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COURT OF APPEALS
DIVISION II

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NO. 37656-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

Z.H.,

Appellant.

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

The Honorable Gary R. Tabor, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in failing to dismiss the charges against appellant based on the prosecutor's intrusion into appellant's attorney-client relationship.

2. The court erred when it entered findings of fact 25 and 26 and conclusions of law 1, 3, 4, 5, 6, and 7.¹

Issue Pertaining to Assignments of Error

At the time of juvenile appellant's arrest, Lewis County Prosecuting Attorney Michael Golden was engaged in a romantic relationship with appellant's mother. Counsel did not remove himself or his office from the case. Between appellant's arrest and his guilty plea, Golden repeatedly communicated with appellant's mother about the case and in the face of comments that she doubted defense counsel's tactics, urged appellant's mother to trust him and to "have faith in" him. Unaware of his mother's relationship and her communications with Golden, appellant pleaded guilty based primarily on his mother's advice and against his counsel's advice.

Where (1) prejudice is presumed and (2) Golden's egregious behavior undermined the attorney-client relationship during the critical plea bargaining stage of appellant's case and influenced appellant's decision to

¹ The court's findings and conclusions are attached as an appendix.

accept the state's plea offer against counsel's advice, did the trial court err in denying appellant's motion to dismiss?

B. STATEMENT OF THE CASE

1. Procedural Facts and Motion to Dismiss Charges

The Lewis County prosecutor charged Z.H. with six counts of second degree arson² and two counts of second degree burglary related to a series of fires occurring in November and December 2006. CP 72-76, 77-80, 81-82. An adult defendant, John Zylstra, was also charged with the crimes. 3RP 12.

On March 3, 2007, Z.H. pleaded guilty to six counts of second degree arson and two counts of second degree burglary. CP 63-71; 1RP³ 1-10. Z.H. waived speedy sentencing until the end of 2007 because the plea agreement required him to cooperate in the prosecution of Zylstra. 1RP 10.

In July 2007, Z.H. moved to dismiss the charges based on governmental misconduct after it was revealed the elected Lewis County prosecutor, Liam Michael Golden, was involved in a romantic relationship

² Four of the arson counts charged reckless burning in the alternative. CP 72-76.

³ This brief refers to the verbatim report of proceedings as follows: 1RP - 3/27/07; 2RP - 10/29/07; 3RP - 11/13/07 (volume 1); 4RP - 11/13/07 (volume 2); 5RP - 11/14/07; and 6RP - 3/25/08.

with Z.H.'s mother, K.W., before and after Z.H.'s arrest.⁴ CP 45-55, 58-60.

Two Lewis County judges recused themselves and the parties agreed a Thurston County visiting judge, the Honorable Gary Tabor, would hear the motion to dismiss. 3RP 5. The Thurston County prosecutor defended the motion. 3RP 5.

The court denied the motion. CP 25-32; 5RP 468-92. At Z.H.'s March 2008 dispositional hearing, the court sentenced him to a 65-week manifest injustice disposition. CP 19-24; 6RP 26-35. CP 22.

2. Hearing Testimony

K.W., a special education teacher, is Z.H.'s mother. 3RP 85, 87. According to K.W., Z.H. struggled with depression and weight issues. 3RP 86-87. K.W., who was married, began an affair with Golden in November 2006 after working on his campaign. 3RP 91-93. Golden refused to be seen with K.W. in public. 3RP 96-97. The two talked on the phone and frequently exchanged text messages. 3RP 97.

On January 2, 2007, K.W. asked Golden about fires that had been occurring around the County. She told him she smelled the stench of fuel

⁴ This incident and others involving Golden were lampooned in "Turkeys 2008," Washington Law and Politics, issue no. 66, at 11.

after Zylstra visited Z.H. 3RP 117. January 2 was Golden and K.W.'s last romantic encounter. 3RP 120.

After Z.H. was arrested on January 4, K.W. left Golden a voicemail. 3RP 121. When Golden called back, K.W. asked Golden if he prosecuted "kids." 3RP 122. Golden replied, "I'm sorry to say that I do." 3RP 121. K.W. apologized to Golden because she thought Z.H.'s acts would get Golden in trouble, and the two agreed to end their relationship at least temporarily. 3RP 122, 196. K.W. hired attorney Jonathan Meyer to represent her son. 4RP 212-13.

After Z.H.'s first court appearance, however, K.W. texted Golden. 3RP 123. At that appearance, deputy prosecutor Lori Smith informed the court Golden was "in her face" about wanting Z.H. held pending trial and seeking a long sentence.⁵ 4RP 244. K.W.'s surprise and shock led her to contact Golden. 4RP 244. Golden responded with a voicemail stating "thanks for being a friend and letting the system do its job." 4RP 245.

From then on, K.W. texted Golden after Z.H.'s court appearances because she did not like how the deputy prosecutor treated Z.H. 3RP 124,

⁵ Smith recalled arguing Z.H. should be held for community safety reasons. 5RP 312-13. According to the hearing transcript, however, she told the court Golden and Richards "were just adamant, were pretty much in my face saying 'We want [Z.H.] held.'" 5RP 313. Smith did not recall such a conversation with Golden or Richards, but insisted she would not knowingly make a false statement to the court. 5RP 313, 317-18, 332-34.

128; 4RP 216-18, 235. When K.W. told Golden she felt her loyalties were divided between him and Z.H., Golden replied, "give it time." 3RP 130. Golden generally replied to her messages with reassuring, yet vague, responses. 4RP 236.

About a week after Z.H.'s arrest, Golden called K.W. and she returned his call the following day. 3RP 124. K.W. thought their relationship was over, but during the 80-minute phone call, Golden set out new relationship rules. 3RP 124. Golden told K.W. "this is going to be our test." 3RP 124, 127; 4RP 222. K.W. took that to mean the case against her son would be a test she would have to pass to save their relationship. 3RP 124-25; 4RP 248.

