Supreme Court No. 98781-5
COA No. 79467-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington,

Respondent
v.

LORENZO PRATT,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Lorenzo Pratt was the defendant in COA No. 79467-1-I, decided June 15, 2020, and is the Petitioner herein.

B. COURT OF APPEALS DECISION

Mr. Pratt seeks review of the Court of Appeals decision affirming the denial of his motion to withdraw his guilty plea(s) to second degree murder and other charges despite his counsel's provision of ineffective assistance, in violation of the Sixth Amendment per Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and Hill v. Lockhart, 474 U.S. 52, 57, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985). Appendix A (Decision).

C. ISSUES PRESENTED ON REVIEW

1. An attorney must adequately investigate the facts and available defenses in investigating a criminal case before counseling a defendant to plead guilty. Here, in this self-defense case, despite repeated urgings, trial counsel failed to seek out witness Donnie Adams, who was listed in the police reports, and could support Mr. Pratt's claim of self-defense. Counsel sent his investigator to Adams' address, but never made any further efforts to contact him. In fact, after Mr. Pratt moved to withdraw his plea, newly appointed counsel

Cathy Gormley easily located Adams. Adams confirmed that he was present at Flo Ware Park previous to the incident, where he saw, and heard, the decedent Mr. Smallwood threaten to "air out" (shoot) Mr Pratt. Yet counsel had made only a token effort to locate Adams, claiming after the fact that Adam's testimony could be impeached, which is not a viable reason for the failure. In addition, counsel failed to have Mr. Pratt examined for Post-Traumatic Stress Disorder (PTSD), a mental condition that would relate directly to a person's actual and reasonable perception of danger, which is central to self-defense.

Where a defendant need only come forward with *some evidence* of self-defense to shift the burden to the State to disprove self-defense beyond a reasonable doubt, and counsel neglected to pursue scientific evidence of PTSD or witness evidence of Donnie Adams shown in the original police reports and repeatedly urged by the defendant to seek out, were counsel's actions deficient to Mr. Pratt's prejudice?

2. Did counsel perform deficiently to Pratt's prejudice when he also failed to accurately explain the law of self-defense to Lorenzo, by telling him that if he went to trial he would have to make out self-defense by a preponderance, and would likely need to testify, where the defendant's burden of production is to merely come forward with

"some evidence" of self-defense, and that evidence can come from any source, whereupon the burden of disproving self-defense shifts to the State beyond a reasonable doubt?

3. Where the defendant received ineffective assistance in being counseled to plead guilty awhich undermine all confidence in the outcome of Mr. Pratt's decision whether to plead guilty rather than go to trial, was Mr. Pratt plainly entitled to plea withdrawal?[1]

D. STATEMENT OF THE CASE

(1). <u>Guilty plea following inadequate investigation and incorrect advice as to the law and the facts pertinent to the matter crucially at issue - Mr. Pratt's right to act in self-defense</u>. Lorenzo Pratt, who was laboring under the incorrect belief that his lawyer Mr. Donnelly had provided him with effective assistance in counseling him to enter a guilty plea, plead guilty to second-degree murder and related charges for allegedly shooting Mr. Deshawn Smallwood in the central district of Seattle on the evening of April 24, 2014. CP 424, 438.

When new counsel Cathy Gormley was appointed to represent Mr. Pratt in his post-sentencing motion to withdraw plea, she easily

[1] Mr. Pratt's Opening Brief challenged the pertinent factual findings entered by the trial court upon denial of the motion to withdraw plea. AOB, at pp. 1-2; <u>see</u> CP 831-38; <u>State v. Ross</u>, 141 Wn.2d 304, 309, 4 P.3d 130 (2000).

located Donnie Adams, using the same address information that Mr. Pratt had given Mr. Donnelly for this witness. CP 457 (Gormley declaration); CP 596-97 (transcript of Donnie Adams interview). Adams stated that he had been in Flo Ware Park in the central district of Seattle previous to the shooting, and he saw, and heard, Smallwood threaten Pratt, saying he was going to "air you out" - meaning that he was going to shoot Pratt full of holes. CP 596-97.

In addition, Mr. Pratt learned from Gormley that Mr. Donnelly had been incorrect when he told him that he would have to testify to support self-defense, and would have to produce evidence by a preponderance, and when he did not tell him that providing merely "some evidence" would serve to shift the burden to the State to *disprove* self-defense. CP 437-39; 1/7/19RP at 490-92.

Mr. Donnelly made no timely or adequate attempt to locate or interview Mr. Adams; he later stated in his interview that he "put off trying to find Donnie Adams 'cause I kinda wanted to see where the case went" and "I didn't know if he was gonna give accurate information or what he was going to provide." CP 536. Not until June of 2015 did Mr. Donnelly direct his investigator to locate and interview Mr. Adams. CP 536. Donnelly's investigator went to the address

provided by Mr. Pratt twice but Adams was not there at the time. CP 536-37. No other efforts were made by Mr. Donnelly to locate or interview Mr. Adams. CP 574.

Next, Mr. Donnelly mis-explained the law of self-defense to Mr. Pratt. Mr. Donnelly made numerous statements in his plea withdrawal interview that showed he did describe the law of self defense with a level of deficiency improper for an attorney representing a client in a murder case where the defendant told counsel he acted in self-defense. Mr. Pratt had continued to assert self-defense to Mr. Donnelly and demand a trial. CP 575. But on June 2, 2015 the prosecution sent a memo to Mr. Donnelly containing a settlement offer. As part of the rationale for this offer, the State asserted that there was no evidence that would support self-defense. CP 594-95. Donnelly therefore advised Pratt he would be convicted and face 40 years. CP 438.

When attorney Cathy Gormley was appointed post-plea, her motion to withdraw plea was supported by the declarations of Mr. Pratt, Mr. Donnelly, a psychological evaluation report from Dr. Jason Prinster, and, ultimately, the declaration of law professor John Strait. CP 420, 437, 440, 444, 456. Donnelly admitted that he did not have Mr. Pratt evaluated for PTSD, which Donnelly only now realized

would be relevant to the subjective aspect of self-defense - to show that Mr. Pratt actually thought he was in danger of being shot by Smallwood. CP 564-65, 570. Professor Strait stated that the failure to interview Donnie Adams, and to explain the law of self-defense that would govern procedurally and substantively at a trial, and the failure to investigate the mental issues of PTSD and its relevance to self-defense, was deficient. CP 393-98.[2]

Post-trial counsel Gormley later withdrew from representation of Mr. Pratt, as a result of unrelated conflict issues. Mr. David Trieweiler subsequently represented Mr. Pratt, conducted a full interview of Mr. Donnelly, and thereafter litigated the motion to withdraw plea. CP 515; 1/7/19RP at 482, 506.

