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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON, Respondent, v. Alfred Earle Brown Appellant.	No. 34203-4-III STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Alfred Earle Brown, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

~~Additional Ground 1~~

Quotations and Citations
1. Involuntary Waiver of Miranda Rights
2. Involuntary Guilty Plea
3. Ineffective Counsel
4. Specific Performance
5. Brady Violations

~~Additional Ground 2~~

6. Hearsay Testimony
7. Judicial Prejudice
8. Appeal Eligibility
9. Exceptional Sentence w/out Report to SGC
10. Same Criminal Conduct
Exibits A through M

If there are any additional grounds, a brief summary is attached to this statement.

Date: 8/24/16 Signature: Al E. Brown

Quotations & Citations

1. Miranda Rights Waiver

(An intelligent waiver is impossible at .419 BAC)

"Waivers of Constitutional Rights must be Knowing, voluntary, and intelligent."

St. v R.C. Smith, 2016 WnApp LEXIS 943
St. v M. Humphries, 181 Wn2d 708, (9/12/13)
St. v Reuben, 62 WnApp 620 (1991)
Keeney v Tamayo-Reyes, 504 U.S. 1 (1992)
Townsend v. Sain, 372 U.S. 293 (1963)

2. Involuntary Guilty Plea

"An allegedly involuntary guilty plea is the type of Constitutional error that a defendant may raise for the first time on appeal."
St v. Walsh, 143 Wn2d 1, (2001)
St. v. Roller, 2007 WnApp (4/3/07)

"A plea cannot be the product of, or induced by coercive threat, fear, persuasion, promise, or deception." -cont-

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St. v Fredrick, 100 Wn2d 550. (1983)
St. v Swindell, 93 Wn2d 192 (3/6/80)

"Alford plea needs strong evidence of actual guilt."
In re PRP, R.W.Ness 70 WnApp 817 (1993)

"A plea is involuntary where the defendant is misinformed of a direct consequence of a guilty plea." (Exibit E, p.3) (Ex. M, p.81-83)
St. v Mendoza, 157 Wn2d 582, (2006)
St. v Aldridge, 2016 WnApp, (5/11/15)

"An involuntary guilty plea constitutes a Manifest Injustice."
St v. Wakefield, 130 Wn2d 464 (1996)

"Hobson's Choice: An election by compulsion or without freedom of choice; a choice without an alternative."
Ballentine's Law Dictionary, 3rd Edition

St. v Perez, 33 WnApp 258, 260-61, (1982)
Wood v Morris, 87 Wn2d 501, (1976)
Boykin v Alabama 395 U.S. 238 (1969)

3. Ineffective Counsel

In re PRP of Maribel Gomez -
180 Wn 2d 337, March 12, 2013
"Defense counsel has a duty to make reasonable investigations."
"Defense counsel has a duty of loyalty to a defendant. Thus the right to effective assistance of counsel includes the right to conflict-free counsel."

"Government misconduct need not be of an evil or dishonest nature; simple mismanagement is sufficient... includes... the right to be represented by counsel who has had sufficient opportunity to adaquately prepare a material part of his defense."
St. v Michielli 132 Wn 2d 229, 240 (3/1997)

St. v Taylor 83 Wn 2d 594 (1974)
St. v Sangtachan Fong, 2016 WnApp 547 (3/21/16)
St. v Edwards WnApp 379 (2012)
St. v A.N.J. 168 Wn 2d 91 (2010)
St. v James 48 WnApp 353 (1987)
Lafler v Cooper 132 S.Ct 1376 (2012)

4. Specific Performance *

"Two remedies are available for breach of a plea bargain - withdrawal of the plea and Specific Performance."
St. v Schaupp 111 Wn 2d 34, 41 (1988)

"We hold now that the defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy."
St. v Miller 110 Wn 2d 528, 535 (1988)

5. Brady Violations

1.a) State suppressed evidence concerning Deputy Sheriff Max James, who responded to the "Lost Car" incident, giving insufficient time to investigate/interview & prepare.

1.b) State suppressed evidence concerning recorded testimony/interviews with Dave & JoLou Catron until two days before trial, giving insufficient time to investigate and prepare defense.

1.c) State suppressed Discovery to De-

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fendant until four days before trial, giving insufficient time to investigate/prepare defense to additional witnesses. (x2)

2. Evidence at issue was favorable to the accused because it was impeaching to the Alleged Victim, who was lying.

3. Prejudice ensued such that there is reasonable probability defensive counsel would have been convinced of his duty to defendant, and could have impeached state's witness (A.V.), thereby justifying And substanciating Knapstad motion.

Brady v Maryland 373 U.S. 83 (1963)
83 S.Ct 1194

6. Hearsay Testimony

~~St. v Lindahl 111 Wn App 1 (2002)~~
WA St. Constitution Art. I, § 35
Victim's Rights: "Victim" is not defined as relatives, neighbors, friends, etc, except "a [one] representative to appear to exercise the victim's rights."

7. Judicial Prejudice & Biased Statements

"Code of Judicial Conduct 3(D)(1)(a) provides in part that judges should disqualify themselves in a proceeding in which impartiality might reasonably be questioned, including but not limited to instances in which the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding."

and,

"The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial. The appearance of fairness doctrine requires the court to inquire as to how the proceedings would appear to a reasonably prudent and disinterested person."
In re Marriage of Higgebottom 1999 WnApp 1503

"Under a constitutional harmless error test... once the potential for prejudice is shown, the state bears the burden of showing that the error was harmless beyond a reasonable doubt. This is an extremely high burden for the

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State to meet, for even the appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice. And even if multiple errors are each harmless, such errors will require a new trial if the cumulative effect of the errors seriously impugned the defendant's right to a fair trial."
St. v Degroff 2005 WnApp 1546 (6/29/05)

8. Appeal Eligibility

Exibit M, p. 81, 82, 83

"A trial court's oral rulings have no final or binding effect unless they are formally incorporated into the court's findings of fact, conclusions of law, and judgement."
St. v Bryant 78 WnApp 805 (6/21/95)

Erroneous J & S should have been revised and corrected to reflect Jg. Barthelds oral ruling, or else he is guilty of Malfeasant Deception.
"...misinformed of a direct consequence..."

9. Exceptional Sentence w/out Written Finding of Facts Report to Sentencing Guidelines Comm.

"Without written findings, the WA St. Sentencing Guidelines Commission and the public at large cannot readily determine the reasons behind exceptional sentences, greatly hampering the public accountability that the SRA requires."
St. v Frielund 182 Wn2d 388 (9/16/16)

RCW 9.94A.010 "The purpose of this chapter..."
RCW 9.94A.535 "Whenever a sentence..."
WA St. Superior Court Criminal Rules 7.2(d)
1981 WA St. Laws chap. 137 § 12(3)
In re Breedlove 138 Wn2d 298 (1999)

"If the trial court relies on a reason which is not substantial and compelling and which is not consistent with the purposes of the SRA of '81, the sentence is unlawful." (Breedlove)

10. Same Criminal Conduct

"In this case, there is no question that the assault and harassment involved the same

victim or that they were committed at the same time and place. Thus, the depositive question is whether they also involved the same criminal intent. . . Because these mental elements arguably intersect, we must examine how closely related the crimes are, whether the nature of the criminal objective changed between crimes, and whether one crime furthered the other."
St. v Imam Addlehe Jara 2006 WnApp 632 (4/11/06)

"In deciding if crimes encompass the same criminal conduct, trial courts should focus on the extent to which the criminal intent, as objectively viewed, changed from one crime to the next. Part of this analysis will often include the related issues of whether one crime furthered the other, and if the time and place of the two crimes remained the same."
St. v Burns 111 Wn2d 314 (3/15/90)

I am not arguing Offender Score, but the Terms of Confinement to be Concurrent, rather than Consecutive.

11. Cumulative Error

"The cumulative error doctrine applies where a combination of trial errors denies an accused a fair trial, even where any one of the errors, taken individually, would be harmless."
In re PRP of Dayra Cross 180 Wn.2d 664 (11/7/13)

WA St. Constitution Art. 1, Sec. 21
U.S. Constitution Amendments VI, XIV
St. v Alexander 64 Wn App 147, 158

"A conviction must be reversed when the reviewing court concludes that a cumulation of errors has deprived the defendant of the right to a fair trial." (Robert Lamone Alexander)

~~Supp.~~ * 4. Specific Performance (Supplement) *

"...the state may not undercut a plea bargain explicitly or by conduct showing an intent to circumvent its terms."
St. v P.A. Lindahl 114 Wn App 1 (9/20/02)

Statement of Additional Grounds

Appellate counsel has briefly touched on five potential asignments of error in her Motion for Withdrawal. I will try to support those, and pick up where she left off, having a few more in mind to present. I will try to be brief.

1. Involuntary Waiver of Miranda Rights

When Deputy Steadman read me my rights, I was really drunk. A PBT showed .419 BAC. He cuffed me and put me in his vehicle, and after several minutes inside the Catron's home, he took me to the hospital. During transport, he became verbally abusive, accusing me of assaulting my mother. At one point, he yelled at me, "Why don't you just man-up and admit it!"...which offended me, and I told him he needed to apologize. Even at this point, I thought I was being arrested only for DOC violation. I tried to explain what I knew, and what Mom had told me about falling down the stairs two and a half weeks previous, but then he accused me of lying. I had been out back changing the water, and came in to find her face down on the basement landing with cans of applesauce scattered around her. I did not actually see her fall. I was not drunk the night she fell, but eighteen days later when arrested I was, and Dep. Steadman was very provocative and did not believe me about what had happened. I did not realize I was arrested for assault until the next day in court at Preliminary. At least he had the decency to be honest at the 3.5 hearing eighteen months later about no marks or bruises on my hands. They were clean and unmarked because I did not assault my mother, but no one believes me. My contention is that an "intelligent" waiver is impossible at .419 BAC. (Q & C, #1)

2. Involuntary Guilty Plead (Alford)

Words are inadaquate to fully describe the extreme duress I suffered in jail: Nine months in a tank ran by Sureños where I feared for my life every day, and the next nine in near isolation, knowing I faced life without parole. I

faced the crisis of my life, and nobody was going to help, and nobody cared. Paul Kelley, the public defender, ignored and refused my requests for exculpatory investigation, and even told me several times that he didn't care as long as he went home every night. He said investigation was a waste of time, and that there wasn't a chance in a million of aquittal. I was desperate; more desperate than I'd ever been for a reasonable solution; even if it was a compromise. And so I made a Hobson's Choice to take an Alford plea, and I lied about it being "freely and voluntarily." Exibit B / RP 62

