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July 18, 2016  
Court of Appeals  
Division I  
State of Washington

NO. 74344-9-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

BRODERICK YOUNG,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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A. INTRODUCTION.

Broderick Young pled guilty to the charged offenses without understanding that his sentence, described as consisting of “actual confinement” within a standard range and “life” maximum, meant that he was receiving a life sentence with the possibility of parole. His lack of understanding was rooted in his spiraling psychosis, his attorney’s failure to explain the sentence’s practical operation in a meaningful way, and the court’s failure to address the sentence’s terms when accepting the guilty plea. Because Mr. Young did not knowingly, intelligently, and voluntarily plead guilty to the charged offenses with an understanding of the sentencing consequences, he should be allowed to withdraw his plea.

B. ASSIGNMENTS OF ERROR.

1. Mr. Young did not knowingly, intelligently, and voluntarily waive his trial rights and plead guilty as required by the Sixth and Fourteenth Amendments and article I, sections 3, 21, and 22.

2. Mr. Young did not receive effective assistance of counsel.

3. The court erroneously denied Mr. Young’s motion to withdraw his guilty plea.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. A guilty plea requires a knowing, intelligent and voluntary waiver of the right to a jury trial, including a meaningful understanding of the sentencing consequences of pleading guilty. Mr. Young pled guilty to an offense that required an indeterminate sentence of life with the possibility of parole after serving a minimum term, but he did not understand that he had no right to release because neither the court nor his attorney explained this to him when he pled guilty. Did Mr. Young plead guilty without an accurate understanding of the sentence he would receive?

2. The right to effective assistance of counsel includes meaningful assistance in the plea bargaining phase. At a minimum, an attorney must explain the nature of the charges, potential defenses, and the risk or benefits of pleading guilty, including specific sentencing consequences. Mr. Young did not understand the nature of the sentence he faced. Did Mr. Young receive ineffective assistance of counsel?

D. STATEMENT OF THE CASE.

In July 2011, Broderick Young was having a “mental breakdown.” CP 157. He had not been taking his antipsychotic medications “for a while.” RP 96.<sup>1</sup> He walked “for miles and miles” without eating and barely sleeping. *Id.* He heard voices and had hallucinations. RP 96-97.

He was arrested after he entered a stranger’s home while naked, having lunged toward her. CP 94-95. She grabbed him, pushed him into a cabinet, and he ran outside. *Id.* She locked the door behind him and called the police. *Id.* He was charged with attempted first degree rape and first degree burglary. CP 310-11.

Police took him to the Skagit County jail, where guards reported he acted bizarrely, speaking incoherently and keeping his cell full of feces and urine. CP 93-94. He suffered from hallucinations, delusions, and paranoia. *Id.* His attorney reported the jail’s concerns to the court, and he was sent to Western State Hospital on two separate occasions for competency evaluations. *Id.*; 7/28/11RP 2

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<sup>1</sup> “RP” refers to the single volume of proceedings that includes the hearing on the motion to withdraw the guilty plea on November 13, 2015, as well as other related proceedings, held on April 8, August 19, October 28, and November 25, 2015.

Mr. Young had an “extensive history” of mental illness and was diagnosed with bipolar disorder and potentially schizoaffective disorder. CP 147. During a manic phase, he is “disheveled, has non-stop incoherent/illogical pressured speech” and “continuously chants” or sings. *Id.* He will sleep very little “or not at all.” *Id.* He becomes delusional. *Id.*

His mother “suffers from chronic schizophrenia and has been institutionalized for much of her life.” CP 157. Mr. Young has also been civilly committed, including two three-month psychiatric admissions in Oregon in 2007 and 2010, and other shorter-term hospitalizations. CP 93, 201, 203-04.

In May 2012, after he was medicated and found competent, he pled guilty as charged to attempted rape in the first degree and burglary in the first degree. CP 303-07. The court imposed the prosecution’s recommended sentence, including a minimum term of 110.25 months with a maximum life sentence. CP 108, 119-20. This sentence constituted the high end of the standard range. CP 108.