Golden did not attempt to dissuade K.W. from talking about her son's case. 4RP 222. During the conversation, K.W. inquired why Meyer told her not to talk to Z.H. about the case. 4RP 222-23. Golden explained she might become a witness against Z.H. 4RP 222-23. Golden also told K.W. he could not tell her everything at that time, but when it was over they would go away together and he would explain everything. 3RP 125. When K.W. pointed out the case could last a long time, Golden said he would "push the calendar." 3RP 125. K.W. only heard that phrase from Golden. 3RP 125. Golden stated he would follow the case closely. 4RP

421-22. Golden also stated, "you're not gonna like what I'm gonna have to do, but it's going to be fair." 3RP 127.

One weekend in late February, K.W. and Golden were both present at a dinner in honor of Lincoln's birthday. Golden repeatedly approached K.W., which made her uncomfortable. 3RP 130. Golden and K.W. sent messages back and forth many times that weekend. 5RP 133-34. In response to K.W.'s messages about her son's case, Golden's texts stated, "[h]ave faith in me," and "you need to trust in me." 3RP 133. K.W. took that to mean Golden thought the plea deal offered her son was fair, contrary to Meyer's opinion. 3RP 133-34.

Golden called the following Tuesday and urged K.W. to visit him. 3RP 131. K.W. became emotional during the conversation. 3RP 131. She told Golden she did not like Meyer and Meyer did not like Golden, and that she was sorry for hiring Meyer to represent her son. 3RP 132-33. K.W. told Golden she did not understand why Meyer thought Golden was being "vindictive" in dealing with her son. 3RP 131. She told Golden that Meyer contemplated taking the case to trial to surprise the prosecution. 3RP 131. In response, Golden stated, "look at the pieces of shit [Meyer] represents." 3RP 131, 138; 4RP 254. K.W. also told Golden she did not know whom to trust because her stepfather (who worked at Lowe's and had

no legal training) believed the offer was fair, unlike Meyer. 3RP 139-40; 4RP 246. Golden replied "yeah." 3RP 133. Golden's comments affected how K.W. viewed Meyer's advice and representation of her son. 3RP 134.

K.W. refused Golden's request to visit him, stating she needed "to . . . get [Z.H.] through sentencing." 3RP 131-32. Golden said "Fine. Call me next week." 3RP 132. K.W. believed Golden was upset that she would not visit him to have sex with him. 4RP 254-55.

Toward the end of March, Golden called and said he missed her. But K.W. had learned from Golden's neighbor another woman was staying at Golden's house. 3RP 143-44. On March 31, K.W. told an attorney she met socially about her son's case and her relationship with Golden. That attorney's advice led her to believe Golden's actions were improper. 3RP 145; 4RP 240-41.

K.W. always received responses to text messages to Golden before Z.H.'s plea, but afterward he stopped responding. 3RP 158-59. While Golden usually responded to K.W.'s concerns with general reassurances and declined to provide specific information, he permitted her to provide details about the case. 4RP 259. Likewise, Golden never told K.W. to stop contacting him. 4RP 259.

K.W. wanted Z.H. to plead guilty in order to take responsibility for his actions. 4RP 262. But what she had learned since Z.H.'s plea led her to believe she had advised her son improperly. 4RP 262. K.W. acknowledged Golden never directly asked her to persuade Z.H. to plead. 4RP 247. His statements influenced her to do so. 4RP 247-48, 256-60.

Z.H. testified when Meyer was not around, his mother made disparaging remarks about Meyer. 4RP 285. Z.H. felt pressured by his mother and stepfather (who generally deferred to his mother's judgment) to accept the state's plea offer despite Meyer's recommendation to let the prosecutor "cool down" and wait for a reasonable deal. 4RP 285, 289-90. Based on his mother's advice, however, Z.H. felt uneasy about Meyer's advice. But for his mother's advice, Z.H. would have followed Meyer's advice and not accepted the plea offer. 4RP 300. Z.H. learned about his mother's affair with Golden in May or June 2007. 4RP 286-87.

Golden acknowledged an affair with K.W. throughout November and December 2006. 5RP 346. When K.W. called and said she loved him in late December, he was disgusted because she was intoxicated and he had been a recovering alcoholic for nearly 20 years. 5RP 348. At that point he was "done or . . . pretty close to done" with the relationship. 5RP 348-49.

Golden denied learning of Z.H.'s arrest from K.W., although he acknowledged telephone records proved he called her cell phone that evening. 5RP 352. Golden's first learned about the arrest from Zylstra's arrest report. 5RP 353-54, 389. After reviewing the report, Golden called chief criminal deputy Jason Richards and chief civil deputy Douglas Jensen into his office and stated, "I have been dating [Z.H.'s] mother. What am I gonna do? What do we do? How do we handle this?" 5RP 354-55. Golden directed the question mainly at Jensen because he had more experience with conflict issues. 5RP 356. Golden told Jensen he would be "out of the case," and Jensen agreed. 5RP 356. Golden told Richards "this case is handled without me. Handle it as every other case. I am not going to interfere. Don't let me interfere if I want to." 5RP 357. Golden claimed he gave no direction on the case, made no decisions, and had no input into plea negotiations. 5RP 357. Golden did not recall asking to be informed about the case, although over time, he learned of "the outcomes." 5RP 357.

Jensen recalled only that Golden mentioned a dating relationship that he was breaking off and seemed agitated. 3RP 164. Jensen believed he would have recalled if Golden mentioned he was dating the mother of a juvenile respondent. 3RP 164-67.