3. Ineffective Assistance of Counsel

I signed over fifteen continuances, hoping Mr. Kelley would pick up the ball and at least act like a defense attorney instead of MVP for Prosecution. The idea of going to trial with him scared the holy bejesus out of me. I tried to fire him seven times: Three letters to his boss, a letter to the court, a letter Judge Bartheld, and two verbal requests in person to Mr. Kelley himself to step aside and appoint new counsel. I begged him to withdraw, but as usual, he refused. He refused to file a Knapstad motion, he refused to take case # 15-1-00339-4 to trial, thereby denying my right to trial, and then, when Jg. Bartheld made prejudicial comments about "intimidation" in reference to this dismissed case, he refused to object. He ignored my requests to object to to Arraignment Error (9/2/14) until the very day of trial (1/25/16) when he then eagerly came to Prosecution's rescue in trying to figure out exactly when it became pertinent. He ignored my requests for Discovery for over a year, (Ex. C) until four days before trial, and after I'd signed for it, commented on it, cross-referenced contradictions and inconsistencies in the Alleged Victim's testimony and then gave it back to him to prepare for trial, he ignored it, saying again that it was a "waste of time to prepare for trial." Now he refuses to give it back to me, saying the prosecutor won't let him. (Ex. A) He also failed to object to their last-minute changes to § 2.2 and 2.6 in the Judgement and Sentence concerning Same Criminal Conduct and Sentence Appeal. To me, this pretty much proves his complicity with Prosecution for my conviction. No defense attorney worth two red pennies would allow their client to be tricked into such last minute deviation from Specific Performance. He was more concerned about his promotion to Director of the Department of Assigned Counsel than his clients.

"Defense Counsel has a duty of loyalty to a Defendant. Thus, the right to ef-

fective assistance of counsel includes the right to conflict-free counsel." (In re PRP of Maribel Gomez 180 Wn 2d 337, 3/12/13)

Nothing was ever "conflict-free" with Mr. Kelley. He argued with me about everything. Within the first three months of arrest, I had given him multiple requests for Defensive Investigation, and outlines of specific things to find out about, like the "Lost Car " incident, when a deputy sheriff came out to the house to find the Alleged Victim's car 8/17/14, the day before she called 911. Why didn't she report assault to him? (Because that is not what happened to her.) I asked Mr. Kelley to get her medical records very early in proceedings, due to her being an extreme Fall Risk, on a Pain Contract with her doctor due to an Alcohol Problem, and because she has a history of falling. (Like off the back porch in the summer of 2013.) Mr. Kelley ignored me. By mid-October of 2015, I had asked him four times for Discovery. (Ex. C) In re PRP of M. Gomez, headnotes also state that "Defense Counsel has a duty to make reasonable investigations." By the time Mr. Kelley finally got around to obtaining the A.V.'s medical records, and finding / interviewing the deputy from the "Lost Car" incident, it was late 2015 / 2016, and too late to prepare for trial even if he had been so inclined. A continuance was rejected by Jg. Bartheld in January of 2016 for the simple fact that the case had already dragged out eighteen months. He had stated (Kelley) back in August of 2015 that he would be ready by mid-September, but that was either a lie or a cruel joke, because here it was late January of 2016 and he still wasn't ready. I knew he wasn't, simply by his failure to recall critically pertinent details of the case. He told me the morning of 1/25/16 that it would "be a suicide ride" to go to trial, and that I was "on [my] own", because the state thought they had such a strong case. (Based on <u>one</u> incredible, unreliable A.V., circumstancial evidence, and hearsay witnesses.) Understanding now his relationship with Prosecution as their MVP, I know why. I faced Hobson's Choice, with a Manifest Injustice about to take place, and there wasn't anything I could do about it.

"An involuntary guilty plea and denial of effective counsel during the plea process may constitute a Manifest Injustice." St. v Taylor 83 Wn 2d 594 (1974) and St. v Sangtachan Fong (March 21, 2016) "Manifest Injustice: (1) Ineffective Counsel (2) Plea not ratified (3) Involuntary Plea, or (4) Agreement not kept by Prosecution."

4. Prosecutorial Misconduct in Specific Performance

Nowhere in the Plea Agreement does it preclude Sentence Appeal. (Ex. E, p. 3) Page 3, § 5(f) states that I gave up "the right to appeal a finding of guilt," and p. 5, § 8 (Ex. E, p. 5) states that "if the court imposes an exceptional sentence after a hearing, either the state or I can appeal the sentence." I signed that plea. Paul Kelley signed that plea. And Ms. Brooke Wright, #41217 signed that plea, but she did not abide by it. She violated Specific Performance. My contention is the last sentence of the Checked / x-ed box paragraph of § 2.6 on p.2 of the J & S, concerning Sentence Appeal, and the first checked / x-ed box paragraph of § 2.2 of that same page. (Ex. J) Section 4.A.2 is also inappropriate. I was so distraught and traumatized by the aforementioned abuse of Due Process and the "presumed innocent until proven guilty" facade that I didn't catch it at the time, and I sincerely doubt Mr. Kelley actually wanted me to.

5. Prosecutorial Misconduct in Brady Violations

Discovery, medical records, witness statements, the deputy from the "Lost Car" incident, etc ad nauseum. It was like pulling hen's teeth, trying to get any of the information necessary to make any educated ecisions or strategies. The Saturday before the Monday I was scheduled for trial, Mr. Kelley surprised me mid-morning with the news that he had just that morning received a copy of the recorded interview with the Catron's, Dave & JoLou. Two days before trial was to start, we were apparently supposed to prepare defense for the state's two primary witnesses. (Who didn't really see or know anything either, but still, it's the principle...) It was absolutely ridiculous how long I languished in jail waiting for so little Discovery information for so little Defensive effect. Medical records were incomplete, history of falls and A.V.'s Fall Risk status records were incomplete, and no effort whatsoever was put into finding out about A. V.'s fall off the back porch in 2013, or her fall into the bathtub in 2010, while drunk and loaded on painkillers, the day after she got home from hip replacement surgery. No effort whatsoever. If not quite blatant suppression enough for Brady status, certainly severe enough for Unreasonable Discovery Delay and Hobson's Choice. Mr. Kelley finally gave me a copy of redacted Discovery and transcripts of A.V.'x recorded statements to him only four days before trial was scheduled in January of 2016. I had been asking for these documents for months, literally up to a year previous. I signed the requested protective order, and took the documents back to my jail cell accord-

ing to YCDOC Inmate Manual p. 12 of 25. Now they are refusing to return it to me, which is, in my best estimation, Evidence Suppression post facto. I include Mr. Kelley in this estimation, because he is quite obviously conspiring with the state, which is conflict of interest.

6. Hearsay Testimony at Sentencing

It may be legal, but I believe it to be highly unethical and unprofessional. My rotten sister and an ex-girlfriend from 35 years ago had no business whatsoever "testifying" to anything. They know nothing about what actually happened, because they weren't there to see it. Their "testimony" was so very inappropriate. Marilyn's primary motivation in this is undoubtedly getting her sticky meathooks on the estate inheritance, and whatever is left of my stuff. She's a greedy, gold-digging perra, and had no business potentially influencing Jg. Bartheld's impartiality at sentencing...

7. Judicial Prejudice and Biased Statements

...which apparently indeed was compromised by something or someone, as indicated by such statements as , "I hope your mother's (failing mental faculties) let her be lucky enough to forget about you," and, "You severed that (filial) relationship." Ha! All I ever did was try to take care of her as best I could. I was so flustered and upset by his remarks and the hearsay "witnesses" being there, I signed that J & S in a fog of frustration and anxiety. Mr. Kelley basically just stood there nodding his head like he had orchestrated it all, and was enjoyuing getting the credit.

8. Judicial Affirmation of Appeal Eligibility

Judge Bartheld was reviewing the J & S, trying to tell me what was on it, but I was so upset and fogged-out, I wasn't really hearing what he was saying, until he got to the part about Sentence Appeal. I perked up a bit and asked him to repeat that part, and he went so far as to read CrR 7.2 right out of the book ver batim, and assured me that while I could not appeal the verdict, indeed I absolutely could appeal sentencing. I contend that he supercedes whatever sneeky tricks the prosecutor slipped in §2.6.

9. Exceptional Sentence without Report to S.G.C.

Currently I am playing mail tag with the Sentencing Guidelines Commission, trying to find out for sure if the sentencing court complied with RCW 9.94A.535 and CrR 7.2(d). To the best of my knowledge to date, they have not. Every attempt to answer my question so far has involved focusing back on the J & S,

(Ex. K) which is circular logic, (Ex. F, p. 11) like begging the question. In re PRP of Breedlove 138 Wn 2d 298 (12/8/1998) "Even though the sentence may be statutorily authorized, when a trial court imposes a sentence which is outside the standard range set by the legislature, the court must find a "substantial and compelling reason to justify the exceptional sentence. If the trial court relies on a reason which is not substancial and compelling and which is not consistent with the purposes of the SRA of 1981, the sentence is unlawfull." And, it's pretty clear in 9.94A.535 where it says "Whenever..." Not just Trial, but "Whenever," which would include a Plea. Unlike Breedlove, however, I have no paralegal training, I didn't stab or kill anyone, and I did not ask for four times the reasonable sentence. (Ex. F, p. 10) The last part of the last sentence of CrR 7.2(d) states, "...the court's written findings of fact and conclusions of law shall also be supplied to the Commission." I'd really like to see that. I don't believe they can honestly justify it.

10. Same Criminal Conduct Warrants Concurrency

Original charges of Assault II fell into the 22 - 29 month range, and so, with the reduced, amended charges, I expected a plea bargain of somewhere between 30 to 60 months. It was only reasonable to assume that the amended charges would be compensated by an exceptional sentence comparable to the original charges. Prosecution's first offer was 15 years. And so I signed a few more continuances and waited in jail several more months, until James Haggarty and Dan Fessler both retired, and Joe Brusick and Paul Kelley took their places. I soon realized Mr. Kelley was more interested in promoting his career than defending me. Prosecution wasn't budging, and laughed at my counter-offers. Mr. Kelley told me they wanted me locked up long enough to let my poor and puzzled mother pass on by natural causes. I find such a sentiment reprehensible beyond comprehension, and to state it out loud to defense counsel to pass along to a defendant morbidly unprofessional. What a horrible thing to say! The Second Amended Information (Ex. H) alleges both Counts 1 & 2 occurred on the same date, at the same time, in the same place, as part of the same incident and Criminal Intent, therefore logically and legally making them Same Criminal Conduct and warranting the corresponding sentences being served concurrently, not consecutively. My contention is that §2.2, 2.6, and 4.A.2 were slipped in on the J & S undetected by me, and uncontested by Mr. Kelley. The Plea Agreement does not stipulate these. Actually, the SDPG states on page 3,

§ 6(b) that "the terms of confinement for Counts One & Two are presumed to be served concurrently." (Ex. E, p.3) Same Criminal Intent, same "victim," same date, same cause number, same case. (Ex. H) Same Criminal Conduct warrants concurrency. (Ex. B, p. 64) 2006 Wn App LEXIS 632 Imam Addlehe Jara. Unlike Jara, however, I am not arguing Offender Score, but the Terms of Confinement. The point of all this is that even though each case is different and must be examined individually, we still have Case Law, by which all cases are compared to be consistent with Legislature's intent when they ruled on SRA in 1981. IE: Ten years is too much time, even if her split lip was not accidentally self-inflicted. Four times too much time. Which is why I want this mess remanded for re-sentencing to run concurrent, at least. (Ex. F, p. 12) That's really all I am asking.