He later moved to withdraw his guilty plea because he had not understood the plea he entered, particularly the life sentence that the court imposed. CP 91-102, 169. He complained that neither his attorney

nor the court explained the nature of the indeterminate life sentence in a way that he understood. CP 98, 168-69. He said his “mental incapacitation” and “inability to understand the consequences of pleading guilty” required allowing him to withdraw his plea. CP 169.

The court granted a fact-finding hearing and appointed a new lawyer. RP 9. It agreed that the plea colloquy did not discuss the indeterminate life sentence, which bothered the judge, but she found no authority requiring this information before accepting a guilty plea. RP 125. Mr. Young’s original defense attorney did not recall their conversations and relied on his usual practice and emails with the prosecution to surmise that they had discussed plea offers. RP 41, 42, 53, 75. He had no independent recollection of their specific conversations or of treating Mr. Young any differently than any other client, notwithstanding his active mental illness. RP 53, 71-72. Defense counsel admitted he had not conducted any factual investigation and only looked into a defense of mental incapacity by requesting a psychological evaluation. RP 46. He would have investigated the factual allegations or other legal strategies only if a trial occurred. *Id.* He told Mr. Young that he risked an exceptional sentence above the standard range and advised him to plead guilty to the charge to avoid an

exceptional sentence. RP 42, 44. He did not explain that there was little risk of an exceptional sentence because the potential aggravating factors were already accounted for in the standard range. RP 44.

Mr. Young did not understand that he was sentenced to lifetime incarceration, with the possibility of parole, until he arrived at the Department of Corrections and was informed that he early release date was “life.” RP 84-85. The court denied his motion to withdraw the guilty plea. CP 342; RP 122-26.

Pertinent facts are discussed in further detail in the relevant argument sections below.

E. ARGUMENT.

**Mr. Young pled guilty based on the inadequate explanation of the consequences of his plea, which failed to accommodate his profound mental illness and undermines the validity of his guilty plea.**

*1. A valid guilty plea requires a knowing, intelligent, and voluntary understanding of its consequences.*

A decision to plead guilty must be based on an understanding of the charge, “alternative courses of action,” and the sentencing consequences. *In re Pers. Restraint of Hews*, 108 Wn.2d 579, 597, 741 P.2d 983 (1987); 13 Wash. Prac., Criminal Practice & Procedure § 3707 (3d ed.) (“plea of guilty must be freely, unequivocally,

intelligently and understandably made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act.”).

A defendant’s waiver of his right to trial by jury and entry of a guilty plea must be an intentional relinquishment of a known right, indulging in every presumption against waiver. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); U.S. Const. amends. 6, 14; Const. art. I, §§ 3, 21, 22. An involuntarily entered plea establishes a manifest injustice permitting withdrawal of the plea. *State v. Turley*, 149 Wn.2d 395, 398, 69 P.3d 338 (2003); CrR 4.2(f).

A guilty plea may be involuntary if based on misinformation about the direct consequence of the plea, including the statutory maximum. *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006).

It may also be involuntary if premised on inadequate advice of counsel. A defendant is entitled to effective assistance of counsel in the process of plea negotiation. *Missouri v. Frye*, \_ U.S. \_, 132 S.Ct. 1399, 1405-06, 182 L.Ed.2d 379 (2012); U.S. Const. amend. 6; Const. art. I, § 22. At the plea bargaining stage, “defendants cannot be presumed to make critical decisions without counsel’s advice.” *Lafler v. Cooper*, \_ U.S. \_, 132 S.Ct. 1376, 1385, 182 L.Ed.2d 398 (2012). A client’s intent

to plead guilty does not excuse a lawyer from adequately investigating the case or pursuing available avenues of relief. *State v. A.N.J.*, 168 Wn.2d 91, 113, 116, 118, 225 P.3d 956 (2010). “Anything less” than effective representation during plea bargaining “might deny a defendant ‘effective representation by counsel at the only stage when legal aid and advice would help him.’” *Frye*, 132 S. Ct. at 1407-08 (quoting *inter alia Spano v. New York*, 360 U.S. 315, 326, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959) (Douglas, J., concurring)).