Richards recalled Golden walked into his office with an arrest report and stated he was dating Z.H.'s mother. 3RP 53. Richards's impression was that the relationship was over. 3RP 53. Golden stated he did not want to be involved or make any decisions in the case and wanted the case handled "by the numbers. " 3RP 54. Richards took that to mean they should not be lenient with Z.H.. 3RP 54-55. Richards kept Golden informed about the case. 3RP 55. He was unaware Golden participated otherwise. 3RP 55.

Golden testified he was present when Richards and Chris Baum,⁶ the deputy prosecutor assigned to Zylstra's case, discussed whether to charge Zylstra -- and by extension Z.H.⁷ -- with first degree arson because one of the damaged structures was an abandoned cabin. 5RP 361-62. The circumstances presented an interesting legal issue. 5RP 361-62.

⁶ Baum testified Richards wanted to meet with Golden about charging Zylstra and Z.H. 5RP 405-06. In the meeting, Richards and Baum offered their opinions. 5RP 408-09. Baum recalled Golden uncharacteristically said very little. 5RP 408-09. Golden directed Baum to follow Richards's instructions. 5RP 411. Baum first learned of Golden's relationship with K.W. in July 2007. 5RP 412.

⁷ Baum and Smith, the juvenile prosecutor, agreed Z.H. and Zylstra should be identically charged. 3RP 16. A first degree arson charge would have resulted in adult prosecution against 17-year-old Z.H. 3RP 20; 5RP 321.

When Golden learned of charges against Z.H., he decided to end the relationship with K.W. for good. 5RP 365-66. He informed K.W. by telephone. He disavowed specific memory of any call but agreed it might have occurred during the approximately 80-minute call occurring January 14. 5RP 366-67, 383.

Between Z.H.'s arrest and plea, Golden saw K.W. only in the community. 5RP 367. Although telephone records showed he called K.W. twice on February 20, he did not specifically recall any phone conversations with K.W. except the one ending the relationship. 5RP 370.

Golden acknowledged receiving text messages from K.W. but said he "rarely" responded. 5RP 371-73. Golden stated, "I typically do not respond to messages from former girlfriends, especially when I am seeing somebody else[.]" 5RP 373. He resumed a relationship with his ex-wife on February 27, 2007. 5RP 374.

Golden denied receiving messages or talking to K.W. about Z.H.'s case until the summer of 2007.⁸ 5RP 374-76, 398-99. He denied asking K.W. to persuade Z.H. to plead guilty or doing anything to encourage that

⁸ At that time, Golden sent K.W. a series of messages including one stating: "My ex and I have reconciled. Do not dial my digits anymore when you are drinking. Be lucky I didn't charge your son with arson one. If you want to talk make an appointment." 3RP 151-54. Golden testified he sent such messages in response to messages from K.W. he considered indecipherable or "borderline threatening." 5RP 381-82.

result. 5RP 377. Golden denied telling K.W. the case against her son would be "their test" or that he would explain it all when it was over and they go away together. 5RP 402. Golden denied K.W. communicated her dilemma whether to trust him or Meyer. 5RP 401. Golden denied telling K.W. to trust him. 5RP 401. Golden denied stating, "Look at the pieces of shit Meyer represents." 5RP 401. Golden believed K.W. was angry because she saw him with his ex-wife. 5RP 380-81.

Smith, the juvenile prosecutor, became seriously ill in mid-to-late January. 5RP 322. When she returned to work, it appeared a plea agreement with Z.H. had been reached. 5RP 322. But she later learned the parties never agreed on the disposition recommendation. 5RP 323-27, 338. Based on the disagreement, Richards instructed Smith to withdraw the plea offer. 5RP 338-39. The parties "were going back and forth" up to the March 2 plea. 5RP 323. Smith did not become aware of Golden's relationship with K.W. until after Z.H. moved to dismiss the charges in August 2007. 5RP 331.

3. Summary of Court's Written Findings and Conclusions

The court denied Z.H.'s motion to dismiss the charges. CP 25-32. The court found a relationship between Golden and K.W. existed at the time of Z.H.'s arrest. CP 26 (finding 5). Shortly after the arrest, Golden

informed Richards and Jenson about the relationship and that he would not participate in the prosecution. CP 26 (finding 8). Richards and Baum talked about how to charge Zylstra in Golden's presence. CP 27 (finding 10). But Golden was not involved in plea negotiations. CP 27 (finding 13). A tentative plea agreement was reached on January 26, although a dispute later arose about the sentencing recommendation. CP 28 (finding 14). Z.H. eventually pleaded guilty, still unaware of K.W.'s relationship with Golden. CP 28 (finding 15).

During the time between Z.H.'s arrest and plea, K.W. and Golden spoke on the phone and exchanged text messages. CP 28 (finding 18). Although K.W. communicated Meyer's evaluation of Golden "as an attorney or as a prosecutor," K.W. did not share confidential communications with Meyer and the only defense tactic she shared with Golden was that Meyer planned to surprise the prosecution by taking the case to trial. CP 28-29 (findings 19, 20, 21, 22). Golden did not share that or other information learned from K.W. with his deputy prosecutors. CP 29 (findings 23-24).

The court also found the following:

25. During the period from January 4th to March 2, 2007, the only advice that . . . Golden communicated to [K.W.] regarding her son's case was that she should follow . . . Meyer's instructions and not talk to her son about the case

because that could make her a witness. When [K.W.] attempted to speak with Golden about what was occurring in [Z.H.'s] case, Golden would simply acknowledge that he had heard what she said and would encourage her to have faith or to have faith in him. At one point Golden told [K.W.] that when the case was over, he would explain matters to her.