11. Cumulative Error

Well, I see my list has changed a bit from the one I had in mid-October of 2015, and shortened a little. Ex. I) But in principle, the reasoning is the same; there were so many sloppy, lackadaisical elements to getting a proper defense together, and so many malicious fabrications and machinations by the state, that anything less than at least looking at Cumulative Error doctrine would be uncivilized. I've targeted five potential assignments of error in addition to the five that Appellate Counselor Ms. Andrea Burkhart brought to attention, and I've done my level best to substantiate them all. I do hereby propose they all be examined cumulatively as well as individually in light of the Cumulative Error doctrine, and not in the prejudicial light most favorable to the state.

Exibits

A. Letter from Paul Kelley 7/30/16
B. Plea Hearing 1/25/16
C. Letter to Paul Kelley 10/11/15
D. Letter to Paul Kelley 10/4/15
E. Plea Agreement 1/25/16
F. In re Breedlove 1999
G. Letter to Paul Kelley 11/2/15
H. Second Amended Information 1/25/16
I. Letter to Paul Kelley (date unknown)
J. Judgement and Sentence 2/4/16
K. Letter from S.G.C. 7/21/16
L. Rules of Appellate Procedure 10.10(c)
M. Verbatim transcripts of proceedings

Exibit L

RULE OF APPELLATE PROCEDURE 10.10
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

Since Appellate Counsel has indeed filed a Motion to Withdraw, The Court is obligated To search the record for Substanciation. (of my grounds and allegations)

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

[December 24, 2002]

Exibit M

this person. The state is going to call him. So we'll take care of any testimony in the state's case in chief.

There has been an updated offer. There was also redacted discovery that will be going to Mr. Brown hopefully Monday morning when some of the grey redactions are redone so they're blacked out. I will do that and get those to Mr. Brown on Monday morning. So that's what we have to do.

Mr. Brown asks for -- I'm going to at least express the motion on his behalf only because it's important to him. I think it's -- I've advised the state of the motion.

Mr. Brown wishes to have a brief sit down with the complaining witness in this case. That would be Mrs. Brown. He would like to hear what her position is on this matter. That is important to him.

That is his request. He's made that request twice in letters to me, but I can't do that. That would only take court authority, in my opinion, because I think the state advised at least a few minutes ago that they would object to such a scenario, but he wishes to have the court make a ruling on that request.

I don't know the logistics of that request yet. If the court is wanting to entertain such a motion, I guess I would get into the logistics once that threshold is met. Like I said, it's not a request that we hear a lot, but that is his request. He asked me to advise the court. Thank you.

SAG #3 P.2

4 days before trial

Exibit M

5

SAG #3 p.2 #7, p.5

THE COURT: The court would deny that motion. There is indications in this case of potential intimidation in the relationship between Mr. Brown and his mother. I recall specifically statements (from #15-1-00339-4 (Dismissed)) indicating you're going to be sending me to prison by going ahead with this type of an action. So the court is going to deny that request finding that it does not rise to the level of a constitutional issue to be able to personally interview himself the complaining witness in this case. #15-1-00339-4 Dismissed with Prejudice!

I assume that counsel has had adequate opportunity to investigate the matter and to interview the witnesses; is that correct?

MR. KELLEY: Yes.

THE COURT: Okay.

MR. KELLEY: I've interviewed Mrs. Brown twice. Those are recorded, and Mr. Brown will get copies of those transcripts that I --

You got those, right?

MS. WRIGHT: I'm not sure I have.

MR. KELLEY: All right. I'll get them to you. I think I sent them as part of the discovery packet.

MS. WRIGHT: Okay.

MR. KELLEY: But he'll have copies of those transcripts as well.

THE COURT: Okay.

Exibit M

SAG #3, p.2 #7, p.5

MR. KELLEY: Now I recall that you heard the motion to dismiss on one of the counts. I remember that now. Okay. No, not O.K. Borrowed testimony?

THE COURT: I have approved the continuance or the reset, excuse me, not continuance, resetting the trial to the 25th. Actually, not 25th, the 19th.

MS. WRIGHT: That's right.

MR. KELLEY: And we'll deal with scheduling on Friday. If the case is going to proceed to trial, I know that I have to be in a meeting at 10:00 on Tuesday morning, as you are. We'll try to get around some of that.

THE COURT: Okay.

MR. KELLEY: Okay.

THE COURT: All right.

MR. KELLEY: Thank you, Judge.

MS. WRIGHT: Thank you, Judge.

THE COURT: Thank you.

(Proceedings recessed until 1-15-2016.)

Exibit M

(9)

SAG #3 P.3

(3)

The extra week will assist another request by Mr. Brown on me to do a little bit more work. I was given that request this morning. Liar! That's another reason I think I probably would have come in here anyway and asked just for that, whether or not the court did it or not. I think it would be prudent on multiple levels to move this a week.

THE COURT: Does Mr. Brown object to setting the trial over one week?

MR. BROWN: No. I've only had the statement four days.

THE COURT: Okay.

MR. KELLEY: What he's referring to is redacted discovery that was delivered to him on Monday morning.

THE COURT: Okay. So we're not continuing the case. We're just simply resetting it to the 25th. Because of the commitments of counsel, there's a substantial likelihood this case is going out on the 25th.

MS. WRIGHT: Absolutely, your Honor.

THE COURT: We'll enter the order, then, and trial will be set now to start on Monday, January 25th, to accommodate these last minute matters and scheduling issues.

MR. KELLEY: Thank you.

MS. WRIGHT: Thank you.

(Proceedings recessed until 1-22-2016.)

Exibit M

for his request --

MR. KELLEY: Well, he --

THE COURT: -- other than he needs more time. More time to do what?

MR. KELLEY: His own work and his own preparation for getting ready for this matter. I can tell the court that as far as I'm concerned I've gotten one more request this morning to find a witness. We're going to try do that for him today with counsel's assistance. It's a law enforcement officer, and that should not be much of a problem, I hope. If it is a problem, I can report that to the court on Monday. I asked for this MONTHS ago!

SAG #3 p.3

As far as the other evidence is concerned and the witnesses, I think this case is prepared for trial. The defense is general denial. It did not happen the way the state believes that this incident happened, and that is the defendant's position. So that's the type of case it has been since the get-go.

I think this case, it would be prepared. It is prepared to go as it sits. But for the one other request, and I get many requests, by the way, and we're trying to fulfill those requests and investigate. I have Mr. Haueter from my office making some calls on another witness that came up yesterday.

We'll do our level best to be prepared. If for some

Exibit M

reason on Monday there comes a problem, I'll take it up with the trial judge if your Honor does not grant Mr. Brown's motion for a continuance.

THE COURT: The court is going to deny the request. I haven't been provided with a reasonable basis for the request at this point in time. This case has been pending now well over a year, almost a year and a half. I recall just recently Mr. Brown objecting to the continuance. We only set it over an additional week or two. I may be mistaken in that recollection.

MR. KELLEY: You know, I don't recall. I may not recall it similarly. In any event, I know -- yeah --

THE COURT: The bottom line is this case needs to get resolved for a variety of reasons, one of which is if it is continued it's going to be unduly delayed because I suspect it's going to require appointment of new counsel at some point in time if Ms. Wright, her responsibilities starting May 1st, is not able to try this case.

It seems to me that absent a legitimate reason why this case can't go to court that it needs to go. At this point in time I don't have a legitimate reason. Kelley's dalience!

SAG #3 p.3

So I need a trial status order. The case will go out on Monday. If problems arise over the weekend, the trial judge can address the issue.

MR. KELLEY: Right. I'll work with the status

Exibit M

I think, based on the status of discovery and all the information that defense has had throughout the course of the case, they expected this change. I don't believe there is any prejudice to the defendant.

THE COURT: Well, I'm really loathe to allow amendments on the day of trial, especially something that's been pending for a year and a half. Can you pinpoint for me when it was it was that you advised the defense that you were going to amend the information.

MS. WRIGHT: I can, your Honor, if you'd give me a moment to check my e-mail.

(Pause.) Here is where Kelley assists. Incomplete.

THE CLERK: Your Honor, the clerk has marked state's Identifications A through G.

MS. WRIGHT: Your Honor, that was on October 10th, 2014.

THE COURT: All right. I will allow the amendment. Ms. Wright, just so you are aware, in the usual course I would not allow the amendment on the first day of trial.

MS. WRIGHT: I appreciate that, your Honor.

THE COURT: A not guilty plea will be entered. Are we ready do the 3.5 hearing?

MS. WRIGHT: We are.

THE COURT: All right. Do you wish to make an

SAG #3 p.2

Exibit M

SAG #1 p.1

Q. Did you examine Mr. Brown's physical body? Did you examine anything about Mr. Brown other than just talking with him? Did he look for any wounds on him?

A. No, I did not see any.

Q. Did you look?

A. Not specifically.

Q. You didn't see his hands when you were cuffing him?

A. Yes, I saw them. There was nothing obvious.

Q. There was nothing obvious about --

A. I mean, if there was bruising or cuts or something I probably would have saw them, if that's what you're asking, when I handcuffed him.