2. *The court admitted it did not insure Mr. Young understood the consequences of his guilty plea but did not believe case law existed about its obligation to do so*

A defendant enters a valid plea only by making a knowing, voluntary, and intelligent decision based on an understanding of the charge and the plea’s consequences. CrR 4.2(d); *State v. McDermond*, 112 Wn.App. 239, 243–44, 47 P.3d 600 (2002). A defendant must be informed of the direct sentencing consequences of the guilty plea. *State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d 965 (2008). The length of a sentence is a direct consequence of a guilty plea. *Mendoza*, 157 Wn.2d at 590; *see also State v. Moon*, 108 Wn.App. 59, 63, 29 P.3d 734 (2001). When a plea is based on misinformation, it is not knowingly, intelligently, and voluntarily entered. *Moon*, 108 Wn.App. at 63.

At the motion to withdraw the guilty plea, Judge Susan Cook reviewed the plea colloquy she previously conducted and conceded she did not discuss with Mr. Young the mandatory lifetime sentence being imposed. RP 125. This lapse “bothered” the judge. *Id.* But she found no legal authority requiring a judge to explain the meaning of an indeterminate life sentence or explain that the sentence imposed would be lifetime incarceration with the possibility of parole. *Id.* The judge agreed it “would be important for someone to know” the consequences of an indeterminate life sentence when pleading guilty. *Id.*

Rather than mention the lifetime incarceration Mr. Young faced, the judge told Mr. Young that the prosecutor “would recommend 110 and a quarter months in prison, community custody for life,” and other non-incarceration obligations. CP 306. The guilty plea statement contained the identical representation. CP 108. During the plea colloquy, there was no further discussion of the length of incarceration Mr. Young faced as a result of his plea or the mechanism for obtaining community custody. CP 303-07.

The judge did not explain the indeterminate nature of the sentence. *Id.* The judge did not explain that the sentence authorized lifetime incarceration without any community custody. *Id.* The judge

did not explain that there was no guarantee he would ever be released to serve community custody or that his sentence was the equivalent of a life term. *Id.*

The possibility of serving a life sentence was not an illusory or hypothetical consequence for Mr. Young. When imposing a sentence of life with the possibility of parole, this Court accords a life sentence “its literal meaning.” *State v. Fain*, 94 Wn.2d 387, 394, 617 P.2d 720 (1980). It is “clear” that “parole is simply an act of executive grace.” *Id.* There is no right to it and no judicial review of its denial. *Id.* The parole board’s discretion is “virtually unfettered.” *Id.* Because a person’s “chances for executive grace are not legally enforceable,” this Court presumes a life sentence will be served as imposed. *Id.* at 395.

Similarly to *Fain*, Mr. Young’s release to community custody would only occur at the unfettered discretion of the parole board. He has no right to counsel for a parole hearing or legal recourse if his release is denied. The Department of Corrections treats his sentence as “life.”

Mr. Young did not understand the actual implication of his sentence until he arrived at state prison and saw that DOC classified his early release date as “life.” RP 84.

The written statement on plea of guilty did not cure the court’s inadequate colloquy. It characterized the standard range as the “actual confinement” Mr. Young faced, set forth as “83.25 to 110.25 months.” CP 105. It also stated the “maximum term” was life, but it did so in a standard form that signaled only the standard range portion constituted the time of incarceration requiring “actual confinement.” *Id.*

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	2	83.25 to 110.25 months		Life	Life & \$50,000
2	2	26 to 34 months		18 months	Life & \$50,000
3					

CP 105. Buried in another part of the guilty plea statement, a densely written paragraph says in part,

(i) Sentencing under RCW 9.94A.507: if this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will

be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me, which may include electronic home monitoring, and I may be required to participate in rehabilitative programs.

