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A. ARGUMENT IN REPLY

ALDRIDGE WAS MISADVISED OF A DIRECT CONSEQUENCE OF HIS PLEA BECAUSE THE MANDATORY MINIMUM SENTENCE WAS NOT APPLIED TO HIM.

The State does not dispute that mandatory minimum sentences are direct consequences of a plea. Brief of Respondent at 5. Nor does it dispute that Aldridge was advised the mandatory minimum sentence would apply to him. Brief of Respondent at 7. Nor can it dispute that the mandatory minimum was not, in fact, applied to Aldridge. CP 89-98. Because Aldridge was, therefore, misadvised of a direct consequence of his plea, he must be permitted to withdraw his guilty plea. State v. Mendoza, 157 Wn.2d 582, 584, 141 P.3d 49 (2006).

Despite the discrepancy between the advice Aldridge received and the reality, the State argues the advice was correct because, in its view, Aldridge admitted facts that necessarily triggered the mandatory minimum sentence. Brief of Respondent at 7. This argument should be rejected.

First, the State argues that, because there was no evidence of disfigurement or impairment of a body part, Aldridge's plea must necessarily admit that his assault was committed with the intent to produce the only remaining definition of great bodily harm: "bodily injury which creates a probability of death." Brief of Respondent at 7-8 (discussing RCW

9A.04.110(4)(c)). This argument misunderstands the elements of first-degree assault and the nature of the factual basis required.

As charged in this case, the elements of first-degree assault do not require proof of actual injury to the assaulted person. RCW 9A.36.011(1)(a); CP 1. The elements are met if there is “intent to cause great bodily harm” and a firearm is used. *Id.* The varying definitions of great bodily harm are definitional; they are not elements of first-degree assault. *See, e.g., State v. Laico*, 97 Wn. App. 759, 760, 987 P.2d 638 (1999) (“The definition of ‘great bodily harm’ contained in RCW 9A.04.110(4)(c) is merely definitional and does not create alternative means of committing the crime of assault in the first degree.”). Thus, Aldridge’s statement on plea of guilty did not need to, and did not, specify whether the “great bodily harm” he intended was disfigurement, impairment of a body part, or the probability of death. CP 78. Even considering the probable cause certification that he agreed could be considered, Aldridge did not admit he intended the “probability of death” that the State argues is equivalent to the “force or means likely to result in death” required for the mandatory minimum to apply. CP 4, 78, 80. Under the facts in the probable cause certification, he may have intended, but failed to cause one of the other definitions of great bodily harm.

Next, the State argues that any time a firearm is used, the mandatory minimum sentence for first-degree assault applies. Brief of Respondent at 8-9. But this argument directly contradicts In re Personal Restraint of Tran, 154 Wn.2d 323, 329, 111 P.3d 1168 (2005), where the court held the mandatory minimum did not necessarily apply whenever a firearm is used.

In Tran, the petitioners pled guilty,<sup>1</sup> admitting the elements of first-degree assault and admitting their use of a deadly weapon in Roberts' case and a firearm in Tran's case. Id. at 326-27. Like the State in this case, the Department of Corrections argued the mandatory minimum sentence for first-degree assault necessarily applied because they admitted use of a firearm or a deadly weapon. Id. at 325.

First, the court compared the elements of first-degree assault under the firearm or deadly weapon prong to the conditions necessary to trigger the mandatory minimum sentence. The court concluded, "RCW 9A.36.011(1)(a) alone does not necessarily satisfy either of these two conditions." Id. at 329. Next, the court considered whether the addition of a firearm or deadly weapon enhancement necessarily triggers the mandatory minimum. Id. at 330. The court concluded the applicable definition of deadly weapon as "readily capable of causing death or substantial bodily harm" "does not necessarily implicate either condition required to impose a

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<sup>1</sup> Tran pled under North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Tran, 154 Wn.2d at 327.

mandatory minimum sentence.” Id. at 331. In other words, Tran rejects the State’s argument that use of a firearm automatically shows intent to kill.

Moreover, regardless of whether a mandatory minimum sentence could have been applied, it was not. Aldridge was wrongly advised that the mandatory minimum applied to his case when no mandatory minimum was actually applied. This misadvisement regarding a direct consequence of his plea requires that he be permitted to withdraw his plea as he requests. Mendoza, 157 Wn.2d at 584.

B. CONCLUSION

For the foregoing reasons, and for the reasons stated in the opening Brief of Appellant, Aldridge requests this Court permit him to withdraw his guilty plea or, alternatively vacate his sentence and remand for resentencing.

DATED this 1<sup>st</sup> day of October, 2014.

Respectfully submitted,

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