However, the trial court denied the motion to withdraw plea, reasoning that Mr. Pratt entered his plea based on the risks he faced at trial, and, as shown by his jail phone calls in which he discussed the

[2] Shootings during his entire life in the area where Mr. Pratt lived, and in recent days, had left Mr. Pratt mentally fragile. Mr. Pratt's father was shot dead when Lorenzo was a teenager. On April 18, 2014, the day prior to the firearm pointing incident, Mr. Pratt's best friend, Kevin Brown, had been shot and killed, which was the second shooting death in Mr. Pratt's central district Seattle neighborhood in five days. CP 421 (citing discovery page 3471, and Seattle Post-Intelligencer article, *http://www.seattlepi.com/local/article/Central-District-commuaity-calls-for-end-to-5443318.php* [last accessed July 15, 2020]).

case with his family, on the concerns that he would be found guilty. See CP 831-38; 1/7/19RP 563-87; 1/8/19RP at 563-83; Exhibit 1. The court also reasoned that there was no mis-advice or lack of knowledge of the law that would have changed the outcome, and similarly determined that there was no failure to investigate any aspect of a defense of self-defense. See CP 831-38.

Mr. Pratt appealed to Division One of the Court of Appeals and the Court affirmed. Appendix A. Mr. Pratt files this Petition for Review, arguing that the issues presented meet the requirement of RAP 13.4(b)(1). The Supreme Court should accept review, so that Mr. Pratt may place his full arguments of error and prejudice before the Court, secure reversal of the Court of Appeals and withdrawal of his plea to second degree murder, and return to the Superior Court for trial on the original charge of first degree murder.

E. ARGUMENT

Trial counsel's failure to investigate and counsel's failure to correctly explain the law of self-defense constituted deficient performance, to Mr. Pratt's prejudice, requiring that he be allowed to withdraw his pleas of guilty.

1. Review is warranted under RAP 13.4(b). The Supreme Court will grant review in a case decided by the Court of Appeals if

one or more of the requirements of RAP 13.4(b) are satisfied. Here, review is warranted under RAP 13.4(b)(3), because this case presents a significant question of Lorenzo Pratt's right to effective assistance of counsel under the Sixth Amendment. U.S. Const. Amend. VI (providing, "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his" defense); see generally Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

RAP 13.4(b)(3) merits the Supreme Court accepting Mr. Pratt's petition for review (and upon review, reversing the Court of Appeals); because he has a constitutional right to a lawyer who performs effectively, i.e., non-deficiently. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

2. Mr. Pratt's right to effective assistance entitles him to effective legal representation in the process of counseling him to choose to plead guilty rather than to insist on his right trial. Unquestionably, the aforementioned constitutional requirement of effective assistance established by Strickland required that Mr. Pratt's lawyer provide non-deficient representation when counseling him during the difficult process of determining whether to plead guilty. State v. Stowe, 71 Wn. App. 182, 186, 858 P.2d 267, 269

(1993) (citing Hill v. Lockhart, 474 U.S. 52, 57, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)); U.S. Const. amend. VI. If the lawyer provided inaccurate advice to Mr. Pratt, the defendant was prejudiced in his ability to make an informed decision in the case - that is, the deficiency produced a different outcome. Stowe, 71 Wn. App. at 189 (reversal is required because, if not for the attorney's deficient advice, the defendant "would have demanded a trial.").

3. Mr. Pratt need only demonstrate that his lawyer's deficiency undermines confidence in the outcome, rather than strictly meeting a "more likely than not" standard. In general, in the context of a guilty plea, the defendant must show that his counsel failed to actually and substantially assist him in the important and consequential decision of whether to accept a State's plea offer. See State v. McCollum, 88 Wn. App. 977, 982, 947 P.2d 1235, 1238 (1997) (substantial assistance requires the lawyer to "conduct an adequate investigation"). Importantly, the standard of showing a "reasonable probability" of a different outcome in this context is not a more likely than not test. State v. Estes, 188 Wn. 2d 450, 457-58, 395 P.3d 1045 (2017); State v. Jones, 183 Wn.2d 327, 339, 352 P.3d 776 (2015)). Rather, Mr. Pratt need only show that his lawyer's

deficiencies are sufficient to undermine the Court's confidence in the outcome. Estes, 188 Wn. 2d at 457-58 (citing Strickland, at 694). Because the decision making progress of whether to accept a plea offer and forego the right to trial is so variegated from case to case, it makes sense that the Court be empowered to reverse a guilty plea when all of the circumstances establish that justice went unserved.

4. The egregious circumstances of Mr. Pratt's case demonstrate deficient investigation and advice in the context of Mr. Pratt's lawyer's counsel to him that he should plead guilty.

(1). The Court of Appeals erroneously deemed Mr. Donnelly's failure to properly explain the law of self defense to Mr. Pratt as excusable because of the lawyer's duty to explain the law understandably to laypersons, and erroneously deemed Donnelly's mis-explanation not material because even if he overstated the burden to raise self-defense, he did not counsel pleading guilty by stating that Mr. Pratt would be unable to meet the burden.

The State conceded below that attorney Donnelly counseled a plea because he told Mr. Pratt that he could not prevail on self-defense - this is a matter the Respondent expressly recognized. See SRB, at p. 15. Mr. Donnelly's own declaration makes clear that he was repeatedly urging Mr. Pratt that he could not successfully raise self-defense, and this is why he counseled a plea of guilty. CP 441 (Donnelly declaration, at para. 6). Mr. Donnelly had mis-explained the law of

self-defense to Mr. Pratt. But the Court of Appeals rejected the argument that Mr. Donnelly did so in a manner that constituted prejudicial effective assistance of counsel. The Court reasoned,

> Even if Donnelly used the term "preponderance," instead of "some evidence" to describe Pratt's burden of production, the court determined that Donnelly's advice was not misleading because he did not tell Pratt that he could not satisfy that burden or that he would bear the burden of proving self-defense at trial. Donnelly simply conveyed to Pratt his belief that Pratt "would have to testify in order to persuade the jury that he acted in self-defense."