Q. At least on his hands?

A. Right.

Q. Did you notice any scratches or anything else like that?

A. No.

Q. What about on his face?

A. None that I saw.

Q. What was he wearing, do you recall?

A. Jeans. I don't know if he had a jacket or shirt.

Q. Okay. Would you have noted that in a police report if you had noticed any sort of wounds on him?

A. Yes.

Q. Why would you have done that?

A. Well, the jail would have made me, number one. I mean, if

Exibit M

A. That was his response, yes.
Q. And I'm assuming, tell me if I'm wrong, that you asked him if he wanted to make a statement.
A. No, I did not ask him.
Q. You didn't ask him?
A. No.
Q. Why?
A. Because he said he understood his rights. I asked him if he wanted to waive the rights. He said, I understand my rights. To me, that's him wanting to make a statement. He could have chose not to.
Q. So at that point did you ask him, well, what happened? Did you say that? Did you ask him that?
A. Not at that time, no.
Q. Okay. So after you read the rights, did you go and talk to Mrs. Brown again and then come back?
A. Yes. St. v Reuben 62 WnApp 620 (1991)
Q. And that's when this falling down the stairs statement that he made was said to you?
A. Yes.
Q. So you read rights, went and talked to Mrs. Brown and then came back?
A. Yes. Oleson T. Reuben
Q. Did he -- did Mr. Brown, when you -- say anything about not wanting to talk with you after you came back to the police

Exibit M

Q. Yeah.
A. He was answering my questions, talking to me.
Q. But his eyes weren't closed or rolling back in his head or anything like that?
A. No.
Q. And then off to the hospital?
A. Yes.

MR. KELLEY: Thank you. Thank you very much.

THE COURT: All right.

MS. WRIGHT: Briefly, your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. WRIGHT:

Q. Between the time that you read him his Miranda rights and the time that you had the conversation about how did those injuries occur, how much time elapsed?
A. Maybe ten minutes. Oleson T. Reuben 62 WnApp 620
Q. All right. And during that time was he in your patrol car the whole time?
A. Yes.
Q. All right. Had anything changed about his condition between the time that you read him Miranda and the time that you spoke to him again?
A. No.

Exibit M

MS. WRIGHT: That's all I wanted to ask.

THE COURT: Mr. Kelley, anything else?

MR. KELLEY: No. Thank you.

THE COURT: Did you ever get any idea what his blood alcohol was?

SAG #1 p.1

THE WITNESS: Yes, your Honor. It was .419 on my PBT.

THE COURT: Four?

THE WITNESS: Four.

THE COURT: Okay. Does that raise issues for anybody?

MS. WRIGHT: If I can follow up quickly.

THE COURT: Sure.

FURTHER REDIRECT EXAMINATION

BY MS. WRIGHT:

Q. Despite the fact that you found him to be very intoxicated, did you have any doubt that he was able to engage intelligently and understand the situation, understand his rights?

A. No. He functioned.

MS. WRIGHT: Okay. Thanks. That's all.

THE COURT: Mr. Kelley, anything else?

MR. KELLEY: No. Thank you.

THE COURT: Do you have any other witnesses?

Exibit M

Q. Where were you going?
A. To jail.
Q. So what did -- was there anything said during that ride?
A. Yes. After engaging the transmission of the vehicle into gear and pulling out onto South 79th and proceeding towards, you know, heading back downtown, he started accusing me of assaulting my mother.
Q. So he was making statements or asking questions?
A. I think he said something to the effect of what's going on with your mom? I said, well, she wandered out. The house got real quiet, and I went looking for her. I thought maybe she was wandering around again.

SAG #1 P.1

He said something to the effect of why don't you just man up and admit you beat the shit out of her? And I went, whoa. Where did that come from? He said something to the effect of that's what she said. I went, you got to be kidding me. No, she fell down the stairs.

Q. So you told him that she fell down the stairs?
A. Yes, I did.
Q. And was this in response to a question or was this a non-inquisatory conversation?
A. It was more of an accusation. Yeah, he was kind of trying to bully me around a bit, at least that's what it felt like.
Q. And you responded by saying?
A. Defensively I tried to explain what I knew about the

Exibit M

situation, which was very -- I did not witness the actual fall. I was outside. I was out back changing the water.

She told me, when I came in and found her at the bottom of the stairs, she told me how she had fallen or the next day, someplace in there. Subsequently she told me how she had fallen.

Q. So that's what you were relating --

A. That's what I was trying to relate to Deputy Steadman was her recollection of how she fell.

Q. In all this time did you invoke your right to remain silent?

SAG #1, p.1

A. I didn't see any reason to invoke my right to remain silent.

Q. You didn't want to?

A. Had I felt guilty in any way, shape or form, yes, of course. I would have shut my mouth and asked for a lawyer.

Q. You didn't ask for a lawyer?

A. I had no idea that there would be charges or anything at that point. Why wouldn't I talk to an officer of the law?

Q. How long did this conversation take place?

A. All the way into town and into the emergency -- all the way into the emergency room at Memorial at least. He was very adamant and making accusatory statements, and he was very adamant about defending myself. I wanted him to take back his statements, which eventually verbally he did. In the emergency room at Memorial he eventually said, all right, all right, all right. I take it back.

Exibit M

SAG #1 p.1

Q. Take what back?
A. His accusatory statements that I had assaulted my mother or his accusations.
Q. And then what happened after the hospital?
A. After the hospital, we went and came to the county jail.
Q. Were there any other statements made in the police car between going from the hospital and going to the jail?
A. Not that I recall. We were conversing or having interaction. I don't remember the specific subject. He had kind of backed off on his accusations.
Q. Did you feel any pressure or coercion to make the statements that you did in the car?
A. Yes. When somebody accuses you of something, you answer back. No, no, it ain't like that at all. I consider that to be a normal reaction when somebody makes an accusation. You try and stick up for yourself and say, no, you're wrong.
Q. You felt compelled to answer?
A. Yes.
Q. Did you feel like you had a choice in not answering?
A. I wasn't really thinking about the choice. I wasn't -- at that point, like I said, I did not feel compelled not to answer. I didn't feel like -- as an officer of the law, you expect him to be -- yeah, at that point I didn't think I had any reason not to talk to him. I did not think that I had any reason not to talk to him.

Exibit M

A. Not that I know of, no.
Q. All right. You were informed that you had a DOC warrant at the time?
A. Yes. He informed me of that in the interaction in our driveway, right there at the gate where I was standing.
Q. Your testimony was that you had no reason not to explain your side of the story to the deputy on that night.
A. At that point I did not feel like I had any reason to remain silent, no.

MS. WRIGHT: No further questions.

THE COURT: Anything else, Mr. Kelley?

MR. KELLEY: No. Thank you.

THE COURT: All right. Have a seat next to your lawyer, Mr. Brown.

Any other witnesses?

MR. KELLEY: No.

THE COURT: Any other witnesses?

MS. WRIGHT: No, your Honor.

THE COURT: All right. Do you want to sum up then, Ms. Wright.

MS. WRIGHT: I will briefly. The state has to prove by a preponderance of the evidence that any statements made by the defendant were made with a knowing, voluntary and intelligent waiver of his rights. Deputy Steadman testified that he advised the defendant of his rights off

SAG #1 p.1

Exibit M

He advised that when he was accused of this he felt he had no choice, at least in his mind, but to answer. His position is that he was attacked during an accusatory type of questioning and that he felt that he had to answer.

He did advise us that he understood his rights. That's true. When an individual feels like they have to answer because that's the way they feel at the time, I think the court needs to make a finding whether or not this is coercive. If it is coercive, the statements should be out. If it's not coercive, then the state prevails.

Mr. Brown advises us that because of the situation in the car on the trip down to the hospital, his recollection was that he was being --

MR. BROWN: Verbally attacked.

MR. KELLEY: I'll repeat that, verbally attacked.

That is the position of the defendant. I would ask the court to make a finding that any statements he made would not be admissible during the state's case in chief. Thank you, Judge.

THE COURT: Okay. Well, there really aren't any disputed facts here. Mr. Brown was contacted and arrested by Deputy Steadman back on August 18, 2014. Mr. Brown was intoxicated. However, according to his testimony, he wasn't so intoxicated that he didn't understood what was going on. He understood the Miranda warnings as they were given to him

SAG #1 p.1

Exibit M

my concerns. If they come up I'll object.

THE COURT: All right. Make sure what you want, what areas you don't want them to testify about.

MS. WRIGHT: I'll continue to do so, your Honor.

THE COURT: Is there anything else?

MR. KELLEY: Not from me. There may be one witness. We're going to deal with that later today if we have to, a Deputy James. We've talked about that already. We need to contact that deputy and see if that person would testify. I'll tell the court this afternoon to at least mention that to the jury.

SAG #3 p.3

THE COURT: Is he on here?

MS. WRIGHT: Max James. → "Lost Car" incident

THE COURT: I'll put him on there.

Anything else

MS. WRIGHT: Just for your dire process, how will that go forward?

THE COURT: I'll introduce the case. I'll introduce you folks. I'll go through the witness list and see if anybody knows any of the witnesses.

I'll then go through and ask general questions of the panel. I'll probably do hardship first before I do anything else.

Then we'll do a biographical sketch. Each member of the panel will answer one of the sheets over there. I'll

Exhibit M

We haven't proved to anything. I haven't really stipulated to anything either other than my poor and puzzled, dazed and confused mother was extremely injured back in August and that my primary -- I was -- two and a half weeks later I was drunk. The night of my arrest I was extremely drunk. I think Deputy Steadman came up with a .419 BAC.

I was Mirandized on allegations of a DOC warrant because I was in noncompliance with my CCO, and that was it. Any other statements that I made to him during the course of that evening fall outside the rule of the Miranda rights.

So there is grounds for further legal action, in my best estimation. However, in light of the overall threat to request -- if I were to withdraw the plea and request proceeding with trial, I'm faced with essentially the same threat here on the last page, the persistent offender. Quite frankly, I don't want to die in prison. You know, I'm almost 51, and the Washington State Department of Corrections is not my idea of a healthy retirement. I've said enough.

THE COURT: All right. Thank you, Mr. Brown.

Mr. Brown, it is the judgment of this court to follow the negotiated settlement in this particular case. To the charges of Third Degree Assault, Count 1 and Count 2, the court will find, based upon agreement of the parties, that

Insufficient - (Breedlove)

Exibit M

there are substantial and compelling reasons to justify an exceptional sentence upward under State vs. Hillyard, and sentence you to the maximum sentence on Count 1 of 60 months and the maximum sentence on Count 2 of 60 months, to run consecutive.

The court will grant you credit for time served, which is required, together with any good behavior credit that you may have earned while at this facility. Because the court has sentenced you by agreement of the parties to the maximum sentence for each of those two counts, there will be no community custody provisions.

Legal financial obligations, the court will strike the criminal filing fee, the court appointed attorney recoupment fee. Those mandatory assessments total $700. They include the crime penalty assessment, the DNA collection fee and the domestic violence assessment fee. I have stricken entirely the costs of incarceration.

You've lost your right to video. You've lost your right to own or possess a firearm. You're now subject to DNA testing.