CP 106.

This abstruse explanation does not rectify the misimpression left by the court's in-court colloquy that made no mention of the lifetime sentence being imposed with the possibility of release at the discretion of the parole board. Mr. Young did not expressly initial this paragraph to show he paid particular attention to it, as he did to a few other paragraphs. CP 109, 110, 111. The court never told Mr. Young his sentence authorized lifetime incarceration for count one, even though the judge cautioned him about the three-strikes law if convicted of additional strike offenses in the future. 5CP 109, 306.

Instead of explaining the sentence's terms, the judge told Mr. Young that he faced "community custody for life" after serving a standard range sentence. CP 306. Similarly, the written guilty plea statement made it appear that the "actual confinement" was limited to the standard range and the rest would be community custody. CP 105

(chart), 108. At the time Mr. Young pled guilty, he was not adequately advised that the direct sentencing consequence of his plea was to authorize his lifetime incarceration, and this deficiency undermines the voluntariness of his plea. *Mendoza*, 157 Wn.2d at 590-91.

3. *Mr. Young's attorney failed to adequately communicate the consequences of the guilty plea even though he knew Mr. Young was experiencing serious mental health complications.*

Mr. Young's misunderstanding of the plea terms is demonstrated not only by the court's deficient plea colloquy and the misleading sentencing description in the guilty plea statement, but also by his attorney's deficient performance. During the trial court proceedings, Mr. Young was experiencing serious mental health problems and his attorney did not effectively counsel him about the case.

At the time of the incident and while held in jail after his arrest, Mr. Young suffered from substantial psychotic problems, known to counsel, the State, and the court. RP 50, 69; CP 202. When arrested, he had been walking through the streets for days, without eating or sleeping, and while shedding his clothes. CP 199, 202; RP 96. He entered the complainant's home naked, seeing visions and hearing voices. RP 96-97.

His unstable, dangerous behavior significantly alarmed jail staff. CP 93-94. They contacted Mr. Young's lawyer to express their concern several times. *Id.*; RP 69. The jail's concern about Mr. Young's behavior led his attorney to request competency evaluations on two separate occasions. CP 93-94.

Before his arrest, he had several long term civil commitments due to mental illness. CP 93, 157, 201-04. His mother has "chronic schizophrenia." CP 157.

Despite plain evidence of Mr. Young's significant mental illness, defense counsel did not deviate from the routine legal advice he would give to any client. *See* RP 40, 42, 52. He did not recall taking any special time or modifying the content of his explanation of the legal situation to be sure Mr. Young understood the charges and their consequences. RP 52-54.

Mr. Young complained that his attorney barely visited him and barely spent any time explaining the sentencing consequences. RP 92. He believed his attorney simply disliked him and did not want to be bothered with his problems. *Id.*

The mere fact that Mr. Young was competent to proceed does not alleviate defense counsel's obligation to meaningfully explain the

consequences of a guilty plea in a manner understandable to a defendant. A competency inquiry asks whether a defendant has the ability to understand the proceedings. *See Godinez v. Moran*, 509 U.S. 389, 401 n.12, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993). On the other hand, whether a defendant knowingly and voluntarily waived his rights, requires that a defendant actually understands the significance and consequences of a particular decision. *Id.*

A defense attorney's obligation to explain the consequences of a guilty plea is separate from a court's role in ascertaining the voluntariness of a plea. *State v. Sandoval*, 171 Wn.2d 163, 173, 249 P.3d 1015 (2011). Even if the court explains sentencing consequences to a defendant, defense counsel's advice may undermine or negate that information. *Id.*

Defendants need enough information to make an informed decision and must be able to understand that information. *Id.*; *see Lafler*, 132 S. Ct. at 1385. Even though defense counsel told Mr. Young he faced an indeterminate sentence, and he might not be released when he first asked, Mr. Young did not understand the nature of the sentence. RP 40, 44, 87. He did not view his sentence as a life term because his

lawyer told him he would be released. *Id.* He was surprised that DOC treated him as having a life sentence. RP 83.