Appendix A (Decision, at p. 4). In addition, the Court of Appeals reasoned that any mis-explanation of the law was excusable given that Mr. Pratt was a lay client:

> Although counsel is expected to understand the applicable law when advising a client, counsel is also expected to communicate with a client in language that the client is able to understand. ABA Criminal Justice Standards for the Defense Function, Standard 4-3.1(d) (2017).

Appendix A (Decision, at p. 5). There are problems with each aspect of this reasoning. First, Mr. Donnelly plainly <u>was</u> counseling Mr. Pratt to plead guilty when he mis-explained the law of self-defense to his client. The reasoning that Mr. Donnelly "did

not tell Pratt that he could not satisfy" the standard necessary to raise self-defense is erroneous, because in counseling Mr. Pratt to enter a guilty plea, he described the defense of self-defense as far more difficult to interpose in a criminal trial than it actually is. This was inconsistent with counsel's obligation to know and explain the correct relevant law during the pre-trial phase of the case. State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984); State v. Holley, 75 Wn. App. 191, 197, 876 P.2d 973 (1994).

And the lawyer's general obligation to explain the law to his client in a manner that the client - any client, not just Mr. Pratt - can "understand" cannot become established as sufficient to meet the requirement by an explanation that is so in error and incomplete that it is incorrect. It is demeaning to Mr. Pratt to suggest that he would not understand that he only needed to come forward with some evidence of self-defense in order to shift the burden to the State to disprove self-defense beyond a reasonable doubt. The bottom line is that Donnelly admitted that he may have told Mr. Pratt that the defense would have to raise the issue by a preponderance of the evidence before the burden of disproving the defense would shift to the State. CP 575-76. This was entirely

wrong, as a defendant need only produce some evidence of self-defense to shift the burden to the State to disprove self-defense, State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997), and to suggest that Mr. Pratt would not be able to understand these legal concepts is completely inconsistent with the intelligence Mr. Pratt displayed during his court proceedings and in his pro se written submissions during the lengthy period of litigation of the plea withdrawal.

Further, the defendant himself need not testify to produce "some evidence" and trigger the State's burden. Defense counsel provided inadequate advice for purposes of helping the defendant decide intelligently whether to plead guilty or go to trial. No matter how Donnelly's phrasing is parsed, after the fact, as merely saying that he advised Pratt that persuading the jury would be necessary to be successful, this must all be considered in the context of the poor advice on the burdens at issue. What matters is that the defendant's burden of production of coming forward at trial with some evidence of self-defense is a "low burden," and that Donnelly expressed it to Pratt as higher than it is, and as a reason to not go to trial. State v. Janes, 121 Wn.2d 220, 237, 850 P.2d

495 (1993). And, there need only be some evidence which tends to prove an act was done in self-defense, and that evidence *may come from "whatever source," and it "does not need to be the defendant's own testimony*." (Emphasis added). State v. Walker, 164 Wn. App. 724, 729 n. 5, 265 P.3d 191 (2011).

To counsel a guilty plea by over-stating or mis-stating the burdens of the defense in a criminal prosecution is contrary to the lawyer's obligation to know and explain the correct relevant law during the pre-trial phase of the case. Osborne, at 87, Holley, at 191. The RPC ethical rules regarding explaining the law understandably are not an excuse for *faulty* explanations of the law. A competent lawyer must know the law precisely, but must also know how to describe the law in lay terms and do so accurately. Washington's Rules of Professional Conduct provide that a lawyer shall explain a matter to the extent reasonably necessary to permit the client "to make informed decisions regarding the representation." RPC 1.4(b). Mr. Pratt needed to understand the precise nature of his burden of production and the shift of the burden of proof to the State in this case, where he was entitled – in one of those decisions that are expressly *reserved to*

him - to receive the right advice so he could intelligently make his decision as to whether to proceed to trial or plead guilty. State v. Cross, 156 Wn.2d 580, 611, 132 P.3d 80 (2006).

Second, Mr. Donnelly's mis-explanation of the law of self-defense was especially harmful because Donnelly did not adequately seek out Mr. Donnie Adams who could have supplied the necessary quantum of evidence of self-defense. When combined with the failure to investigate PTSD – which would have been yet another material form of evidence meeting the "some evidence" standard - counsel's deficiencies caused cumulative prejudice that undermines any confidence in the outcome.

(2). The Court of Appeals erroneously deemed Mr. Donnelly's failure to secure the testimony of Donnie Adams or to investigate PTSD to not be deficient performance, but the defendant need only produce "some evidence" in order to require the State to disprove self-defense to the State and counsel neglected these basic investigations that would have met that burden of production.

It is clear that witness Donnie Adams should have been sought out and interviewed, and it is clear that the failure to do these things cannot be excused by a notion that Adams might be susceptible of impeachment. The Court of Appeals erroneously accepted these contentions Appendix A (Decision, at pp. 6-7). In the Court of Appeals, the Respondent did not dispute that Donnie Adams could

testify that the victim, Smallwood, threatened that he was "gonna kill" Mr. Pratt, and did so using the language toward Pratt that he would "air you out." See CP 567. And the Respondent did not dispute that Adams was known to be a potential witness, since his name was in the police reports, and did not dispute that he was easily available to attorney Donnelly, as shown by the ease with which new counsel Cathy Gormley was able to locate and speak with him. SRB, at pp. 14-16.

Any witness is susceptible of impeachment - but impeachment has no effect whatsoever on the usefulness of that witness's testimony to meet the defense's burden of production, and therefore shift the burden of proof of self-defense to the State. CP 393, 395-97 (declaration of John A. Strait). Adams' trial testimony might be only a few words - reporting that Smallwood told Pratt, I will "air you out" - but that frightening evidence of a threat to shoot Mr. Pratt full of holes would have been of great significance. A non-deficient defense attorney interviews the witness *before* assessing the viability of the case:

> The record reflects that Curtis intended to do an investigation at the scene but considered it impractical to do so until she was sure the case was actually going to go to trial. This puts the cart before the horse. If the result of an investigation is reasonably likely to help a defendant decide

> between pleading guilty and going to trial, the investigation should be done before that decision has to be made.