SAG #8 P.5

You have one year from today's date to collaterally attack this judgment and sentence. You have 30 days from today's date to appeal the judgment and sentence if you believe I have committed an error. Your rights to appeal, Mr. Kelley can address those issues, but you must file a

Exibit M

notice of appeal with the clerks's office within 30 days of today's sentence if you desire to appeal this decision.

MR. BROWN: I'm sorry. Would you repeat that, the Court of Appeals.

THE COURT: Yes. In fact, I think what I'm going to do is I'll read it to you right out of the court rules.

You are hereby advised that you have the right to appeal this judgment and sentence, not the plea the guilty but the judgment and sentence.

SAG #8 P.5

MR. BROWN: Okay.

THE COURT: You have right to appeal the sentence because it is outside the standard range, but it was also the understanding of this court that this was the agreed upon sentence which was negotiated at the time the plea was taken. Unless a notice of appeal is filed within 30 days from entry of this judgment today, the right to appeal is irrevocably waived.

The superior court clerk will, if requested by you, supply a notice of appeal form and file it upon completion by you. If you are unable to pay the costs of the appeal, the court may have counsel appointed, and the court can also order portions of the trial record necessary for review of assigned errors to be transcribed at public expense for that appeal.

The time limits on the right to collaterally attack

Exibit M

imposed by RCW 10.73.090 and .010 are the rules that I've referenced that you have one year from today's date to collaterally attack the judgment and sentence.

Any questions?

MR. BROWN: Yes, sir. Which particular book is that that you're reading from?

THE COURT: I'm reading from the Rules For Superior Court, the criminal rules. It is Rule 7.2(b).

MR. BROWN: CrR?

THE COURT: Yes.

MR. BROWN: Thank you, sir.

THE COURT: The court is signing the judgment and sentence.

That raises the next issue in this case as to whether or not the court should sign a continuing domestic violence no contact order. Mr. Brown insists that the court modify the standard domestic violence no contact order, which would provide for no contact either directly or indirectly with Joanne Brown, the victim of this case and his mother.

Mr. Brown seeks to modify that order on the basis that he wants to repair the relationship with his mother and speaks of that relationship as being the strongest relationship known and one that should be fostered. It is inconceivable to this court that Mr. Brown can only look to that limited view when he destroyed that relationship with

SAG #7, P.5

Exibit M

the severe beating administered to his mother. Prejudice!

The court will not modify the domestic violence restraining order. You shall have no further contact with your mother either directly or indirectly.

This court is familiar with the ravages of dementia. It probably would make no difference anyway whether or not you had contact with her or not. She probably doesn't remember you, Mr. Brown. Perhaps for her safety and for her concerns of her nightmares, maybe it's a good thing she not remember you. Judicial Prejudice/Bias

SAG #7 p.5

So I'm signing the domestic violence no contact order. I've indicated that this was presented to you in open court with you present, and I would ask Ms. Wright to serve you with a copy of that for the record.

MR. KELLEY: Is there a date on that?

MS. WRIGHT: I just need you to sign there.

(Pause.)

MS. WRIGHT: Mr. Brown, there is your copy of the no contact order.

THE COURT: Okay. Court will be in recess.

MR. KELLEY: Thank you.

(Proceedings were adjourned.)

Exibit A

Yakima County
DEPARTMENT of ASSIGNED COUNSEL
104 North 1st Street
Yakima, Washington 98901
(509) 574-1160 / 1-800-572-7354
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Paul Kelley, *Director*
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Jeff West, *Misdemeanor Supervisor*
Peggy Walker, *Office Supervisor*

Saturday, July 30, 2016

Alfred Earle Brown, #801659
Coyote Ridge Corrections Ctr.
1301 N Ephrata Ave
PO Box 769
Connell, WA 99326

RE: Correspondence / Superior Court, Cause #14-1-01191-7

Mr. Brown:

Enclosed is the correspondence you sent to me during your case. This is the second delivery of your letters to you. On February 23, 2015, I hand delivered your correspondence up to that date while you were incarcerated in the Yakima County Jail.

As for your request for discovery, I understand that you may disagree, but CrR 4.7 precludes me from sending it to you. I know that you originally had the copy and made notes on most of the pages. You then gave it back to me. The state now insists that if you still need possession of that discovery then a protective order should be in place. I sent you a copy of that earlier this year. I enclose another for you. You have two options. Agree to the protective order or make a motion to the court. Please advise if you require anything else from the case file.

liar!

Regards,

Paul Kelley

Enclosures

You're relieving the state of its burden of proving that you're guilty beyond a reasonable doubt at a trial, and you're giving up the right to appeal. Do you understand that?

→ MR. BROWN: Yes, I do. (Lie) of coercion

THE COURT: Has anybody made any threats to you or promises to get you to plead guilty to this charge?

MR. BROWN: Permission to speak freely, your Honor. Life w/out Parole is a threat.

THE COURT: I asked you a question. You can answer it how you choose.

MR. BROWN: The nature of the charge itself, the first charge itself was extremely threatening. Throughout this procedure I've been under duress to make this decision. However, it is a conscious decision, and I believe it to be the best decision under ~~advisement~~ abandonment of traitorous counsel.

THE COURT: In fact, you're entering this plea freely and voluntarily? No.

→ MR. BROWN: Yes. (Lie) ~~on~~ of Coercion

THE COURT: Okay. You understand that -- I've already gone through those rights.

There is a standard range for these offenses, and I'll get to that portion, which is 17 to 22 months as to each count and 12 months of community custody. The recommendation from the prosecuting attorney is going to be

Exibit B, p.64

MR. BROWN: Yes.

THE COURT: Because of the nature of the offense being denominated as a domestic violence offense, the court could order you to undergo a domestic violence assessment and counseling. You understand that?

MR. BROWN: Yes.

THE COURT: As part of your community custody.

MR. BROWN: Yes.

THE COURT: To the charge, then, of third degree assault and felony harassment of another alleged to have occurred on August 1st of 2014, how do you plead to those charges, guilty or not guilty?

MR. BROWN: Guilty by an Alford plea.

THE COURT: It's guilty or not guilty. Is it guilty or not guilty?

MR. BROWN: Guilty.

THE COURT: This is an Alford plea. I understand that you are pleading guilty not because you believe you are guilty but because you believe if the matter were to proceed to trial there's a substantial likelihood that you would be convicted, and you wish to take advantage of the reduction of charges offered by the state?

MR. BROWN: Yes, sir, preponderance of the ~~circu~~ ~~master~~ evidence. (circumstancial)

Exhibit C

10/11/15

"For purposes of CrR 8.3(b), under which a court may dismiss a criminal prosecution in the furtherance of justice when the state has committed misconduct that is prejudicial to the defense, (Arraignment Error, Brady Violations, etc) a defendant's right to a fair trial is prejudiced by an UNREASONABLE DISCOVERY DELAY (14 months!) that forces the defendant (me) to choose between the right to a timely trial and the right to adequately prepare (effective assistance of) counsel."

→ 149 Wn. 2d 1, State v. Wilson 10/24/02
65 P. 3d 657

→ 108 Wn. App 774; 31 P. 3d 43 9/17/01 - 3/13/03

"HOBSON'S CHOICE" - "An election by compulsion or without freedom of choice; a choice without an alternative." - Ballentines Law Dictionary 3rd Ed.

#3, ~~p. 5~~

I told Mr. Kelley about the "Lost Car" report at least a year ago, along with Alleged Victim's dive off the back porch in the summer of '13. I've given him several Defensive Investigation outlines, pertaining things like Fall Risk, Pain Contract, Welfare Fraud, Tax Evasion, and Alcohol Problem.

#3, ~~p. 4~~

I've asked him at least four times for Discovery, and I have yet to listen to his recorded interviews with A.V., or review the witness list.

Exhibit C

I see in Local Criminal Rules 4.7 Discovery is due to all parties within 5 days of the order, and within 15 days of trial if not requested. I've requested Discovery at least four times.

I've also requested review of your interviews with Alleged Victim at least four times.

I've had opportunity to only glance at the "witness" list. (There are no eye witnesses. Nobody knows.)

I've given you five opportunities to step aside and let someone else handle it. Your choice.

Now, if you blow this, you will never be forgiven. Never. But, if you pull this off successfully, I will be your friend for life, and I will try to do anything and everything I can to help you succede.

If we lose, everyone loses. Nobody wins. But if we win, everybody wins. Nobody loses. That is how simple this is. You may not think so from an attorney's perspective, but it really is that simple.

We need to review and prepare. Soon.

Mr. Brown

Exibit D

10/4/15

Mr. Kelley;

After the Tampering charges were dismissed, I anticipated an offer of ten years.

Active gang member "Lil Mumbles" got ten years for shooting a man in both knees while robbing him.

Chris Minshew, whose offender score is off the chart, got five years for inflicting great/grievous bodily injury on his wife (an Assault I offense) and because the No Contact order was modified, gets to communicate with her from prison.

Yet my only offer was fifteen years for a self-inflicted split lip. Fifteen years is into seriousness level XII or XIII for my offender score. Even if I were responsible, Serious bodily injury is only level IV.

And many wonder why I have so little respect for Man's Law. Perhaps it is because it is not respectable. Perhaps it is because it is evil. Satanic.

P.T.S.D. from D.O.C. is real. I may need a psychiatric evaluation and diagnosis, but I'm not going back to prison/hell. It is worse than death.
(Criminal School/Hate Factory)

Mr. Brown

Exibit E, p.3

5. **RIGHTS: I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM UP BY PLEADING GUILTY:**

(a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify myself and the right to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:**

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	5	17-22 Months	n/a	12 months	5yrs/$10,000
2	5	17-22 Months	n/a	12 months	5yrs/$10,000

* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

(b) ☒ The terms of confinement for Counts One & Two are presumed to be served **concurrently,** unless the court finds that an exceptional sentence is appropriate.

☐ **EXCEPT FOR THE ENHANCEMENTS ON COUNTS ONE,** which must be served **consecutively** to any other portions of my sentence.

☐ The terms of confinement for Counts _____ are presumed to be served **consecutively.**

Exibit E, p.5

8. **THE JUDGE MAY NOT FOLLOW THE RECOMMENDATION:** The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

   a. The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.

   b. The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.

   c. The judge may also impose an exceptional sentence above or below the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

   d. The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

   If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

9. **I UNDERSTAND THAT MY GUILTY PLEA HAS FURTHER CONSEQUENCES:**

   a. **FINANCIAL:** In addition to sentencing me to confinement, the judge will order me to pay $500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration. RCW 7.68.035,

   b. **CRIME RELATED RESTRICTIONS:** The judge may impose crime related restrictions on my activities, including a restriction that I have no contact with the victim(s) of the crime. Any violation of a condition of my sentence is punishable by additional confinement or other sanctions.

   c. ☐ ~~**COMMUNITY CUSTODY – CRIMES COMMITTED PRIOR TO JULY 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community~~

Exibit F, p.9

[18] We hold that where, as here, a trial court has approved a plea agreement as being consistent with the interests of justice and in conformance with this state's prosecuting standards, the trial court may additionally approve the plea agreement's stipulation to an exceptional sentence above or below the standard range if the trial court finds that the sentence is consistent with the purposes of the SRA.