26. In advising her son on whether to accept the State's plea offer, [K.W.] struggled between wanting her son to be held accountable for his actions and at the same time wanting him to be treated fairly. In conversations with [K.W.] during this time, . . . Golden did no more than express comfort to her in having to face that dilemma.

27. Through the plea negotiations, [Meyer] was able to prevent the prosecution from seeing to decline [Z.H.] to adult court, and moved the prosecution from a position of seeking to incarcerate [Z.H.] until he was 21 . . . to a manifest injustice recommendation of 65 to 68 weeks As a result, . . . Probation was also persuaded to reduce its sentence recommendation [Meyer] also persuaded the prosecution to leave the defense free at sentencing to recommend a different sentence. . . . Finally, [Meyer] obtained agreement by the prosecutor to recommend credit for time served on [electronic home monitoring.] All of this was accomplished by [Meyer] despite [Z.H.'s] taped confession.]

CP 29-30.

From this, the court concluded:

1. [Z.H.] brought this motion . . . pursuant to [CrR] 8.3(b)⁹ . . . [Z.H.] has the burden to prove [governmental] mismanagement or misconduct and resulting prejudice.
2. While the State has argued that a dismissal under CrR 8.3(b) should not even be considered by this court because guilty pleas have been entered and so a criminal prosecution is not now ongoing, there could be shown a violation of constitutional due process if [Z.H.] could prove the allegations made in this case, and therefore the court chooses to consider [Z.H.'s] allegations and the evidence presented.

. . .

CP 31.

The court concluded there was no "inappropriate" involvement by Golden in prosecution of the case. CP 31 (conclusion 3). Golden did not "influence, nor attempt to influence, [K.W.] in the advice she gave her son" about whether to accept the state's plea offer and therefore did not violate Z.H.'s attorney-client privilege. CP 31 (conclusion 4). Moreover, Golden

⁹ CrR 8.3(b) states:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

An accused also may move for dismissal under the rule. State v. Sonneland, 80 Wn.2d 343, 346, 494 P.2d 469 (1972). The State argued under State v. Pringle, 83 Wn.2d 188, 517 P.2d 192 (1973), and other cases Z.H. must move to withdraw his plea before requesting dismissal under CrR 8.3(b). 5RP 430-32.

did not violate attorney-client privilege in that no confidential communication between Meyer and Z.H. was communicated to Golden during the prosecution of this case. CP 31 (conclusion 5).

The court concluded the plea agreement was the result not of "overreaching" by the state but Meyer's effective plea negotiations and the plea process did not prejudice Z.H. CP 31-32 (conclusion 6). Finally, the court concluded Z.H. entered his plea freely and voluntarily, and the circumstances surrounding his plea did not prejudice him. CP 31-32 (conclusion 7).

C. ARGUMENT

GOLDEN'S INTRUSION INTO Z.H.'S RELATIONSHIP WITH HIS ATTORNEY VIOLATED Z.H.'S RIGHTS TO DUE PROCESS AND TO THE ASSISTANCE OF COUNSEL.

The trial court abused its discretion when it denied Z.H.'s motion to dismiss because it erred in concluding Golden did nothing inappropriate and applied an incorrect legal standard in determining whether Golden's improper acts prejudiced Z.H. The court's ruling should therefore be reversed and the charges dismissed.

1. Applicable law and State v. Cory

The Fifth and Sixth Amendments and article I, section 22 guarantee criminal defendants the right to counsel. State v. Cory, 62 Wn.2d 371,

373, 382 P.2d 1019 (1963)). Intrusion into private attorney-client communications violates the rights of the accused to effective representation and to due process. State v. Garza, 99 Wn. App. 291, 296, 994 P.2d 868 (2000) (citing Cory, 62 Wn.2d at 373-74). This rule applies with equal force to communications that lead to a guilty plea. Wilken v. Squier, 50 Wn.2d 58, 61, 309 P.2d 746 (1957).

Cory and CrR 8.3(b)¹⁰ provide different grounds for dismissal of charges based on governmental misconduct. State v. Granacki, 90 Wn. App. 598, 602, 959 P.2d 667 (1998). A trial court's decision to dismiss an action under Cory is reviewed for abuse of discretion. Granacki, 90 Wn. App. at 603. Abuse occurs when a trial court's discretion is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). "The range of discretionary choices is a question of law and the judge abuses his or her discretion if the discretionary decision is

¹⁰ Z.H. cited both authorities in his motion to dismiss. CP 45-51 (defense memorandum in support of motion to dismiss).

contrary to law." State v. Neal, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001).

In Cory, the sheriff taped conversations between Cory and his attorney while Cory was in jail. 62 Wn.2d 371. The Supreme Court held not only was reversal of Cory's conviction required, the "only adequate remedy" was dismissal of the charges because there was no way to isolate the prejudice resulting from an eavesdropping. Id. at 377. "'The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial.'" Cory, 62 Wn.2d at 376 (quoting Glasser v. United States, 315 U.S. 60, 76, 62 S. Ct. 457, 86 L. Ed. 680 (1942)). Moreover, dismissal discouraged "the odious practice of eavesdropping on privileged communication between attorney and client." Cory, 62 Wn.2d at 378 (citing Fusco v. Moses, 304 N.Y. 424, 107 N.E.2d 581 (1952)). Dismissal is the appropriate remedy for Golden's intrusion into Z.H.'s relationship with Meyer.

2. Because prejudice is presumed as a matter of law, the court erred when it found Z.H. was not prejudiced by Golden's egregious acts and denied Z.H.'s motion to dismiss.

The court correctly found Cory provided legal grounds for dismissal. CP 31 (conclusion 2). But the court misapplied the law when it determined

Z.H. was not prejudiced by Golden's improper intrusion into the plea process because, in the court's estimation, Z.H. obtained a favorable result when he pleaded guilty to eight felonies. CP 30 (finding 27); CP 31-32 (conclusions 1, 3-7). As a matter of law, unjustified governmental intrusion into the attorney-client relationship requires the court to presume prejudice to an accused. Moreover, Z.H. proved Golden's actions did prejudice him.