State v. Cahill, 176 Wash. App. 1014 (September 3, 2013) (at * 4) (Division 1, 2013 WL 5310474) (unpublished, cited pursuant to GR 14.1(a). A failure to seek out and secure crucial witnesses is deficient performance. State v. A.N.J., 168 Wn.2d 91, 111, 225 P.3d 956 (2010). The defense attorney failed to interview this key witnesses, and below, no viable tactical reason for the failure was advanced.

5. Reversal is required. Counsel's deficiencies caused reversible prejudice by undermining any possible confidence in the outcome. It is true that Mr. Pratt stated in jail phone calls that there were risks he would face at trial, and, when he discussed the case with his family, he had concerns that he would be found guilty of the higher charge. See CP 831-38; 1/7/19RP 563-87; 1/8/19RP at 563-83; Exhibit 1. But Mr. Pratt argued that he would not have pleaded guilty if his lawyer had pursued the known, key evidence or correctly explained the law. CP 438. Mr. Pratt's statements on the phone about facing risks at trial came only in the context of his lawyer's ineffective assistance.

Further, in his letters, Mr. Pratt plainly hoped that people would come forward with the *truth.* 1/7/19RP at 547-48; CP 647-70

(letters). In a letter to his friend "Big Cutty," Mr. Pratt described how Smallwood looked as if he was pulling a gun on him, and said that if he "would have hesitated, it would have been bad for me." 1/7/19RP at 547-48. Pratt also stated that he needed Donnie Adams to tell the truth. 1/7/19RP at 547-48. And in his letter to Timothy Blackwell, he stated that he prayed that witnesses would come forward. In a letter to his mother, he stated that he knew he "didn't do anything wrong" and that he wanted "the truth to come out." 1/7/19RP at 547-48.

Finally, at the very juncture of arrest following the incident, Mr. Pratt told the police that "he did not see a gun at any time" but he fired because he believed, in fear, that there was a gun - and he did not want to die by hesitating. CP 10. As this incident arose in a gang confrontation, over the course of multiple days of shooting events, Mr. Pratt could easily have told police that he saw a firearm, knowing that one would likely be found. But he did not - he admitted that after the fact he might possibly have been wrong, but he stated that he fully believed there was a gun, and the evidence would have showed he was thoroughly *reasonable* in his fear.

Mr. Pratt could have said to the police that he definitely saw Mr. Smallwood reaching for, or wielding, a handgun. That is what a false

claimer of self-defense would have done. But Mr. Pratt did not do that. This made Lorenzo Pratt more highly credible at a trial, not less. This made a trial case much stronger, not weaker. Because a defendant is entitled to act on his actual, reasonable perception that he was about to be shot, Pratt's jury would without doubt have been given the crucial jury instruction which provides that a person is entitled to act on appearances in defending oneself, even if it turns out later that the person was mistaken as to the existence of the danger. 11 Washington Pattern Jury Instructions: Criminal 17.04, at 203 (2d ed.1994); see State v. Kyllo, 166 Wn. 2d 856, 863, 215 P.3d 177 (2009) (citing State v. Walden, 131 Wn.2d 469, 477, 932 P.2d 1237 (1997)).

But for his counsel's ineffective assistance, Mr. Pratt would have taken this case to trial, and there can be no confidence that he would still not have done so even absent his lawyer's multiple mistakes. This Court should grant review under RAP 13.4(b)(3) and allow Mr. Pratt to litigate his case before the Supreme Court, and demonstrate that the Court of Appeals decision was in error.

F. CONCLUSION

Only a defendant represented by effective counsel can make a voluntary, intelligent decision as to whether to proceed to trial or plead

guilty. Hill v. Lockhart, 474 U.S. at 57; State v. Cross, 156 Wn.2d 580, 611, 132 P.3d 80 (2006); U.S. Const. amend. VI. The defendant respectfully urges this Court to grant review.

Respectfully submitted this 15th day of July, 2020.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. LORENZO PRATT, Appellant.	No. 79467-1-I DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. — Lorenzo Pratt entered into a plea agreement to resolve multiple felony charges. Several months after he was sentenced in accordance with the parties' joint recommendation, Pratt filed a motion to withdraw his guilty plea, raising claims of ineffective assistance of counsel. Following two years of litigation surrounding discovery issues, the trial court denied the motion. Because Pratt fails to demonstrate that counsel's representation was constitutionally inadequate, we affirm.

FACTS

The State charged Lorenzo Pratt with first degree murder while armed with a firearm and unlawful possession of a firearm, arising from the April 2014 shooting and death of 20-year-old Deszaun Smallwood. In a separate case, the State charged Pratt with assault in the second degree based on the allegation that he

pointed a firearm at an oncoming motorist a few days before the shooting. The court granted the State's motion to join the two causes for trial.

According to police reports, both incidents occurred in the immediate aftermath of the murder of Kevin Brown, a close friend of Pratt's. The first incident took place on the day of Brown's death. Pratt pointed a firearm at the occupant of an oncoming vehicle, in apparent frustration at being unable to pass the vehicle on a narrow street. Pratt later admitted that he brandished a firearm, explaining that he was "jumpy" and distraught, and that he initially thought the approaching vehicle was associated with the person who killed Brown.

The shooting that resulted in Smallwood's death occurred five days later, two blocks from Flo Ware Park, in the Central District neighborhood of Seattle, where a memorial for Brown took place earlier in the day. Police reports and a prosecutor summarized the evidence leading to Pratt's arrest for murder: At the memorial, Pratt approached a group that included Smallwood and his friend, Laumont Lancaster. Pratt challenged Lancaster, and Lancaster "sucker punched" Pratt in the face. Smallwood initially tried to diffuse the conflict and was not involved in the violence. Lancaster reportedly prevailed in the fight and Pratt fled in a vehicle. Word quickly spread that Pratt was defeated in a fight.

A few hours later, Pratt arrived at a residence near the park where several people, including Smallwood, were milling around in the yard and in the street. Apparently still angry about the earlier fight with Lancaster, Pratt immediately initiated a confrontation with Smallwood. Pratt punched Smallwood in the head, and Smallwood fought back. The fight moved into the street and when Smallwood

appeared to be gaining the upper hand in the fight, Pratt disengaged and moved toward a parked vehicle. He produced a firearm and fired approximately six shots at Smallwood. Bullets struck Smallwood in the arms and back. First responders pronounced Smallwood dead on the scene. Several people witnessed the shooting, but most were extremely reluctant to cooperate with law enforcement.