[19] The fact that a stipulation may be a substantial and compelling reason justifying an exceptional sentence does not relieve the sentencing court of its duty to enter findings of fact and conclusions of law which explain the reasons for the sentence.

RCW 9.94A.120(3) provides in pertinent part:

> Whenever a sentence outside the standard range is imposed, *311 the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

Written findings ensure that the reasons for exceptional sentences are articulated, thus informing the defendant, appellate courts, the Sentencing Guidelines Commission, and the public of the reasons for deviating from the standard range. RCW 9.94A.105. *See* BOERNER, *supra,* at 9-2 to 9-5.

[20] [21] [22] The remedy for a trial court's failure to issue findings of fact and conclusions of law is ordinarily remand for entry of the findings, and we remand here for that purpose. *State v. Head,* 136 Wash.2d 619, 624, 964 P.2d 1187 (1998); *Templeton v. Hurtado,* 92 Wash.App. 847, 965 P.2d 1131 (1998). The failure to enter findings does not justify vacation of the sentence in a personal restraint proceeding unless it is a fundamental defect which results in a complete miscarriage of justice. *See In re Personal Restraint of Cook,* 114 Wash.2d 802, 812, 792 P.2d 506 (1990). There is no miscarriage of justice where the sentence imposed is the precise sentence requested by the defendant.

My plea was not

Further, by knowingly, intelligently and voluntarily agreeing to the exceptional sentence and by signing the sentencing order, Breedlove waived his right to appellate review of the exceptional sentence. *Perkins,* 108 Wash.2d 212, 737 P.2d 250 (a criminal defendant may, as part of plea agreement, waive constitutional and statutory rights, including rights under the SRA and the right to appeal); *State v. Mollichi,* 132 Wash.2d 80, 89 n. 4, 936 P.2d 408 (1997) (criminal defendants may, expressly or impliedly, waive constitutional rights to counsel, to speedy public trial, to jury trial, to be free from self-incrimination, or to be tried in the county where the crime was committed, and **426 may waive statutory rights, such as the right to have restitution determined within the statutory time limit); *Cooper,* 63 Wash.App. at 13-14, 816 P.2d 734.

[23] The testimony and evidence before the sentencing judge was that Breedlove had completed two years of college. He also is a certified paralegal and has represented *312 himself in civil cases in federal court. He understood the charges against him, the standard sentence range and the maximum sentence. His responses to the court's questions demonstrate he understood that the consequences of his plea agreement included the imposition of a maximum sentence on each charge and that the maximum sentences would run consecutively for a total of 20 years. It also appears that Breedlove understood the alternative to the plea agreement was retrial on the murder charge. He indicated that he understood the possibility that he would be convicted a second time on that charge and that his sentence was likely to be longer than 20 years. He also was concerned that a conviction for murder (but not manslaughter) would constitute a conviction for a "most serious offense" under RCW 9.94A.030(23) and he was concerned that such a conviction would be a strike under Washington's "three strikes" law. He also indicated to the sentencing judge that he understood and agreed that he would not be able to challenge the basis for the imposition of the exceptional sentence.

His stipulation to the sentence was intelligent, voluntary and made with an understanding of its consequences and constitutes a valid waiver of his right to challenge, by appeal or personal restraint petition, the sentence he requested.

[24] [25] We additionally note that the doctrine of invited error " 'prohibits a party from setting up an error at trial and then complaining of it on appeal.' " *Wakefield,* 130 Wash.2d at 475, 925 P.2d 183 (quoting *State v. Pam,* 101 Wash.2d 507, 511, 680 P.2d 762 (1984)), *overruled on other grounds by State v. Olson,* 126 Wash.2d 315, 893 P.2d 629 (1995). The doctrine has been considered in cases in which defendants were sentenced pursuant

Exibit F, p. 10

to plea bargains and later challenged their sentences on appeal. *Wakefield*, 130 Wash.2d at 475, 925 P.2d 183 (the doctrine did not apply where a trial judge went beyond the defendant's request that the court participate in plea negotiations); *Cooper*, 63 Wash.App. at 14, 816 P.2d 734 (defendant's statement on plea of guilty that he agreed sentences should be ***313** served consecutively was invited error). *See also Smith*, 82 Wash.App. at 162-63, 916 P.2d 960 (defendant could not challenge trial court's finding of deliberate cruelty where defense counsel had conceded deliberate cruelty existed).

In this case Breedlove agreed to the imposition of a particular sentence in exchange for reduced charges and a presumably shorter sentence. He agreed, in writing and orally in open court, that the stipulation, itself, justified the exceptional sentence in his case. He signed the sentencing order, which contained the abbreviated reason for the exceptional sentence, rather than findings of fact.

He invited any error in the trial court's failure to make specific findings on the sentence and may not now complain that the failure was error.

I am not a paralegal

Breedlove additionally argues in his opening brief in this court that the trial court should have been collaterally estopped from imposing an exceptional sentence on remand for a new trial. This issue was not raised at the time of sentencing, in the personal restraint petition or the motion for discretionary review, and it was not accepted for review. We decline to consider it but note that the cases cited by Breedlove on this issue do not support his position.

Affirmed; the personal restraint petition is dismissed. However, we remand to the sentencing court for the entry of findings of fact and conclusions of law supporting the exceptional sentence.

SMITH, JOHNSON, MADSEN, JJ., and DOLLIVER, J.P.T., concur.

ALEXANDER, J. (concurring).

I agree with the dissent that a stipulation to an exceptional sentence is not a substantial and compelling reason justifying imposition of a sentence outside the standard range. While the State and a defendant may ****427** certainly stipulate to facts that may support the finding of a reason for an exceptional sentence, the parties cannot by their stipulation bind the sentencing judge to make such a finding.

***314** I nevertheless agree with the majority that we should affirm the sentence imposed here on Breedlove. I reach this conclusion because Breedlove waived his right to appellate review of the sentence by requesting the sentence that was imposed. As the majority notes, the record clearly establishes that Breedlove acted intelligently, voluntarily, and knowingly when he agreed to have the sentencing court sentence him to a term of 20 years. For that reason, he may not now be heard to quarrel with the sentencing court's embracing of a result he invited.

* I did NOT request 10 years!

DURHAM, C.J., and TALMADGE, J., concur.

SANDERS, J. (dissenting).

Breedlove's exceptional sentence was based on a single "finding" of the trial court: "See stipulated agreement." Clerk's Papers (CP) at 57. Breedlove's stipulation states that he is stipulating to the sentence to avoid substantial risk of conviction and sentence to a greater term of confinement. CP at 53 (Def.'s Stipulation to Exceptional Sentence (Sept. 5, 1996) at 2, ¶ 6). The issue is therefore whether this finding and stipulation are sufficient to comply with the Sentencing Reform Act of 1981(SRA) which requires a substantial and compelling reason to exceed the sentencing range the legislature has determined to be the presumptive standard.

A plea bargain to a sentence not in compliance with the law will not be enforced. *In re Personal Restraint of Moore*, 116 Wash.2d 30, 38, 803 P.2d 300 (1991) (sentence imposed pursuant to plea bargain must be statutorily authorized; defendant cannot agree to be punished more than the legislature has allowed); *State v. Miller*, 110 Wash.2d 528, 538, 756 P.2d 122 (1988) (Durham, J., concurring in result) ("There simply is no credible legal argument that can be made for the proposition that a court [ ] may exceed its statutory sentencing authority in order to enforce the terms of a plea agreement.") (citation omitted); *In re Personal Restraint of Gardner*, 94 Wash.2d 504, 507, 617 P.2d 1001 (1980) (plea agreement cannot exceed statutory authority ***315** given to court). The fact

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that the defendant had two years of college and paralegal training (Majority at 421) does not change the statutory sentencing requirement. [1]

The SRA sets out the standard sentencing range. It prohibits a sentence outside that range except where the trial court "finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.120(2).

In most cases the SRA contemplates imposition of the standard range sentence, as that range is "a legislative determination of the applicable punishment range for the crime as ordinarily committed." *State v. Parker*, 132 Wash.2d 182, 186-87, 937 P.2d 575 (1997).

Clearly, if the judge imposed an exceptional sentence solely on the basis of this plea agreement, it would be invalid. *In re Personal Restraint of Moore*, 116 Wash.2d at 38, 803 P.2d 300. This being the case, it must follow "substantial and compelling reasons" justifying imposition of an exceptional sentence cannot include the plea agreement itself. The reasoning of the majority is therefore circular when it holds "[w]here the parties agree that an exceptional sentence is justified, the purposes of the SRA are generally served by accepting the agreement as a substantial and compelling reason for imposing an exceptional sentence." Majority at 424.

**428 The majority speculates as to other reasons that may have been in the minds of the parties or the court at the time that this plea agreement was made. Majority at 425 ("The parties *appear* to have recognized the fairness of the sentence in light of the crime and Breedlove's criminal history. Furthermore, the trial court determined that the 20-year *316 sentence was appropriate, considering the circumstances of the crime.") (emphasis added). However, the actual findings of the trial court provide no basis for the exceptional sentence other than the stipulation, which is as inadequate to meet the statutory standard as is the plea agreement of which it is a part. As a matter of preestablished law, a stipulation to an exceptional sentence cannot be a compelling and substantial reason justifying the exceptional sentence.

The majority notes the prosecutor's right under the SRA to recommend a sentence outside the guideline. Majority at 424 (citing RCW 9.94A.080(3); *State v. Lee*, 132 Wash.2d 498, 506, 939 P.2d 1223 (1997)). [2] However, this simply reflects a right of the prosecutor, not an obligation of the court.

The majority relies upon three cases to support its holding, none from this court, and, in the end, none satisfying.

State v. Cooper, 63 Wash.App. 8, 13, 816 P.2d 734 (1991): Unlike the case at bar, the trial judge entered specific conclusions of law supporting his decision to impose an exceptional sentence. Thus *Cooper* is inapposite.