Garza, 99 Wn. App. 291, is instructive on the question of prejudice. There, Benton County Jail officers discovered a window bar had been partially cut with what appeared to be a hacksaw blade, as well as other damage. Id. at 293. Concluding one or more inmates attempted to escape, officers searched the pod where the damage occurred. Id. Three inmates asserted officers seized and reviewed their legal documents, which contained private communications with their attorneys. Id. at 293-94.

The trial court found the three complaining inmates' legal papers had been seized, looked through and, in one case, read by a jail officer. Id. at 294-95. But the trial court denied their motion to dismiss under Cory because they could not show they were prejudiced. Id. at 295.

The Garza court conducted an analysis of the law post-Cory and concluded prejudice is presumed in circumstances where the violation was unjustified. Id. at 298-300. The Court first noted the United States

Supreme Court rejected a per se rule that any government intrusion into private attorney-client communications violated a defendant's right to counsel. Weatherford v. Bursey, 429 U.S. 545, 97 S. Ct. 837, 51 L. Ed. 2d 30 (1977). But federal courts since Weatherford were unclear as to who bore the burden of proving prejudice, or whether prejudice may be presumed in some circumstances. Garza, 99 Wn. App. at 298. For example, in United States v. Irwin, 612 F.2d 1182 (9th Cir. 1980), the Ninth Circuit court held the burden was the defendant's, but noted that prejudice could manifest itself in several ways, including through government influence harmful to a defendant's confidence in his attorney and from other actions calculated to give the prosecution an unfair advantage at trial. Id. at 1187.

On the other hand, other federal courts concluded prejudice may be presumed in some circumstances. Garza, 99 Wn. App. at 298-99 (citing Sinclair v. Schriber, 916 F.2d 1109, 1112-13 (6th Cir. 1990); Clark v. Wood, 823 F.2d 1241, 1250 (8th Cir.), cert. denied, 484 U.S. 945 (1987); United States v. Ofshe, 817 F.2d 1508, 1515 (11th Cir.), cert. denied, 484 U.S. 963 (1987); United States v. Morales, 635 F.2d 177, 179 (2nd Cir. 1980); Mastrian v. McManus, 554 F.2d 813, 821 (8th Cir.), cert. denied, 433 U.S. 913 (1977); United States v. Noriega, 764 F. Supp. 1480, 1488-

89 (S.D. Fla. 1991); 2 WAYNE R. LaFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 11.8, at 75 (1984)).

In Shillinger v. Haworth, 70 F.3d 1132 (10th Cir. 1995), for example, a sheriff required that a deputy be present during the defendant's consultations with his attorney. Although defense counsel paid the deputy for his time and allegedly instructed him to consider himself a defense employee, the deputy conveyed the substance of the attorney-client conversations to the prosecutor. Id. at 1134. The Tenth Circuit held prejudice must be presumed when the state learns of confidential communications resulting from its purposeful and unjustifiable intrusion into the attorney-client relationship. Id. at 1142. "[N]o other standard can adequately deter this sort of misconduct. . . . '[P]rejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost.'" Id. at 1142 (quoting Strickland v. Washington, 466 U.S. 668, 692, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Moreover,

Our holding subsumes the state's argument that harmless error analysis should apply to this sort of Sixth Amendment violation because our per se rule recognizes that such intentional and groundless prosecutorial intrusions are never harmless because they "necessarily render a trial fundamentally unfair."

Shillinger, 70 F.3d at 1142 (quoting Rose v. Clark, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986)). Having presumed prejudice,

the Shillinger court found dismissal appropriate where "an intrusion . . . pervasively taint[s] the entire proceeding." 70 F.3d at 1142.

Following the logic of Shillinger and similar cases, Garza concluded that where the state's intrusion into the attorney-client relationship was unjustified, prejudice would be presumed. 99 Wn. App. at 301 (remanding for the trial court to determine whether the scope of jail guard's search was justified by the escape threat); see also Granacki, 90 Wn. App. at 602-03 (upholding dismissal under Cory where detective, who remained in the courtroom throughout trial to assist the prosecutor, was observed looking at defense counsel's notes and conversing with a juror).

Here, there was no justification for Golden's interference in Z.H.'s case. Prejudice is therefore presumed. Cory, 62 Wn.2d at 376; Garza, 99 Wn. App. at 301. Even so, Z.H. more than adequately demonstrated Golden's acts prejudiced him.

As noted in Irwin, prejudice may result from, among other things, "government influence which destroys the defendant's confidence in his attorney." 612 F.2d at 1187 (footnote omitted); see also United States v. Amlani, 111 F.3d 705, 712 (9th Cir. 1997) (disparagement of defense counsel in front of a defendant, resulting in replacement of counsel, established the requisite prejudice for court to vacate Amlani's conviction).

The court in Irwin held dismissal was inappropriate because there was no evidence the government's conduct destroyed the attorney-client relationship. Irwin, 612 F.2d at 1188 ("We find nothing . . . in the supporting affidavits submitted by Irwin and . . . counsel to suggest that Irwin lacked confidence in his counsel.").

Irwin, however, distinguished two state cases that did find dismissal appropriate based on intrusion into the attorney-client relationship via the state's disparagement of defense counsel. Id. (citing Commonwealth v. Manning, 373 Mass. 438, 367 N.E.2d 635 (1977); People v. Moore, 57 Cal.App.3d 437, 129 Cal.Rptr. 279 (1976)). Those cases illustrate the correct result here: dismissal of the charges against Z.H.