About six weeks after Smallwood's murder, police officers arrested Pratt in Portland, Oregon. During a lengthy interview with Seattle detectives, Pratt eventually admitted that he was involved in the fight at Flo Ware Park. He said that during the fight, Smallwood threatened to "air [him] out," which Pratt understood to mean that Smallwood intended to shoot him. Pratt also admitted that he confronted Smallwood when he saw him again and made statements implying that he shot Smallwood out of self-defense, because although he did not see a firearm, he believed Smallwood was about to retrieve one.

In July 2015, approximately two months before the evidentiary portion of the trial was scheduled to begin, the court held pretrial proceedings. On July 7, the court conducted the first portion of a hearing to determine the admissibility of Pratt's recorded statements to Seattle police officers. A substantial portion of his statement was played in court. Following that hearing, Pratt decided to accept the State's plea offer to allow him to plead guilty to reduced charges: second-degree murder and second-degree assault, without a firearm enhancement as to either charge, and unlawful possession of a firearm.

On the evening before he changed his plea, Pratt made several telephone calls from the jail to family and friends. During those recorded calls, Pratt laid out

his reasons for accepting the State's plea offer. Pratt said that he felt terrible when he saw the victim's mother and uncle in court. He mentioned the significant ties between his family and the victim's family and said he wanted to avoid subjecting either family to a difficult and traumatic trial. In the recorded custodial statements that were the subject of the pretrial hearing, Pratt had made unflattering remarks about his family and the victim, and, at one point, suggested that he could provide information to law enforcement about other cases, in exchange for his release. Pratt expressed dismay at hearing some of his own statements replayed in court that he was not "proud" of. Pratt also explained that by accepting the State's offer to recommend a 20-year sentence, he would avoid facing a substantially longer sentence if he lost at trial, and expressed a desire to put the shooting "behind" him.

Pratt pleaded guilty the next day. Shortly after, the court accepted the recommendation of the parties and sentenced Pratt to 20 years' of confinement.

Approximately two months after he was sentenced, in October 2015, Pratt filed a pro se motion seeking to withdraw his guilty plea, alleging ineffective assistance of counsel, Kevin Donnelly. Several months later, assisted by new counsel, Cathy Gormley, Pratt filed a more specific motion with supporting documents.[1] Pratt alleged that although he told Donnelly about Smallwood's earlier threat and consistently maintained that he acted in self-defense, Donnelly told him he would be unable to prove self-defense. According to Pratt, Donnelly failed to explain that the State had the burden of disproving self-defense at trial.

[1] Gormley later withdrew and a third attorney represented Pratt at the hearing on his motion to withdraw.

Pratt also alleged that Donnelly failed to interview two witnesses who would have supported his defense. Pratt said that he specifically urged Donnelly to contact Donnie Adams,[2] who was present during the fight at Flo Ware Park and overheard Smallwood threaten him. Pratt claimed Donnelly refused to do so, insisting that Adams was a gang member who would refuse to talk to him. According to Gormley's declaration, she easily located Adams in March 2016 and he acknowledged that he overheard Smallwood threaten Pratt. Pratt also claimed that Donnelly should have interviewed a confidential informant identified in one of the police reports as having "heard" that Pratt acted in self-defense.

Finally, Pratt contended that Donnelly's representation was deficient because he failed to "investigate any mental health defenses," even though counsel was aware of the defendant's difficult upbringing and exposure to violence. Pratt relied on Donnelly's admission in a 2016 declaration, that prior to discussions with Gormley, he was not aware of the potential link between post-traumatic stress disorder (PTSD) and "perception of risk in a stressful situation." He also relied on a 2016 report obtained by Pratt's new counsel, following a psychological evaluation conducted by Dr. Jason Prinster.[3] Dr. Prinster concluded that, according to Pratt's description of the events, he was experiencing symptoms consistent with a diagnosis of PTSD at the time of the shooting. Dr. Prinster concluded it was likely that, when Pratt shot Smallwood, he was "hypervigilantly

[2] The witness's first name is also spelled Donny in the record.

[3] The report filed as an attachment to Pratt's 2016 motion to withdraw his plea is missing multiple pages. The State maintains that the trial court considered the complete report, and Pratt does not argue otherwise. The record on appeal includes the entire report.

reacting to a perceived threat." In addition, Pratt provided the declaration of a law professor and expert in legal ethics, who opined, based on the assumption that all facts stated in Pratt's motion to withdraw were correct, Donnelly performed deficiently.

More than two years of litigation followed. In the interim, Pratt filed two unsuccessful interlocutory appeals related to the extent of discovery the State could conduct into conversations Pratt had with his attorney. The State conducted an initial interview of Donnelly, and the defense objected to several lines of questioning. After the discovery issues were resolved, the State scheduled a second interview, but Donnelly passed away before the interview took place.

In January 2019, following an evidentiary hearing, the court denied the motion to withdraw. The court entered numerous factual findings and concluded that Pratt failed to establish deficient performance or prejudice. The court also found that Pratt's claim that he would have proceeded to trial had Donnelly performed differently was not credible. Pratt appeals.

ANALYSIS

Pratt challenges the court's denial of his motion to withdraw. He contends that counsel's representation was deficient because he failed to (1) provide accurate information as to the burden of proving self-defense; (2) interview witnesses who would have corroborated his claim of self-defense; and (3) request an evaluation to determine whether he had PTSD. Pratt also claims that, but for counsel's unprofessional errors, he would not have pleaded guilty.

Under CrR 4.2(f), the trial court "shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." Where, as here, a criminal defendant moves to withdraw his guilty plea after entry of judgment, the motion must also meet the requirements of CrR 7.8(b).[4] CrR 4.2(f); State v. Lamb, 175 Wn.2d 121, 128, 285 P.3d 27 (2012). A defendant who demonstrates he received ineffective assistance of counsel meets the burden of establishing a manifest injustice under CrR 4.2(f) and a basis for allowing the withdrawal of a guilty plea under CrR 7.8(b)(5). State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974); State v. Martinez, 161 Wn. App. 436, 440-41, 253 P.3d 445 (2011).