Defense counsel was put on notice that Mr. Young did not understand the sentence he faced. When evaluated for competency shortly before pleading guilty, Mr. Young told the evaluator that he did not understand the sentence and his attorney “didn’t explain it too well.” RP 70; CP 222. But defense counsel recalled no special conversations or in-depth discussions afterward to be sure Mr. Young understood the sentence he faced. RP 52.

Mr. Young later explained that it took him a long time to regain his ability to think rationally even after he went to prison. RP 88. At the time of the incident, and while in jail, he suffered from hallucinations and incoherence. RP 96-97. He did not have the “intelligence” to understand that his guilty plea meant he would not be released. RP 102. Defense counsel did not comply with his obligation to meaningfully assist Mr. Young by presenting his legal advice in an understandable manner and verifying Mr. Young’s actual comprehension of the sentence he faced.

4. *Mr. Young's attorney conducted no factual investigation because he expected Mr. Young to plead guilty, further depriving him of effective assistance of counsel in understanding whether to plead guilty.*

The “failure to investigate” may constitute ineffective assistance of counsel. *A.N.J.*, 168 Wn.2d at 110. The lack of investigation is not excused by the attorney’s expectations after the client has admitted guilt. *Id.* “Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial.” *Id.* at 111.

While the degree of necessary investigation varies, “at the very least,” an attorney cannot legitimately assist a client in making an informed decision about whether to plead guilty by merely accepting the State’s version of events as true. *Id.* at 111-12.

Defense counsel admitted he had not investigated the case beyond checking for a mental health defense by seeking an expert’s evaluation of Mr. Young. RP 44, 46. When that expert did not believe Mr. Young was insane or lacked capacity at the time of the offense, despite also opining that Mr. Young’s mental illness clearly impacted his behavior, defense counsel did not pursue a mental defense further. RP 48-50. He did not seek another expert’s opinion or otherwise

investigate a possible defense based on Mr. Young's plain mental illness. RP 50.

More significantly, defense counsel conducted no factual investigation. RP 44. He did not attempt to interview the complaining witness or any other witnesses, such as the people who found Mr. Young nearby within five minutes of the incident. *Id.*; CP 5. He also did not investigate Mr. Young's personal circumstances at the time of the offense that might corroborate a possible mental health defense, such as ascertaining whether he was obtaining his medications or had been observed acting strangely to people who knew him. RP 44, 46, 62.

Defense counsel said he would only "consider all options," including investigating the allegations, if there was a trial. RP 44. This practice is backwards. The attorney's duty to investigate arises at the outset, because it is necessary to inform the subsequent decisions about whether a guilty plea or trial is well-advised. *A.N.J.*, 168 Wn.2d at 110-12. Defense counsel's perception that investigation would occur only after a plea bargain is rejected misunderstands the role of the attorney and deprives the client of the opportunity to receive informed advice from counsel about the strength of the prosecution's case and the risks of trial. *Id.* at 111-12.

5. *Mr. Young's attorney advised Mr. Young to plead guilty based on erroneous legal advice about the risk of an exceptional sentence above the standard range.*

By statute, the court may not depart from the standard range unless the jury finds legally applicable mitigating factors and the court determines these factors constitute a substantial and compelling reason to impose a sentence greater than the presumptive range. RCW 9.94A.535; RCW 9.94A.537. The standard range is presumed to apply. *State v. Law*, 154 Wn.2d 85, 94, 110 P.3d 717 (2005) (“Generally, a trial court must impose a sentence within the standard range.”).

To be a substantial and compelling factor authorizing a sentence above the standard range, the factor may not be something already considered by the Legislature in setting the standard range. *State v. Nordby*, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986).