In Manning, government agents disparaged Manning's counsel and warned Manning that counsel's chosen tactics would not ensure Manning would stay out of jail. 373 Mass. at 440. The trial court found the agents' conduct warranted "strong condemnation" because it constituted unwarranted interference with the attorney-client relationship. Id. at 441. "'There is no justification for the Government to attempt to deal with the defendant behind the back of his counsel.'" Id. at 441-42. But the court denied the motion, concluding the misconduct did not seriously impair the attorney-client relationship or defense counsel's ability to mount a defense, nor did

it diminish Manning's confidence in counsel. Id. The trial court concluded the governmental misconduct was harmless with respect to the defendant's right to effective assistance of counsel and to a fair trial. Id. at 442.

The Massachusetts Supreme Court disagreed, concluding that dismissal was the only appropriate remedy based on the egregiousness of the acts of the agents, who were working closely with the prosecutor. Id. at 439. The court found that reversal without prejudice was an insufficient remedy and that "a stronger deterrent" against the government's misconduct was required. Id. at 444.

In Moore, two state investigators visited Moore in jail after his arrest. With the prosecutor's approval and absent appointed counsel, Moore and the investigators agreed Moore would work undercover. The investigators told Moore not to inform his attorney, disparaged the competence of Moore's attorney, and falsely claimed he was disbarred. 57 Cal.App.3d at 439-41.

The appellate court held the state's acts denied Moore the assistance of counsel during "crucial pretrial negotiations," a critical stage of proceedings. Id. at 442. Pointing out that plea bargaining was "indispensable" to the efficient administration of criminal justice, the court refused to speculate whether Moore's counsel could have gained him a more

favorable deal: "The point is, Moore was entitled to have him try." Id.
The court rejected the state's argument Moore's only remedy was the
exclusion of evidence: "It is not evidence which has been tainted, rather,
it is Moore's right to due process." Id.

The reasoning employed by the Manning and Moore courts applies
in Z.H.'s case and renders dismissal the only appropriate remedy.

During plea negotiations, K.W. expressed her distrust of Meyer to
Golden. Despite Golden's sworn testimony to the contrary, the trial court
found Golden (1) encouraged K.W. have faith in him and (2) told K.W.
he would explain matters to her when the case ended. 3RP 133-34; 4RP
222, 236; 5RP 401-02; CP 29-30 (finding 25); cf. CP 32 (conclusion 3,
4).¹¹

¹¹ The court made no written finding Golden told K.W. to "look at
the pieces of shit [Meyer] represents." 3RP 131; 5RP 402; cf. CP 29
(finding 22, finding K.W. shared with Golden Meyer's personal opinion
of him). But in its oral ruling the court did not dispute Golden made the
comment, stating:

I find it interesting, if indeed that was said, that [Z.H.] is
one of Mr. Meyer's clients too, and so I cannot see how that
would be a positive comment to [K.W.], that her son would
fit within that category. In any event, I do not find any of
those situations sufficient to indicate to me that there was
somehow an overreaching.

5RP 481.

At best, Golden sat by silently while K.W. communicated her concerns about the ongoing proceedings and her doubts about trial counsel and his strategy. 3RP 138-40; 4RP 224-27, 254; cf. CP 29 (finding 25, 26); CP 32 (conclusion 3, 4); but see note 11, supra. Under the circumstances, a reasonable attorney would know silence (or platitudes) in the face of such disclosures would undermine defense counsel and the sanctity of the adversary process, which is enshrined in the state and federal constitutions Golden was sworn to uphold. See State v. Reed, 102 Wn.2d 140, 147, 684 P.2d 699 (1984) (prosecutors are "public officers whose 'devotion to duty is not measured, like the prowess of the savage, by the number of their victims'") (quoting State v. Montgomery, 56 Wash. 443, 447, 105 P. 1035 (1909); cf. CP 32 (conclusion 4).

Golden's acts and omissions in his conversations with K. W. violated the letter and spirit of RPC 4.2, which prohibits a lawyer from stating or implying to an unrepresented individual the lawyer is disinterested. The rule requires lawyers who know or reasonably should know the unrepresented person misunderstands the lawyer's role to "make reasonable efforts to correct this understanding."

Golden's client was, of course, the state. Even if Golden never gained access to privileged communications between Meyer and Z.H.,¹² it appears Golden used his relationship with the unrepresented K.W. to the state's benefit. See State v. Ladenburg, 67 Wn. App. 749, 840 P.2d 228 (1992) (appearance of fairness doctrine, under which "a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing" may apply to prosecutor's quasi-judicial determination of what charges to file against defendant and whether to plea bargain).

Likewise, Golden's comments that K.W. should trust or have faith in him, as well as his selective silences in the face of K.W.'s expressed doubts about Meyer, violated Z.H.'s right to counsel. They reached Z.H.'s ears -- any reasonable person would know they would -- in the form of K.W.'s disparagement of counsel and her recommendation that Z.H. accept the state's plea offer contrary to Meyer's advice. 3RP 133-37; 4RP 285; cf. CP 32-33 (conclusions 3, 4, 6, 7). Z.H. testified he relied primarily on his mother's recommendation in agreeing to plead guilty and rejected his attorney's advice. 4RP 285, 289-90, 300.

¹² CP 31 (conclusion 5).

Because Golden's interference undermined the attorney-client relationship during a critical stage of the proceedings, and because the state can offer no justification for such interference, the trial court erred when it found Z.H. was not prejudiced by Golden's actions. Garza, 99 Wn. App. at 301 (prejudice presumed where state's interference was unjustified); see also Moore, Cal. App. 3d at 442-43 (violation of due process may occur in circumstances which do not include an outright denial of counsel).

