant was deemed to have admitted both alternative means in the information where the information was charged in the conjunctive – it used "and." Id. By contrast, the information here did not involve alternative means, and to plead guilty, Aldridge admitted only one of the two alternatives connected by "or." There is no conflict.

Nor is there any conflict with State v. Bowerman, 115 Wn.2d 794, 802 P.2d 116 (1990). The issue in Bowerman was whether there was a statutory right to plead guilty to only one alternative means. Id. at 800. The court in that case did not consider a scenario such as this case, involving whether a person, in fact, admitted specific facts as part of an actual guilty plea.

Fuamaila and Richey apply to cases in which statutory alternative means are charged in the conjunctive. But this case does not involve statutory alternative means charged in the conjunctive. The State alleged "great bodily harm or death," not both. CP 1. Under these facts, Tran indicates the correct analysis. Application of the mandatory minimum sentence is not "automatic" merely because a person admits the elements of first-degree assault. Tran, 154 Wn.2d at 329. Because Aldridge was informed the mandatory minimum would necessarily apply, the Court of

Appeals correctly held he was misadvised regarding a direct consequence of his plea.

The Court of Appeals decision is entirely consistent with the legislature's intent. The legislature intended to increase the punishment only for "certain assaults that are characterized by unusually (within the world of assault) violent acts or a particularly sinister intent." Tran, 154 Wn.2d at 329-30. The legislature did not intend the mandatory minimum sentence to automatically apply to every case of first-degree assault. Id. Aldridge did not admit to any additional facts that would make his offense "particularly sinister" within the world of first-degree assault.

The current outcome of this case does not work an injustice to the State. The State could have bargained for the mandatory minimum sentence. Aldridge concedes the State was not bound to offer him any specific plea deal. But the plea agreement contains no term requiring that Aldridge agree to the mandatory minimum sentence or to facts that would support it. CP 80-84. This case appears to have involved a mistake of law. Both the prosecutor and defense counsel appear to have assumed the mandatory minimum sentence automatically applied. Under Tran, this was incorrect.

The Court of Appeals' decision correctly reflects this Court's precedent in Tran, which is directly on point. It does not conflict with this

Court's decision in Richey or the Court of Appeals decision in Fuamaila which involve very different factual scenarios. Moreover, the Court of Appeals' decision is entirely consistent with the legislative intent in establishing the mandatory minimum sentence and does not work a hardship on the State. This Court should deny review.

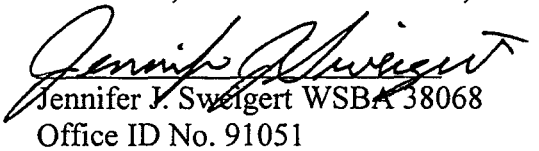
VI. CONCLUSION

This Court should deny the State's petition. If review is granted, however, it should affirm the Court of Appeals.

DATED THIS 8th day of September, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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Respondent,	)	
	)	
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	)	
Respondent.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 8TH DAY OF SEPTEMEBER 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **ANSWER TO STATE'S PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MARLON ALDRIDGE
DOC NO. 815531
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 8TH DAY OF SEPTEMEBER 2015.

x Patrick Mayovsky

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Attached for filing today is an answer to the state's petition for review for the case referenced below.

State v. Marlon Aldridge

No. 92129-6

Answer to State' Petition for Review

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