State v. Hilyard, 63 Wash.App. 413, 417, 819 P.2d 809 (1991): The trial court entered a written conclusion " 'that an exceptional sentence is justified on *the facts* and also due to the stipulation of parties in plea negotiations per RCW 9.94A.080,' " (quoting trial court's conclusions of law) (emphasis added). Affirming, the Court of Appeals simply quotes the statutory language of RCW 9.94A.080(3) *317 that an exceptional sentence may be part of the plea agreement. *Hilyard*, 63 Wash.App. at 418, 819 P.2d 809. Unconsidered is the legal question before this court: Is a stipulation by itself a substantial and compelling reason to go beyond the SRA?

Finally, the majority relies on *State v. Givens*, 544 N.W.2d 774 (Minn.1996). There the Minnesota court noted that the exceptional sentence could be affirmed on the grounds that the victim was particularly vulnerable due to age, a specific factor authorizing an exceptional sentence under the Minnesota statute, and a finding made by the Minnesota trial court judge. *Givens*, 544 N.W.2d at 775-76. The court did however opine a criminal defendant could make a knowing, intelligent, and voluntary waiver of his statutory sentencing rights. *Id.* at 777. But in our state it is settled that even a knowing, intelligent, and voluntary waiver of a defendant's statutory sentencing rights will not authorize the sentencing court to depart from the statute. *In re Personal Restraint of Moore*, 116 Wash.2d at 38, 803 P.2d 300; *In re Personal Restraint of Gardner*, 94 Wash.2d at 507, 617 P.2d 1001.

As our majority concludes a stipulation equates to a substantial and compelling reason for imposing an exceptional sentence, Majority at 424, it is interesting to note the Minnesota court held "an attempt 'by the parties to limit sentence duration does not create a "substantial and compelling circumstance" which may be relied upon as justifying a departure from the Guidelines.' " *Givens*, 544 N.W.2d at 777 (quoting *State v. Garcia*, 302 N.W.2d

Exibit F, p.12

643, 647, *overruled on other grounds by Givens*, 544 N.W.2d at 777 n. 4).[3]

**429 The majority fails to credit the distinction between the rights of the parties to a plea agreement to contract as they see fit and the obligations placed by statute upon the trial *318 court to impose a sentence which conforms to legal standards. Here the trial court set a sentence outside the statutory guidelines based solely on the plea agreement. The SRA's requirement that a judge set a sentence outside its guidelines only for substantial and compelling reasons is not satisfied by a plea agreement. Rather, such a sentence may be imposed only upon a finding of the trial court judge that such reasons do exist and the exceptional sentence is imposed based on criteria set forth in the SRA.[4]

The remedy is not new findings to justify an erroneous result, but lawful imposition of sentence based upon the findings actually made.

CF: #11, Concurrency

All Citations

138 Wash.2d 298, 979 P.2d 417

Footnotes

1 When a request for collateral relief is based on a constitutional challenge, the petitioner is required to show actual and substantial prejudice as a result of the alleged violation. *In re Personal Restraint of Cook*, 114 Wash.2d 802, 809, 792 P.2d 506 (1990); *In re Personal Restraint of Haverty*, 101 Wash.2d 498, 504, 681 P.2d 835 (1984). When, as in this case, the collateral relief is based on a nonconstitutional challenge, the required preliminary showing is stricter than the "actual prejudice" standard. The claimed error must constitute "a fundamental defect which inherently results in a complete miscarriage of justice." *In re Cook*, 114 Wash.2d at 811, 812, 792 P.2d 506. *See also In re Personal Restraint of Fleming*, 129 Wash.2d 529, 534, 919 P.2d 66 (1996).

2 At the time Breedlove was sentenced, first degree manslaughter was classified as a class B felony. Former RCW 9A.32.060(2). The maximum sentence for a class B felony is 10 years. RCW 9A.20.021(1)(b). In 1997, the crime was reclassified as a class A felony. Laws of 1997, ch. 365, § 5. The maximum sentence for a class A felony is 20 years. RCW 9A.20.021(1)(a).

3 Washington's Hard Time for Armed Crime Act requires that judicial records be kept of all sentences for certain violent or armed offenses. Laws of 1995, ch. 129, § 6, codified at RCW 9.94A.105. The Sentencing Guidelines Commission is charged with recording and comparing these sentences. The Commission's first report on judicial sentencing practices summarizes adult felony sentences imposed during the fiscal year 1996. The total number of adult felony sentences in this state for that period is 21,421. Of that number, 19,682, or 91.9 percent, were within the standard sentence range; 2.3 percent were above the standard range; and 5.8 percent were below the standard range (these included defendants receiving mitigated sentences as well as those sentenced under first-time offender waivers or under the special sex offender sentencing alternative). SENTENCING GUIDELINES COMM'N, STATE OF WASHINGTON, ADULT FELONY SENTENCING I-15 (1996). nt by the defendant to the exceptional sentence was the reason most frequently given to justify an exceptional sentence. Agreement by the parties was cited as justification for sentences below the standard range in 78 of 229 cases (more than twice the number than the next frequently cited reason). SENTENCING GUIDELINES COMM'N , *supra*, at I-28 to I-29. Agreement was cited 174 times (again, more than twice the number of the next frequently cited reason-victim vulnerability at 71 times) in the 406 aggravated sentences. SENTENCING GUIDELINES COMM'N, *supra*, at I-30 to I-31.

4 Minnesota, like Washington, requires a sentencing judge to impose a presumptive, or standard range, sentence "unless the individual case involves substantial and compelling circumstances." Minn.Stat. Ann. § 244 app. at 529 (West 1992). When an exceptional sentence is imposed in Minnesota, the sentencing judge "must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence." Minn.Stat. Ann. § 244 app. at 530 (West 1992).

1 The majority notes that Breedlove proceeded pro se "but with standby counsel available." Majority at 420. At the session where the court accepted Breedlove's stipulation to the exceptional sentence, Breedlove was in custody and his standby counsel was not present. State's Resp. to Personal Restraint Pet.App. C at 2 (Pierce County No. 92-1-03059-6, Report of Proceedings (Sept. 5, 1996)). As the record shows, the only legal advice Breedlove received in preparing his plea came from the prosecuting attorney. *Id.* at 3. At one point, albeit not with regard to the stipulation, Breedlove even mentioned he was acting "on advice of Counsel," referring to the prosecutor. *Id.* at 27.

Exibit G, p.1 11/2/15

CrR 4.7 / 8.3 (b) pc

"... in the furtherance of justice..." 173813

→184 Wn.App. 790; 339 P.3d 200 (12/4/14) Opinion/Analysi
[7-9] "Gov. misconduct can be something as basic as simple mismanagement" Stephen M. Brown

→David A. Oppelt, Jr.-172 Wn.2d 285; P.3d 653 (5/5/11)
Headnotes [4,5,6] - "A court may dismiss... due to arbitrary action or governmental misconduct."
Footnote [3] "... negligent delay alone can result in a due process violation in this state." - citing
→Hyson Blackwell - 120 Wn.2d 822; 845 P.2d 1017 ('93

→Ricky Ray Wilson - 149 Wn.2d 1; 65 P.3d 657 (10/24/02)
Headnote [7] 108 Wn. App 774; 31 P.3d 43 (3/13/03)
"... a fair trial is prejudiced by an unreasonable discovery delay that forces the defendant to choose between the right to a timely trial and the right to adaquately prepare counsel." (Fifteen months of wasted time!!)

→Jimmy R. Teems - 89 Wn.App. 385; 948 P.2d 1336 (12/30/9
"... simple mismanagement... sufficient to establish ... misconduct." (Hobson's Choice Sive made 12x)
(3/11/97

→Joseph Robert Michielli - 132 Wn.2d 229; 937 P.2d 587 [7]
"... the right to be represented by counsel who has had sufficient opportunity to adaquately prepare a material part of his defense."
(Mr. Kelley said he'd be ready by 9/21/15. HA!)

#11; Cumulative Error ↓ Exibit G, p.2 (Pg. 2)
→ Lynda Joann Sherman - 59 Wn. App 763; 801 P.2d 274 (12/10/90) Headnotes [5, 8] Failure to Comply / Brady Violations; Right to (Competent, Prepared) Counsel
#5 ~~[illegible]~~; Brady Violations ↘
→ Glynn T. Price - 94 Wn. 2d 810; 620 P.2d 994 (1980)
HN(2) "A continuance ... will not be excluded ... if the state has unexcusably failed to disclose material facts until shortly before a crucial stage in the litigation."

(To date, I've signed a dozen Hobson's Choice continuances.
#2; Involuntary Guilty Plea ↘
→ Ballentine's Law Dictionary, 3rd Edition - "Hobson's Choice"
"An election by compulsion of without freedom of choice; a choice without an alternative."
→ Pictorial Review Co. v Helverling - 68 F.2d 766 (12/5/33)

KEVIN #11; Cumulative Error ↓ DET. OF COE [19]
→ Coe - ~~[illegible]~~; ~~[illegible]~~; 175 Wn. 2d 482 (2012)
[19] The Cumulative Error doctrine applies where a combination of trial errors denies the accused a fair trial even where any one of the errors, taken individually, may not justify reversal."

~~#2~~; Coercion ↓
The Alleged Victim / Perpetra(i)tor did not want to call 911. The AV/P did not want to give, nor sign the sheriff's report. The AV/P did not want to go to the hospital, Aug. 6, 2014. The AV/P did not want to sign Det. Sgt. M. Russell's interview. The AV/P does not want me in prison. At all. Ever. She just wants me to quit drinking and get back to work.

Mr. Kelley's 20+ yrs of experience isn't worth a 2-bit tinker's damn if he still can't get it Right. Fix it. ☺

Exibit H

CF: #10. Same Criminal Conduct warrants Concurrency

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ALFRED EARL BROWN DOB: 4/5/1965 Defendant.	NO. 14-1-01191-7 SECOND AMENDED INFORMATION

TO: ALFRED EARL BROWN
ADDRESS: 3504 South 79th Ave, Yakima, WA 98908

By this Information, the Prosecuting Attorney accuses you of committing the following crime(s):

Count 1 - THIRD DEGREE ASSAULT – DOMESTIC VIOLENCE
RCW 9A.36.031(1)(f) and 10.99.020

CLASS C FELONY – The maximum penalty is 5 years imprisonment and/or a $10,000.00 fine.

On or about August 1, 2014, in the State of Washington, with criminal negligence, you caused bodily harm to Joann E. Brown, accompanied by substantial pain that extended for a period sufficient to cause considerable suffering.

Furthermore, you committed this crime against a family or household member. (RCW 10.99.020.)

