SUPREME COURT NO: 98637-1

98637-1

COURT OF APPEALS NO: 36593-0-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

V.

DONALD STENTZ,

PETITIONER, PRO SE.

ON APPEAL FROM THE SUPERIOR COURT OF

STATE OF WASHINGTON FOR CHELAN COUNTY

THE HONORABLE JUDGE KRISTIN M. FERRERA

PETITION FOR REVIEW

DONALD STENTZ
PETITIONER,
P.O. BOX 769
CONNELL, WA 99326

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A. IDENTITY OF PETITIONER

Donald Stentz, petitioner Pro se, ask this court to accept review of the Court of Appeals Opinion Affirming his Conviction entered on May 19, 2020, designated in art B. of this petition.

B. COURT OF APPEALS OPINION

On may 19, 2020 the court of appeals filed an opinion affirming Mr. Stentz conviction. A Copy of the opinion is attached as exhibit-1.

C. ISSUE PRESENTED FOR REVIEW

1. THERE WAS INSUFFICIENT FACTUAL BASIS TO ACCEPT MR. STENTZ'S ALFORD PLEA TO RESIDENTIAL BURGLARY.

D. STATEMENT OF CASE

In August of 2018 Mr. Stentz was in custody of the Chelan County jail, at which time he sought assistance from a Mr. Wooten to work on his truck parked a 1000 feet away from his ex-wife home. Upon release Mr. Wooten upon his own actions, disregarded Mr. Stentz instructions and broke into Stentz's ex-wife's home, stealing her rifles and a bag of items. Instead of fixing Mr. Stentz's truck, Mr. Wooten stole the neighbor's vehicle in his attempt to flee the area. Mr. Stentz did not direct Wooten to break in any homes or steal the neighbor's vehicle.

Mr. Wooten was subsequently arrested at a gas station, in his attempt to explain his possession of property items and burglary, he allege Mr. Stentz gave him permission to retrieve the items from the house. When questioned Mr. Stentz denied involvement in burglarizing the house or giving Mr. Wooten permission to enter and take items from the home. See Brief of Appellant.

Upon plea deal, in January 2019 Mr. Stentz was charge with residential burglary and violation of a no contact order fore which he was in jail for. The trial court relied upon the affidavit of probable cause to support the basis for an Alford plea to residential burglary. RP35; CP 21.

Upon sentencing the prosecution advised the court there is evidence that Mr. Wooten intended to doublecross Mr. Stentz and steal both Stentz's and his ex-wife's property. RP 48-49. It is uncertain whether that mitigating evidence in support of Mr. Stentz's position was ever disclosed to defense counsel. Mr. Stentz maintained his innocence for the crime of burglary committed by Mr. Wooten, stating:

> "I'd plead not guilty to the crimes that ...Wooten did... I did not tell Nate Wooten to do all those things."

RP 50.

The court confirmed that it sounded like Wooten did things Mr. Stentz did not tell him to do.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

a. The Court of Appeals error when it relies upon facts not in evidence to support it's affirming the conviction.

At no time did Mr. Stentz instruct his cellmate (Wooten) to burglarize the house and take property from the home, or engage in any criminal activity including stealing a vehicle. This is confirmed and demonstrated by Mr. Stentz assertion upon Alford plea hearing, stating:

> "I'd plead not guilty to the crimes that...Wooten did... I did not tell Nate Wooten to do all these things."

RP 50.

The trial court should not have accepted Stentz Alford plea, finding that he is pleading "Not Guilty" to the burglary. The record is unambiguous and does not support a conclusion that Mr. Stentz recruited his former cellmate for the purpose of unlawfully entiring his wifes residence.

There is no factual basis to find Mr Stentz committed a residential burglary, nor did Stentz direct Mr. Wooten to unlawfully enter the residence and steal items, or the neighbors vehicle. Mr. Wooten was not under Stentz directive, but acted upon his own initiative to burglarize the resident and steal a vehicle. Any allege Alford

plea agreement Mr. Stentz made was negated by his statement during plea hearing.

Due process requires a guilty plea of guilty must be knowing, voluntary, and intelligently made. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2009); 14th Amendment U.S. Constitution. Mr. Stentz did not understand the elements of the charged offense, nor understood how his conduct met those elements, and cannot be considered voluntary made. State v. Easterlin, 159 Wn.2d 203, 213, 149 P.3d 366 (2006).

The affidavit of probable cause allege "A person commits the crime of burglary if, With Intent to commit a crime against a person or property therein, the person enters and remains unlawfully in a dwelling other than a vehicle. Mr. Stentz never had intent to commit a crime of burglary nor did he enter or remain unlawfully in a dwelling other than a vehicle. The jail phone call demonstrate that Mr. Stentz was totally unaware Wooten was committing a crime of residential burglary. The factual basis relied upon by the court was insufficient, Mr. Stentz was charged as a principle, the Alford plea must be set aside. State v. Easterin, 159 Wn.2d at 213. 149 P.3d 366 (2006).

This court should accept review because the only evidence linking Mr. Stentz to burglary is a probable cause report drafted by the county prosecutors office, who strategically omitted mitigating evidence and facts. With Mr. Stentz repeatedly asserting he is not guilty of the crimes committed by Mr. Wooten, the trial court should not have accepted the Plea. Here the State has committed a possible Brady violation, by with holding Evidence, advising there is evidence Mr. Wooten intended to cross Mr. Stentz. The denial of exculpatory information deprives Stentz of due process under the 14rh amendment of the United States Constitution.

The information of Mr. Wooten's intent demonstrates Wooten had maliciously intented to committed his own crime of burglary and vehicle theft.