Here, the State threatened to request an exceptional sentence for first degree burglary based on the aggravating factor that “the victim of the burglary was present in the building” when the crime was committed. RCW 9.94A.535(3)(u). *See* Ex. 10, p. 2 (email dated May 8, 2012). But the presence of the victim is already considered by the legislature in the context of first degree burglary when based on assaulting a person in the course of a burglary. RCW 9A.52.020(1). The

assault itself elevates second degree burglary to first degree burglary, substantially increasing the seriousness of the offense and the resulting standard range. RCW 9.94A.515 (setting seriousness level of “Burglary 1” as VII, while level for “Burglary 2” as III); RCW 9A.52.020; RCW 9A.52.030. Because the assault would be impossible without the victim being present, the victim’s presence during the burglary is already considered by the legislature in setting the standard range for first degree burglary and it cannot justify a sentence greater than the standard range. *See Law*, 154 Wn.2d at 95; *Nordby*, 106 Wn.2d at 518.

The State also claimed it would seek an exceptional sentence for burglary based on the aggravating factor that the offense “involved an invasion of the victim’s privacy.” RP 43; RCW 9.94A.535(3)(p); *see* Ex. 10, p. 2. Defense counsel did not believe this factor would justify an exceptional sentence, but did not tell Mr. Young. RP 43-44.

This factor is inherent in a burglary, which necessarily invades a building owner’s privacy. *See State v. Lough*, 70 Wn.App. 302, 336, 853 P.2d 920 (1993), *aff’d on other grounds*, 152 Wn.2d 552, 216 P.2d 479 (2009) (rejecting zone of privacy aggravating factor for burglary); *State v. Post*, 59 Wn.App. 389, 400-01, 797 P.2d 1160 (1990), *aff’d*, 118 Wn.2d 596, 826 P.2d 172 (1992) (same); *cf. State v. Coleman*, 152

Wn.App. 552, 216 P.3d 479 (2009) (finding entry into victim's bedroom constituted more egregious privacy invasion than typical burglary).

Mr. Young was not accused of entering a particularly private area such as a bedroom, but rather walking into the kitchen. CP 5. The invasion of privacy involved in burglaries generally is the reason it is treated as a serious offense with serious sentencing consequences. *See State v. Miller*, 91 Wn.App. 869, 873, 960 P.2d 464 (1998). The invasion of privacy inherent in the offense was considered by the legislature in crafting a standard range. *See Lough*, 70 Wn.App. at 336.

The final aggravating factor threatened by the State was that the burglary was sexually motivated. Ex. 10, p. 2. But again, the standard range accounts for this aggravating factor. Adding a sexual motivation aggravator to first degree burglary automatically raises the standard range from a determinate term to an indeterminate life sentence under RCW 9.94A.507(1)(a)(ii). This mandatory sentencing increase shows the legislature expressly considered how this aggravating factor would increase the offender's sentence. Conduct that is already accounted for in a heightened standard range does not meet the necessary threshold for a substantial and compelling basis to authorize an exceptional

sentence. *See State v. Ferguson*, 142 Wn.2d 631, 648, 15 P.3d 1271 (2001) (offense of exposing person to HIV necessarily includes intent to do harm, so deliberate cruelty cannot justify exceptional sentence).

Defense counsel never explained the illusory nature of the prosecution's threat to seek a higher minimum term as an exceptional sentence, but rather painted it as a "viable threat." RP 42-44. A person sentenced under RCW 9.94A.507 "is serving a life sentence with the possibility of release if, upon expiration of his minimum term, the preponderance of the evidence indicates he will not reoffend." *State v. Clarke*, 156 Wn.2d 880, 890, 134 P.3d 188 (2006). The conviction alone "extinguishes his liberty interests" and deprives him of a right to release prior to the expiration of the maximum term. *Id.*

By enacting this statutory scheme, the legislature determined that a life sentence "must be imposed" for qualifying offenses. *Id.*

The purported threat the State would seek an exceptional sentence rested on facts already accounted for in the standard range, which could not justify an exceptional sentence because they overlapped with the elements of the underlying offenses. In any event, Mr. Young would receive a life sentence, with the possibility of parole, with or without an exceptional minimum term. Defense counsel

persuaded Mr. Young to plead guilty based on the illusory threat of a risk of an exceptional sentence. Absent a legal basis for the court to impose a higher sentence, defense counsel did not competently advise Mr. Young of the risk of an inflated minimum sentence.