Count 2 - FELONY HARASSMENT OF ANOTHER – THREAT TO KILL – DOMESTIC VIOLENCE
RCW 9A.46.020(1)(a)(I)(b), (2)(b)(II) and 10.99.020

CLASS C FELONY – The maximum penalty is 5 years imprisonment and/or a $10,000.00 fine.

On or about August 1, 2014, in the State of Washington, without lawful authority, you knowingly threatened to cause bodily injury immediately or in the future to Joann E. Brown and the threat to cause bodily injury consisted of a threat to kill Joann E. Brown or another person, and did by words or conduct place the person threatened in reasonable fear that the threat would be carried out.

[SCOMIS: RCW 9A.46.020(2)(B)(ii)]

Furthermore, you committed this crime against a family or household member. (RCW 10.99.020.)

JOSEPH A. BRUSIC
Prosecuting Attorney

DATED: January 25, 2016.

By: _____
BROOKE E. WRIGHT
Prosecuting Attorney
Washington State Bar Number 41212

Sex: Male; Race: White; Ht: 5'9"; Wt: 180; Eyes: Brown; Hair: Brown; SID: WA12665447; DOL: BROWNAE358JE; DOC: 801659; Our File No.: 14-7043/mlv; Agency No.: YSO #14C13079;

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2nd Street, Room 329
Yakima, Washington 98901
(509) 574-1210 Fax (509) 574-1211

Exibit I

Cumulative Error

Arraignment Errors

Brady Violations

Unreasonable Discovery Delay

Lack of Reasonable Plea Bargain Offer

Circumstancial "Evidence"

Hearsay Witnesses

Complete Lack of Tangible Facts / Forensics

Arresting Officer's Lies, both Verbal and Written

D.S.H.S. Victim's Advocate Tampering w/ Witness

Det. Sgt. Mike Russell's Prejudicial Interview

Ineffective / Pathetically Inadequate Defensive Investigation

Exibit J

→ ☒ Counts 1 and 2 do not encompass the same criminal conduct and do not count as one crime in determining offender score, pursuant to RCW 9.94A.589.
☒ The crimes in Counts 1 and 2 involve **domestic violence – pled and proven.**

2.3 Criminal History: Prior criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juvenile	Type of Crime
Felony Driving Under Influence 12-1-01677-7	1-15-2013	Yakima, WA	10-30-2012	Adult	NV
Vehicular Assault 06-1-02511-9	12-19-2006	Yakima, WA	10-12-2006	Adult	NV
Vehicular Assault 99-1-00578-8	10-7-1999	Lewis, WA	12-25-1998	Adult	NV

2.4 Other Current Convictions under other cause number(s) used to determine offender score:

Crime	Cause Number	Court (County and State)
None		

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510:

17-22

Count	Offender Score	Seriousness Level	Standard Range	Enhance-ments*	Enhanced Range	Maximum Term
1	~~8~~ 5	III	~~22-29~~ months			5 yrs
2	~~8~~ 5	III	~~22-29~~ months			5 yrs

17-22

☒ The defendant committed a current offense while on community placement, community custody, or community supervision, which added one point to the defendant's offender score. RCW 9.94A.525(19).

2.6 Exceptional Sentence: Substantial and compelling reasons exist which justify an exceptional sentence. Pursuant to State v. Hilyard, 63 Wn. App. 413 (1991), *petition for review denied*, 118 Wn.2d 1025 (1992), the Court finds that an exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range of ~~22-29~~ months for Counts 1 and 2. The defendant and State stipulate that this
→ sentence is not subject to appeal. 17-22 I did not stipulate to this.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant is an adult and is not disabled and therefore has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 10.01.160.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2nd Street, Room 329
Yakima, Washington 98901
(509) 574-1210 Fax (509) 574-1211

Exibit K

CF: #9, ~~#12~~

STATE OF WASHINGTON

CASELOAD FORECAST COUNCIL

PO Box 40962 • Olympia, WA 98504-0962

(360) 664-9380 • FAX (360) 586-2799

July 21, 2016

Circular Logic – Begging the Question

Alfred Brown #801659

Re: Information about cause #14-1-01191-7.

Dear Mr. Brown:

We received your letter on 07/20/2016, which requested information of the cause #14-1-01191-7. I have attached a copy of the Judgement and Sentence which includes the exceptional reason on page 2, "The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range of 17-22 months for Counts 1 and 2. The defendant and State stipulate that this sentence is not subject to appeal."

The Caseload Forecast Council is charged with collecting the data on adult and juvenile sentencing. We are unable to give legal advice regarding sentencing. We encourage you to contact the Washington State Bar Association at 800-945-9722 to gain a referral to legal counsel or a legal association that might be able to answer your question.

Regards,

Duc H. Luu
Database and Sentencing Administration Manager
Phone: (360) 664-9377

cc: Elaine Deschamps

WA St. Court of Appeals
500 N. Cedar St.
Spokane, WA 99201-1905

Aug. 23, 2016
CRCC-MSC-DA31
PO Box 769
Connell, WA 99326

RE: #34203-4-III

Ms. Townsley;

Today I received copy of the verbatim report of proceedings as requested from Appellate counsel. I see according to your letter of April 8, she should be filing proof of mailing. (RAP 10.2(e))

I'm preparing a statement of additional grounds, and expect to mail it within a few days, but am not sure about any deadline. Does the Verbatim report of proceedings request/receipt change my deadline?

Thank you for your attention to this.

Sincerely,

AC E. Brown
Alfred Brown
801659

4p

FILED
JANELLE RIDDLE, CLERK

'16 MAR 14 A10:20

SUPERIOR COUR
YAKIMA CO W/

IN THE SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

FILED
APR 11, 2016
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Plaintiff,

vs.

ALFRED E. BROWN,

Defendant.

NO. 14-1-01191-7

2ND
NOTICE OF APPEAL TO THE COURT OF APPEALS – DIVISION III

NO. 342034

Defendant/respondent in the above case does hereby seek review by the Court of Appeals of the State of Washington, Division III from each and every part of the Judgment and Sentence entered herein on February 4, 2016. ~~A copy of the decision is attached to this notice.~~ (Unavailable)

DATED this 29 day of February, 2016

Al E. Brown
Defendant

Name and Address of Attorney for Plaintiff:

Brooke Wright
128 N. 2nd Street
Yakima, WA 98901

Name and Address of Defendant:

Alfred E. Brown
c/o Yakima County Jail
111 North Front Street
Yakima, WA 98901

COA NO. 342034 SO

Superior Court of Washington for Yakima County

FILED
JANELLE RIDDLE, CLERK
'16 FEB 16 P2:54
SUPERIOR COURT
YAKIMA CO. WA

FILED
MAR 15,2016
Court of Appeals
Division III
State of Washington

No. 14-1-01191-7

State of Washington
Plaintiff

vs.

Alfred Earle Brown, Def.
SID NO. WA12665447
DOB 4/5/65 Male Caucasian

Motion to Appeal Judgement and Sentence
OR
Motion to Modify/Amend Judgement and Sentence

Comes now the Defendant, Alfred Earle Brown, Petitioning the Court for Relief on an unreasonable sentence far exceeding standard range, entered into record February 4, 2016. (10 years is too much.)

- Grounds for Relief/modification include: -

- Ineffective, deceptive Counsel, causing Unreasonable Discovery Delay, Hobson's Choice, + Duress, + Coersion
- Prosecutorial Misconduct in the form of Brady Violations, Witness Coercion and Tampering, and Arraignment Error on two counts.
- Judicial Misconduct in the form of Prejudice, Prejudicial comments during Sentencing, and misinterpretation of "Same Criminal Conduct."

- Absence of "Substantial and Compelling Reason" or "Aggravating Circumstances" to Justify Exceptional Sentence Above Range.

Stipulation to Plea Agreement (Alford Plea by) was based on A) the threat of Life without Parole if taken to trial with an attorney who called off Defensive Investigation back in September of 2014 (saying it was a "waste of time") and basicly proved himself to be a traitor.
B) Realizing that apparently in this County, One poor and puzzled, incredible, dazed and confused, unreliable alleged "victim", highly circumstantial "evidence", and no less than a dozen hearsay "witnesses" were somehow (?!) more plausible than facts.

I did not Stipulate to any charges. Prosecution did not prove anything. Ten years is too much time for a self-inflicted split lip, and I

Propose three options to fix it:

(1) Credit for time served: Standard range is 17-22 months, and I've been locked up now for 27. (w/ earned credit.)

(2) Forty-four months: Even though I think both charges ARE "same criminal conduct", (especially in light of arraignment (amended) claiming/alleging they happened the same night) Top of Standard Range Consecutive is way more acceptable than Statutory Maximum amounting to seriousness ~~XI~~.

(3) Concurrent: Amended Information claims both charges occured 8/1/14; same criminal conduct; No evidence or proof for Count 2 AT ALL; Therefore dismiss/ Suspend Count 2 or Run Concurrent: Five years is more than enough time. TEN is TOO MUCH! Alfred Earle Brown

Judicial Misconduct

- In denying defense's motion for a "sit-down" consultation with Alleged Victim, Judge Barthold showed prejudice in making reference to "intimidation" from case # 15-1-00339-4. (Dismissed)

- In closing statements at sentencing, Judge Barthold accused me of ir-reparably damaging the filial relationship with my mother, when in fact it was she who provoked the law to issue a no-contact order, and then later stated that she regretted it.

- Judge Barthold thusly showed prejudice, assuming my guilt, when I have not been found guilty of anything other than an Alford plea to escape L.W.O.P. due to a traitorous truck ATTORNEY

Judicial Misconduct, Cont.

- 2/4/16, AT SENTENCING, two HEARSAY "WITNESSES" WERE ALLOWED TO GIVE IRRELEVANT STATEMENTS IN COURT, AND WRITTEN STATEMENTS TO BE READ by Judge BARTHELD. Allowing MARILYN BROWN TO READ Aloud A WRITTEN STATEMENT (supposedly by the ALLEGED VICTIM) MAY HAVE BEEN APPROPRIATE, if ALLEGED VICTIM HAD ACTUALLY WRITTEN IT, BUT, KNOWING HER STYLE like I do, she obviously did NOT. MARILYN WROTE IT, AND WAS ALLOWED TO READ IT Aloud. MARILYN'S "OWN" STATEMENT, AND SARAH LANCASTER'S WRITTEN STATEMENT WERE READ by Judge BARTHELD, thereby PREJUDICING him. The whole AFFAIR OF HAVING superfluous, IRRELEVANT "TESTIMONY" AT SENTENCING is so UNETHICAL, UNPROFESSIONAL, AND biased, I don't EVEN KNOW WHERE TO START. Judge BARTHELD grossly ERRED IN SENTENCING. TEN YEARS is TOO MUCH!