The court's conclusion Z.H. was not prejudiced appears to be rooted in an inappropriate post-hoc evaluation of the result of plea negotiations. CP 30 (finding 27); CP 32-33 (conclusions 6, 7). This was error. As the Cory court held, there is no place under these circumstances for "nice calculations as to the amount of prejudice[.]" 62 Wn.2d at 376. This Court should follow Cory and dismiss the charges because the state's intrusion violated Z.H.'s rights to due process and counsel.

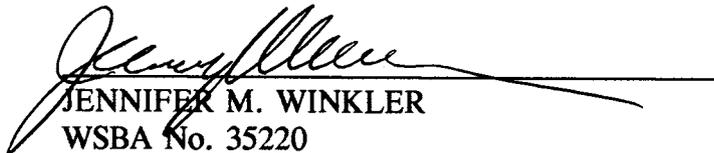
D. CONCLUSION

The trial court misapprehended controlling law. Its ruling should therefore be reversed and the charges dismissed.

DATED this 4TH day of September, 2008.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC


JENNIFER M. WINKLER
WSBA No. 35220
Office ID No. 91051

Attorneys for Appellant

APPENDIX

Received & Filed
LEWIS COUNTY, WASH
Superior Court

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By Kathy A. Brack, Clerk
Deputy

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SUPERIOR COURT
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BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY,
JUVENILE DIVISION

NO. 07-8-00003-8

STATE OF WASHINGTON,
Plaintiff,
vs.
ZACHARY R. HUGHES,
Respondent.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE DEFENSE MOTION TO
DISMISS

A HEARING WAS HELD on November 13-14, 2007 to consider the Respondent's motion to dismiss the charges in the above-entitled cause pursuant to CrR 8.3(b); the Respondent Zachary R. Hughes, appeared in person and through his attorney, Jonathan Meyer; the Plaintiff, State of Washington, appeared by its counsel, James C. Powers, Deputy Prosecuting Attorney for Thurston County. The Court considered the testimony of the witnesses at the hearing, the exhibits admitted into evidence, and the arguments of the parties. The Court also took judicial notice of the files and records in this cause. Based on the above, the Court now enters the following:

I. FINDINGS OF FACT

1. During November and December, 2006, a series of arsons occurred in Lewis County, resulting in an investigation by the Lewis County Sheriff's Office.

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1 2. Pursuant to that investigation, on January 4, 2007, Lewis County Sheriff's Sergeant Alan Stull
2 interviewed the Respondent, Zachary R. Hughes, at which time Mr. Hughes admitted his involvement in
3 the arsons. The date of birth of the Respondent is August 17, 1989, and so he was 17 years old at that time.

4
5 3. In the presence of the Respondent's stepfather, Sergeant Stull obtained a taped statement from the
6 Respondent detailing the Respondent's involvement in these crimes.

7 4. The Respondent was arrested and transported to Lewis County Juvenile Detention. On the way, the
8 Respondent pointed out specific locations where he had committed some of these crimes with other persons
9 he claimed were involved, including an adult named John Zylstra.

10 5. Beginning in November or December, 2006, a romantic relationship had developed between Lewis
11 County Prosecuting Attorney Michael Golden and the mother of Zachary Hughes, Kristine Wallace. That
12 relationship was ongoing at the time of Zachary Hughes' arrest. However, Zachary had no knowledge of
13 this relationship at that time.

14 6. The first appearance of the Respondent in Juvenile Court pursuant to this arrest occurred on January
15 5, 2007. He was held without conditions of release at that point.

16 7. An Information was filed in Lewis County Juvenile Court on January 8, 2007, charging the
17 Respondent with multiple counts of arson in the second degree. Deputy Prosecuting Attorney Lori Smith
18 was assigned to the prosecution of this case.

19 8. Shortly after the arrest of Zachary Hughes, Prosecuting Attorney Golden informed his Chief Criminal
20 Deputy, Jason Richards, and his Chief Civil Deputy, Douglas Jensen, concerning his relationship with the
21 mother of Zachary Hughes, and that he would not have any participation in the prosecution of the case
22 against Zachary Hughes.
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1 9. In the meantime, the adult alleged to have been involved in these same crimes, John Zylstra, had
2 been arrested. Deputy Prosecuting Attorney Christopher Baum was assigned to prosecute Zylstra's case.

3
4 10. In the context of deciding how to charge John Zylstra, there was discussion by Deputy Prosecutor
5 Baum and Chief Criminal Deputy Richards, in the presence of Prosecutor Michael Golden, concerning
6 whether or not to charge arson in the first degree for a cabin that was burned down. Zylstra was only
7 charged with second-degree arson.

8 11. The arraignment of Zachary Hughes in Lewis County Juvenile Court took place on January 9, 2007.
9 At that time, the Respondent was released to house arrest at his residence under electronic home monitoring
10 (EHM).
11

12 12. On January 10, 2007, an amended Information was filed in Lewis County Juvenile Court in the
13 case of Zachary Hughes, which caused the charges against Hughes to mirror those filed against the adult,
14 John Zylstra, including six counts of arson in the second degree, with an alternative charge of first-degree
15 reckless burning in some of those counts, and two counts of burglary in the second degree.
16

17 13. Thereafter, plea negotiations took place between the Lewis County Prosecuting Attorney's Office
18 and Zachary Hughes' attorney, Jonathan Meyer. At various points in time, Deputy Prosecutors Chris Baum
19 and Lori Smith, and Chief Criminal Deputy Jason Richards, took part in those negotiations. Prosecuting
20 Attorney Golden was not involved in those negotiations. A tentative plea agreement was reached between
21 the parties by January 26, 2007.
22

23 14. Subsequently, a dispute arose between the parties concerning the terms of that plea agreement. It
24 was the position of Jonathan Meyer that the defense was free to argue for a different disposition than that
25 recommended by the State at time of sentencing, while the prosecution was anticipating that the defense
26

1 would be bound to the State's sentence recommendation. The dispute was ultimately resolved by the State
2 conceding that the defense could make its own, independent sentence recommendation.