6. *Mr. Young was prejudiced by his attorney's failure to accommodate his mental illness and provide meaningful advice, and did not knowingly, intelligently, and voluntarily plead guilty.*

Ineffective assistance of counsel occurs when “counsel’s representation fell below an objective standard of reasonableness,” and “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Lafler*, 132 S.Ct. at 1384 (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

Defense counsel performed deficiently in several areas. He did not adjust his advice to Mr. Young’s level of understanding, even when he knew Mr. Young experienced long-term psychotic troubles, including being incoherent at times and hearing voices, and he knew Mr. Young had expressed concern that his lawyer had not explained the sentence he faced. RP 48-49, 54, 70. In addition, he conducted no investigation of the allegations to assess the strength of the charges. RP

46. He planned on investigating the incident only if they went to trial.

*Id.*

He advised the mentally unstable Mr. Young to plead guilty to the charged offenses, for which the State would recommend the high end of the standard range followed by life in prison, with the possibility of parole in the future. RP 42, 44. Mr. Young gained little to no benefit from this guilty plea and did not understand the sentence he received until he arrived in prison. RP 84-85.

Further, he encouraged Mr. Young to plead guilty to the charges to avoid the risk of an exceptional sentence. But he did not explain that the threatened aggravating factors were unlikely to apply as a matter of law, because they were factors inherent in the standard sentencing range. RP 44. He also did not explain that an exceptional sentence could only raise the minimum term, because he would receive the same maximum sentence of life applied to even the charged offenses. RP 44, 85.

It is reasonably probable that but for counsel's unprofessional errors, Mr. Young would not entered this plea agreement. He received little benefit: the State recommended the high end of the standard range as the minimum term and did not reduce any charges. The only threat

avoided was the claim that the State would seek an exceptional sentence but the aggravating factors were already accounted for in the standard range for these offenses. If Mr. Young understood he was not receiving a benefit, and in fact was likely to spend his life in prison, he would not have entered the guilty plea. RP 88-90, 101.

Defense counsel's inadequate advice, and the court's deficient plea colloquy, undermine the constitutional validity of the guilty plea and require remand so that Mr. Young may have the opportunity to withdraw his plea. *Mendoza*, 157 Wn.2d at 590-91.

F. CONCLUSION.

Mr. Young's guilty plea was entered without a knowing, intelligent, and voluntary understanding of the direct sentencing consequences, because the court and his attorney did not meaningfully explain those consequences in an understandable manner. He is entitled to the opportunity to withdraw his plea.

DATED this 18<sup>th</sup> day of July 2016.

Respectfully submitted,

s/ Nancy P. Collins  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 74344-9-I
v.	)	
	)	
BRODERICK YOUNG,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18<sup>TH</sup> DAY OF JULY, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |  |                   |  |
|-----|--|-------------------|--|
| [X] | ERIK PEDERSEN, DPA<br>SKAGIT COUNTY PROSECUTOR'S OFFICE<br>COURTHOUSE ANNEX<br>605 S THIRD ST.<br>MOUNT VERNON, WA 98273 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>AGREED E-SERVICE<br>VIA COA PORTAL |
| [X] | BRODERICK YOUNG<br>358230<br>WASHINGTON STATE PENITENTIARY<br>1313 N 13 <sup>TH</sup> AVE<br>WALLA WALLA, WA 99362       | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____                              |

**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF JULY, 2016.

X \_\_\_\_\_ 