The test under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), applies to claims of ineffective assistance of counsel during the plea process. State v. Stowe, 71 Wn. App. 182, 186, 858 P.2d 267 (1993). A defendant must show that (1) his counsel's performance fell below an objective standard of reasonableness and (2) the deficient performance prejudiced him. Strickland, 466 U.S. at 687. In the context of a guilty plea, the defendant must show that counsel failed to substantially assist him in deciding whether to plead guilty. State v. McCollum, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997). We

[4] CrR 7.8(b) provides, "[o]n motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

review de novo a trial court's denial of a motion to withdraw a guilty plea that is based on ineffective assistance of counsel. State v. A.N.J., 168 Wn.2d 91, 109, 225 P.3d 956 (2010).

There is a strong presumption that counsel's performance was reasonable. State v. Grier, 171 Wn.2d 17, 33-34, 246 P.3d 1260 (2011). This presumption may be overcome only if, under the circumstances of the case, there was no conceivable tactical reason for counsel's decisions. Id.

When analyzing prejudice related to effective assistance of counsel during plea negotiations, the focus is on "whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). "[T]he defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id.; State v. Buckman, 190 Wn.2d 51, 62, 409 P.3d 193 (2018). A bare assertion that the petitioner would not have pleaded guilty but for the alleged deficiency is not sufficient to establish prejudice. In re Pers. Restraint of Elmore, 162 Wn.2d 236, 254, 172 P.3d 335 (2007). Where a defendant alleges a failure to conduct an adequate investigation, the defendant must show a reasonable probability that, but for the failure to investigate potentially exculpatory evidence, counsel would have made a different plea recommendation. Hill, 474 U.S. at 59; State v. Garcia, 57 Wn. App. 927, 933, 791 P.2d 244 (1990). This assessment turns on whether the evidence likely would have changed the outcome of a trial. In re Pers. Restraint of Clements, 125 Wn. App. 634, 646, 106 P.3d 244 (2005).

Where a trial court weighs evidence following a CrR 7.8 hearing, we review its factual findings for substantial evidence. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence exists when the record contains sufficient evidence to persuade a "fair-minded, rational person that the declared premise is true." In re Pers. Restraint of Davis, 152 Wn.2d 647, 679-80, 101 P.3d 1 (2004). But we defer to the trial court on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Law of Self Defense

Pratt first contends that he pleaded guilty, in large part, because counsel provided inaccurate and misleading information as to the law of self-defense. Specifically, Pratt argues that Donnelly told him he could not "successfully raise self-defense." But the trial court made findings to the contrary, findings that are supported by substantial evidence.

Based on counsel's declaration and interview statements, the trial court found that Donnelly sufficiently understood the law of self-defense to properly inform and advise Pratt. The court found that Donnelly explained the law in "terms that the defendant could understand." Even if Donnelly used the term "preponderance," instead of "'some evidence'" to describe Pratt's burden of production, the court determined that Donnelly's advice was not misleading because he did not tell Pratt that he could not satisfy that burden or that he would bear the burden of proving self-defense at trial. Donnelly simply conveyed to Pratt his belief that Pratt "would have to testify in order to persuade the jury that he acted

in self-defense." The court determined that Donnelly's strategic assessment was reasonable and his concerns about "the defendant's ability to withstand an attack on his credibility during cross-examination were also reasonable in context with the other evidence that would have been admitted at trial."

When interviewed by the State, Donnelly stated that he discussed self-defense with Pratt on "a number of occasions." He explained to Pratt that there had to be some evidence of an imminent danger and "a strong reason to believe that [he was] subject to a threat and then the force used must be reasonable."

When asked if he explained to Pratt that the State had to disprove self-defense, Donnelly stated:

> [T]he problem with clients is, is you're trying to explain the—the legal standard. You raise the issue by a preponderance, then it has to be disproved by a reasonable doubt. But you also have to acknowledge that I'm not trying this to a judge. I'm probably gonna try it to a jury. So uh I—I don't know if I got that technical with him, but I would have communicated that he would have had to testify and would have had to convince a jury.

Pratt points to Donnelly's use of the word preponderance here to argue that he must have misunderstood the defense burden of production and must have suggested to Pratt that he had to prove he acted in self-defense on a more probable than not basis in order to shift the burden of proof back to the State.

The trial court certainly did not interpret Donnelly's statement in this manner, nor do we. Donnelly made it clear that when he spoke to Pratt about self-defense, he did not focus on the legal standard but on how it would play out practically at trial. Donnelly clearly stated that he would <u>not</u> have told Pratt he had the burden of proving self-defense; instead, he told Pratt that, for all practical purposes, he

would have to testify and "[h]e would have to be persuasive," because when you "assert self-defense, it's gonna have to be persuasive to a jury 'cause I don't think a jury understands . . . that legal standard."

Although counsel is expected to understand the applicable law when advising a client, counsel is also expected to communicate with a client in language that client is able to understand. ABA Criminal Justice Standards for the Defense Function, Standard 4-3.1(d) (2017).[5] We conclude, as did the trial court, that Donnelly's use of the word "preponderance," when read in the context of Donnelly's complete interview, did not prove Donnelly misunderstood the law of self-defense or reached an erroneous conclusion on the viability of a self-defense claim based on some misunderstanding of the law.

Donnelly did advise Pratt that, in his opinion, the self-defense claim would not be successful at trial. Donnelly's advice was based on several evidentiary concerns. First, Donnelly thought Pratt's statement to police gave the prosecutor a lot of ammunition to undercut and discredit him. While Pratt raised self-defense in his police interview, Donnelly described this statement as a sort of "hypothetical statement." Second, Pratt's flight from Washington, with cell phone records showing he had traveled to California after the shooting, would lead to an inference that he did not act in self-defense. Third, Pratt told police he did not see Smallwood with a gun. This raised a question as to the reasonableness of Pratt's use of force. Finally, the other witnesses at the scene of the shooting did not support self-

[5] Available at https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/

defense. In light of this evidence, it was not unreasonable to tell Pratt he would likely have to testify and that his testimony would have to be found credible by the jury to succeed at trial.

Even if Pratt testified, Donnelly's concerns about the viability of the defense were well-founded. According to testimony from the lead prosecutor, had the case gone to trial, the State had evidence that on April 24, 2014, Pratt initiated the verbal and physical altercation at Flo Ware Park and several eye witnesses saw Pratt being aggressive, hostile, provocative, and the instigator of the fight with Lancaster. These witnesses believed Smallwood was trying to diffuse the situation. The State also had evidence that Pratt then retrieved a firearm, returned to a location he knew people involved in the Flo Ware fight would be located, and started another fight.