F. CONCLUSION

This court should grant review of the Court of Appeals Opinion affirming the conviction, because Mr. Stentz did not direct Mr. Wooten or anybody to commit burglary, to reverse and remand this case back to Superior Court.

DATED this June 15, 2020.

Don P STENTZ 374343

Don Phillip Stentz
P.O. BOX 769
Connell, WA 99326

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

STATE OF WASHINGTON, Respondent, v. DON PHILLIP STENTZ, Appellant.	)))))))))	No. 36593-0-III UNPUBLISHED OPINION

PENNELL, C.J. — Don Phillip Stentz appeals his conviction for residential burglary, arguing the trial court lacked a factual basis to accept his *Alford*[1] plea. Finding no error, we affirm.

FACTS

Mr. Stentz was charged with six felonies related to theft of property from his estranged wife's home. Mr. Stentz was in custody at the time of the thefts. The State's

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

theory was that Mr. Stentz was responsible for the break-in because he directed his former cellmate to commit the crime.

The parties reached an agreement whereby Mr. Stentz would plead guilty to two felonies: residential burglary and violation of a no-contact order. Mr. Stentz admitted to the no-contact order violation, but entered an *Alford* plea as to the burglary. He agreed the trial court could refer to the State's probable cause statement and/or police reports as the factual basis for his burglary plea.

The probable cause affidavit recounted that Mr. Stentz had instructed his former cellmate to take property from the home of his estranged wife, including a vehicle and boat parked at the property, and a black duffel bag and two firearms stored in the basement. It further alleged he had drawn for his cellmate a map of the property, advised them of his wife's work hours, and told them what to do with the property after its acquisition.

During the change of plea colloquy, the prosecuting attorney summarized the factual basis for Mr. Stentz's burglary plea. The prosecutor clarified that Mr. Stentz was not alleged to have been present at the scene of the burglary. Instead, the State's evidence was that Mr. Stentz recruited his former cellmate to unlawfully enter his wife's residence and purloin several pieces of property.

The trial court accepted Mr. Stentz's pleas and imposed a total sentence of 84 months' imprisonment. Mr. Stentz now appeals, arguing the trial court lacked a factual basis for accepting his *Alford* plea to residential burglary.

ANALYSIS[2]

A trial court "shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." CrR 4.2(d). This responsibility has particular importance in the *Alford* context, where a defendant seeks to plead guilty despite maintaining innocence. *State v. D.T.M.*, 78 Wn. App. 216, 220, 896 P.2d 108 (1995). In assessing the factual basis for a plea, the court may look to any reliable source of information on the record, including a prosecutor's proffer regarding expected evidence at trial. *State v. Newton*, 87 Wn.2d 363, 369-70, 552 P.2d 682 (1976).

Mr. Stentz argues the facts proffered in support of his *Alford* plea were inadequate because the information charged him as a principal, not an accomplice, and no facts in the record support finding him guilty as such.

Mr. Stentz's argument is contrary to Washington's law on accomplice liability. "The complicity rule in Washington is that any person who participates in the commission

[2] Mr. Stentz has filed a one-page statement of additional grounds for review under RAP 10.10, indicating he is satisfied with the briefing submitted by his attorney. Our analysis is therefore guided solely by the issues raised through counsel.

of the crime is guilty of the crime and is charged as a principal." *State v. Silva-Baltazar*, 125 Wn.2d 472, 480, 886 P.2d 138 (1994); *see also* RCW 9A.08.020. The State need not specify in its charging document that the defendant's guilt is based on accomplice liability. Instead, "an information that charges an accused as a principal adequately apprises [them] of [their] potential liability as an accomplice." *State v. Lynch*, 93 Wn. App. 716, 722, 970 P.2d 769 (1999). Given the state of the law, the fact that Mr. Stentz was not present at the time of the crime did not render the State's facts insufficient to justify acceptance of his plea. Any confusion on the State's theory of liability was clarified at the time of Mr. Stentz's plea.

Mr. Stentz also claims the evidence submitted in support of his plea failed to show he directed his former cellmate to steal property from inside the home of his estranged wife. According to Mr. Stentz, the facts showed he told his cellmate to only take property located outside.

Mr. Stentz's characterization of the record is inaccurate. According to the affidavit of probable cause, Mr. Stentz specifically instructed his former cellmate to go into the basement of his wife's residence and purloin a duffel bag and firearms. This was sufficient to justify a judgment of conviction for residential burglary.

CONCLUSION

The judgment of conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, C.J.

WE CONCUR:

Siddoway, J.

Lawrence-Berrey, J.

Renee S. Townsley
Clerk/Administrator

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The Court of Appeals
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May 19, 2020

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CASE # 365930
State of Washington v. Don Phillip Stentz
CHELAN COUNTY SUPERIOR COURT No. 181005401

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Washington Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. RAP 12.4(b). Please file the motion electronically through the court's e-filing portal or if in paper format, only the original need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the opinion (may also be filed electronically or if in paper format, only the original need be filed). RAP 13.4(a). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates each is due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:btb
Attachment

c: **E-mail** Honorable Kristen M. Ferrera

c: **E-mail** Don Phillip Stentz (DOC #374343 – Coyote Ridge Corrections Center)

C.C.

HON. RENEE TOWNSLEY, CLERK
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JUNE 16 2020

STATE V. STENTZ,
SUPREME COURT NO. 98637-1
APPEALS COURT NO. 36593-0-III

FILED
JUN 22 2020
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

: DEAR COURT CLERK,

PLEASE FIND ENCLOSED PETITIONER'S - PETITION FOR REVIEW TO BE FILED BEFORE THE STATE SUPREME COURT

THANK YOU FOR YOUR TIME SPENT,

SINCERELY,

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