The prosecutor further testified that the State had eye witnesses who were expected to testify that Smallwood was unarmed, that he demonstrated to Pratt he was unarmed, and Pratt pulled his gun and shot Smallwood only when Smallwood appeared to get the upper hand in a fist fight with Pratt. Pratt admitted in a police interview that he did not actually see a firearm in Smallwood's hand and Smallwood was shot in a manner suggesting that he was moving away from the shooter, including a gunshot wound in the middle of his back. And, as Donnelly noted, Pratt fled the State following the shooting. It was reasonable for Donnelly to conclude that this evidence would be sufficient for the State to prove Pratt had not acted in self-defense beyond a reasonable doubt.

Based on the trial court's findings of fact, all of which are supported by substantial evidence, we conclude Pratt has failed to demonstrate that Donnelly's representation was deficient with respect to his understanding and explanation of the law of self-defense.

Failure to Interview Witnesses

Pratt next argues that counsel's performance fell below an objective standard of reasonableness because he failed to interview Donnie Adams. He contends the failure to interview Adams cannot be justified on any strategic basis.

The trial court found that Donnelly considered interviewing Adams and asked his investigator to locate him. At the time Pratt entered his plea, Donnelly "had not foreclosed the possibility of interviewing Mr. Adams" before trial.

The record supports this finding. When Pratt pleaded guilty, the evidentiary portion on the trial was not scheduled to begin for approximately two months. Pratt does not challenge the court's finding that before pretrial proceedings began, Donnelly had already conducted numerous interviews and "[a]dditional interviews were in the process of being scheduled and investigation was ongoing." The record shows that Donnelly had twice attempted to contact Adams, to no avail. There is no evidence to suggest that Donnelly would have made no further attempts. The evidence in the record does not, therefore, establish that Donnelly would not have interviewed Adams had Pratt proceeded to trial.

And, perhaps more importantly, the trial court also found that Donnelly was concerned Adams might provide information helpful to the State—Adams had told Smallwood's mother that he did not witness the shooting, that Smallwood had not

threatened Pratt, and that Pratt had instigated the confrontation. On this basis, the court found there were reasons to doubt that Adams would have provided "favorable testimony in support of the defendant's claim of self-defense at trial in 2015."

The record supports these findings. Although Adams apparently told attorney Cathy Gormley that he overheard Smallwood threaten to "air out" Pratt at Flo Ware Park, this statement was inconsistent with the statements of others who witnessed the fight at the park and with Adams's own prior statements. The victim's mother told police officers that, immediately after the shooting, Adams told her that Pratt had been "bullying" people at Flo Ware Park and that Smallwood said nothing to Pratt. Adams's initial statement aligns with the statements of other witnesses who reported that Pratt was aggressive and hostile at the park and that Smallwood tried to diffuse the situation. According to Smallwood's mother, Adams also told her that Pratt initiated the later confrontation that led to the shooting.

There is nothing in the record to indicate that Adams would have been willing to testify at trial in 2015. Expressing extreme reluctance and hostility, Adams provided a 2-minute statement to Gormley in 2016, but he provided no context or details and she did not ask him whether he would testify. Even if he had been willing to do so, Adams's testimony would have been undoubtedly subject to impeachment, based on his prior statements and numerous letters that Pratt authored in jail. In his letters, Pratt directed his family and friends to put pressure on Adams to provide a statement to support his claim of self-defense, outlining the exact words he wanted Adams to say. Based on this evidence, Pratt cannot

establish that Donnelly performed deficiently by failing to interview Adams before he entered his plea or that discovery of the evidence would have led Donnelly to recommend against accepting the State's plea offer.

Pratt also claims that Donnelly performed deficiently by failing to interview a confidential informant who was identified in one of the police reports and apparently "heard on the streets" that Pratt acted in self-defense. While Pratt contends that it is "plainly necessary" to seek out all potential witnesses, the record here indicates that the confidential informant had no direct knowledge of the shooting, heard this information only "one time," and could not identify the source of information. Absent any indication that the informant could have provided admissible, material evidence in support of Pratt's defense, the record supports the court's finding that the failure to interview the informant was not objectively unreasonable.

Failure to Obtain a Mental Health Evaluation

Finally, Pratt maintains that counsel was deficient in failing to understand the legal relevance of Pratt's mental status to his claim of self-defense. Pratt contends a mental evaluation would have revealed he suffers from PTSD, a condition that would have affected his subjective belief that he was in danger of being shot when fighting with Smallwood.

Donnelly explained in his declaration and interview that he did not seek to obtain a psychological evaluation because, based on his interactions with Pratt, he "could not articulate a reason to have such an evaluation performed." Donnelly also believed that such an evaluation could be "counterproductive to [the]

defense." The trial court concluded that, in view of the information Donnelly had, his failure to obtain an evaluation to determine whether Pratt suffered from PTSD did not amount to deficient performance. The court determined that Donnelly's course of action was strategically sound, since a report stemming from a mental health evaluation would have potentially included information detrimental to the defense and the State would have had the opportunity to procure its own evaluation. The court found that Donnelly's statement that he would have "followed up" on the potential PTSD issue after speaking with Gormley and reading Dr. Prinster's 2016 evaluation was nothing more than "hindsight."

Substantial evidence supports the trial court's findings. Whether or not Donnelly's understanding of the potential relevance of a PTSD diagnosis to a self-defense claim evolved over time, there is nothing in the record to indicate that Donnelly had a reason to suspect Pratt suffered from PTSD at the time of the plea. Even though Gormley sought an evaluation, the record does not indicate that she did so because she knew or suspected that Pratt had PTSD.[6] There is no support for the defense's position that counsel was required to pursue a mental health evaluation simply based on general knowledge of Pratt's upbringing and because he was "grief stricken" and "anxious" at the time of the crime. And because it is not clear that the benefits of obtaining a mental health evaluation outweighed the potential risks, the decision was clearly a matter of strategy.

[6] According to Dr. Prinster's report, Gormley sought an evaluation because she believed Pratt might have a "mood, cognitive, anxiety, or other disorder in addition to his known ADHD."

Pratt cites State v. Fedoruk, 184 Wn. App. 866, 339 P.3d 233 (2014), to support his position that the failure to request a mental health evaluation was objectively unreasonable. In Fedoruk, the defendant had an extensive and well-documented history of serious mental illness and had previously been found not guilty by reason of insanity on several felony charges. Id. at 885. This background information was available to the defense from the beginning of the case. Id. at 881. Yet, defense counsel did not retain a mental health expert or otherwise pursue a mental health condition evaluation until the day before jury selection. Id. In these circumstances, we concluded that defense counsel was ineffective. Id. at 882.

Pratt, on the other hand, has no documented history of serious mental illness or of raising mental illness as a defense to prior criminal charges. There is no basis to conclude that counsel knew or should have known that Pratt likely had PTSD. And, in view of the potential negative consequences of pursuing a mental health evaluation, defense counsel's failure to investigate a potential PTSD diagnosis did not fall below an objective standard of reasonableness.

Pratt's reliance on State v. A.N.J., 168 Wn.2d 91, 225 P.3d 956 (2010), is also misplaced. In A.N.J., our Supreme Court held that "a defendant's counsel cannot properly evaluate the merits of a plea offer without evaluating the State's evidence." Id. at 109. There, the court allowed a juvenile defendant to withdraw his plea because defense counsel's deficient representation constituted a manifest injustice. Id. at 113-14. It based its ruling on several key facts not present here: A.N.J.'s counsel met with his client for as little as 55 minutes total before the plea

hearing, did not talk to any witnesses or use an investigator, and admitted he probably did not explain the consequences of the plea, and that his client never saw the plea documents until immediately before the plea hearing.

In contrast, by the time Pratt accepted the State's plea offer, counsel had numerous discussions with Pratt, had retained at least two investigators, and interviewed approximately 30 witnesses. Pratt does not allege that counsel failed to explain the consequences of the plea or inadequately review the plea documents with him. A.N.J. provides no basis for relief under these facts.

Prejudice

Pratt argues that the outcome of this case would have been dramatically different but for counsel's errors.

However, the trial court found that Pratt's claim that he would have insisted on going to trial if Donnelly had performed differently was not credible. The court specifically found that the transcripts of the telephone calls Pratt made on the night before he changed his plea "persuasively" established that his decision to plead guilty was motivated by several factors, none of which related to counsel's performance. Pratt expressly related the following considerations: 1) his desire to avoid putting his family, the victim's family, and his community through a difficult and divisive trial, 2) his desire to prevent further public airing of his statements to the police, 3) his feelings of guilt, 4) his knowledge that even if acquitted, he would face adverse consequences in his community, and 5) a desire to avoid a significantly longer sentence.

Pratt contends the trial court erred in relying on these statements because "this decision was [made] in [the] context of a case where he had no hope, because no one was investigating the one witness who could help him, and the court had refused his only other alternative—seeking a new lawyer." This argument, however, is solely based on Pratt's testimony at the CrR 7.8 hearing where he explained that while he told his brother in a phone call that he did not want to put the family through trial, he actually felt like "my lawyer [was] not educating me on the laws of self-defense," and his lawyer was "not doing his job." He stated that had Donnelly interviewed Adams and called him to testify at trial, and had Donnelly obtained a mental health evaluation and discovered Pratt suffered from PTSD, and had Donnelly told Pratt of the relevance of this condition to the defense of self-defense, he would not have pleaded guilty but would have instead gone to trial. The trial court found this testimony not credible. Pratt is essentially asking this court to disregard the trial court's credibility finding. The trial court had the opportunity to hear Pratt's testimony, observe his demeanor, and adjudge the veracity of his testimony. We will not review this credibility determination.

The trial court concluded that Pratt failed to show that he was prejudiced by anything Donnelly failed to do or by the advice he gave in anticipation of the guilty plea. This conclusion is supported by the trial court's findings of fact and its findings of fact are supported by the record below.

Because Pratt failed to establish deficient performance or prejudice, his claim of ineffective assistance of counsel fails. The trial court did not err in denying his motion to withdraw his plea.

Statement of Additional Grounds

Pratt raises several claims in a statement of additional grounds for relief.[7] He reiterates the arguments raised by appellate counsel challenging the denial of his motion to withdraw his plea. He also claims that he would have been acquitted at trial on the murder charge because the State would not have been entitled to a first-aggressor instruction, there was significant evidence available to support his claim of self-defense, and he could have raised other viable defenses, such as voluntary intoxication and diminished capacity.

But when he pleaded guilty, Pratt specifically admitted that on April 24, 2014, he shot Smallwood with a firearm, Smallwood died as a result, and that he fired the weapon with intent to cause Smallwood's death. There was a sufficient factual basis for the plea. And by pleading guilty, Pratt waived his right to challenge the sufficiency or strength of the State's evidence. See State v. Carrier, 36 Wn. App. 755, 756–57, 677 P.2d 768 (1984) (a guilty plea waives any right to appeal from a deficiency in state's proof of the crime). We decline to further review the issues related to Pratt's motion to withdraw his plea that were adequately addressed by counsel. See RAP 10.10(a); State v. Thompson, 169 Wn. App. 436, 492-93, 290 P.3d 996 (2012) (the court need not address allegations of error that have been adequately addressed by counsel).

Pratt also challenges the trial court's denial of a motion to discharge counsel he raised prior to his plea. He contends that the trial court denied his motion

[7] Pratt filed two separate statements of additional grounds on the same date. We address both statements.

without conducting a proper inquiry into the factual basis for his request. But, the court invited Pratt to orally explain the basis for his motion. Pratt said counsel was not listening to him, adequately communicating with him, or working diligently on his case. The court gave counsel the opportunity to respond, heard from both the State and the defense with regard to the trial preparations that would take place in the coming weeks, and denied the motion. Pratt fails to demonstrate that the court abused its discretion. See State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004) (decisions on motions to discharge counsel are reviewed for an abuse of discretion)

Finally, Pratt contends that the court erred by accepting his "equivocal" plea. But as explained, there was a factual basis to support Pratt's plea. He expressed no confusion, reluctance, or equivocation in his guilty plea statement or during the formal plea colloquy. Pratt fails to establish a basis for relief.

Affirmed.

Andrus, A.C.J.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 79467-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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MARIA ANA ARRANZA RILEY, Legal Assistant Date: July 15, 2020
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