3
4 15. Pursuant to the plea agreement between the parties, at a hearing in Lewis County Juvenile Court on
5 March 2, 2007, the Respondent changed his pleas to guilty as to the six counts of second-degree arson and
6 the two counts of second-degree burglary charged against him. At that time, the Respondent was still
7 unaware that a romantic relationship had existed between his mother, Kristine Wallace, and Prosecuting
8 Attorney Michael Golden.

9
10 16. After the arrest of Zachary Hughes on January 4, 2007, there was a substantial change in the
11 relationship of Prosecuting Attorney Golden and Kristine Wallace. Thereafter, they had only a few brief
12 personal contacts in public settings and much less contact by phone, *than prior to the*
arrest of Zachary Hughes, 901 [signature]

13 17. During the period between January 4th and March 2, 2007, Kristine Wallace spoke with Jonathan
14 Meyer approximately five times by telephone, spoke with him on several occasions when she accompanied
15 her son to Meyer's office, and spoke with him at each court hearing in her son's case.

16
17 18. During that same period between January 4th and March 2, 2007, Kristine Wallace spoke with
18 Prosecuting Attorney Michael Golden by phone on several occasions and exchanged text messages with
19 him on more numerous occasions, wherein there was some reference to the prosecution of Zachary Hughes.

20 19. On one occasion in a telephone call between Kristine Wallace and Jonathan Meyer, in which
21 Zachary Hughes did not participate, Meyer told Wallace that his tactic in her son's case would be to surprise
22 the State by going to trial. Kristine Wallace related that comment to Prosecutor Golden. However, there is
23 no evidence Golden ever communicated that comment to anyone else in the Lewis County Office of
24 Prosecuting Attorney.
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1 20. There is no evidence of any other communication of Jonathan Meyer concerning tactics in the case
2 of Zachary Hughes having been communicated by Kristine Wallace to Prosecutor Michael Golden.

3 21. There is no evidence of any confidential communication between Jonathan Meyer and Zachary
4 Hughes, heard by Kristine Wallace as a result of also being present, ever having been communicated by
5 Kristine Wallace to Prosecutor Michael Golden.
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7 22. The only other comments by Jonathan Meyer that were communicated to Prosecutor Michael
8 Golden by Kristine Wallace during the period from January 4th to March 2, 2007, concerned Meyer's
9 evaluation of Golden as an attorney or as a prosecutor, and none of those comments involved a confidential
10 communication between Jonathan Meyer and the Respondent.
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12 23. There is no evidence that Prosecuting Attorney Michael Golden ever communicated to anyone else
13 in the Lewis County Office of Prosecuting Attorney anything he learned from Kristine Wallace during the
14 period from January 4th to March 2, 2007.

15 24. There is no evidence that any communication between Kristine Wallace and Prosecuting Attorney
16 Michael Golden during the period from January 4th to March 2, 2007, ever had any effect upon the decisions
17 made by Chief Criminal Deputy Jason Richards, Deputy Prosecuting Attorney Chris Baum, or Deputy
18 Prosecuting Attorney Lori Smith in the handling of the prosecution of Zachary Hughes or in the prosecution
19 of the co-defendant, John Zylstra.
20

21 25. During the period from January 4th to March 2, 2007, the only advice that Prosecuting Attorney
22 Michael Golden communicated to Kristine Wallace concerning her son's case was that she should follow
23 Jonathan Meyer's instructions and not talk to her son about the case because that could make her a witness.
24 When Kristine Wallace attempted to speak with Golden about what was occurring in the Respondent's case,
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1 Golden would simply acknowledge that he had heard what she had said and would encourage her to have
2 faith or to have faith in him. At one point, Golden told Kristine Wallace that when the case was over, he
3 would explain matters to her.
4

5 26. In advising her son on whether to accept the State's plea offer, Kristine Wallace struggled between
6 wanting her son to be held accountable for his actions and at the same time wanting him to be treated fairly.
7 In conversations with Kristine Wallace during this time, Prosecutor Golden did no more than express
8 comfort to her in having to face that dilemma.

9 27. Through the plea negotiations in this case, Respondent's counsel was able to prevent the
10 prosecution from seeking to decline the Respondent to adult court, and moved the prosecution from a
11 position of seeking to incarcerate the Respondent until he was 21 years of age to a manifest injustice
12 recommendation of 65 to 68 weeks in custody. As a result of this negotiated agreement, Juvenile Court
13 Probation was also persuaded to reduce its sentence recommendation from 103 to 129 weeks in custody to
14 agreement with the 65 to 68 weeks recommendation. Respondent's counsel also persuaded the prosecution
15 to leave the defense free at sentencing to recommend a different sentence, including a standard range
16 sentence of no more than 30 days in detention. Finally, Respondent's counsel obtained agreement by the
17 prosecution to recommend credit for time served on EHM, including time the Respondent spent on EHM
18 awaiting his testimony in the trial of the adult accomplice, John Zylstra. All of this was accomplished by
19 Respondent's counsel despite the Respondent's taped admission to all the criminal acts charged against him.
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22 28. On March 2, 2007, the Juvenile Court accepted the Respondent's pleas of guilt and found the
23 Respondent guilty on that basis. Disposition in the case was continued to a date after the trial of John
24 Zylstra.
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1 Based upon the above Findings of Fact, and the applicable legal principles, the Court makes the
2 following:

3
4 II. CONCLUSIONS OF LAW

5 1. The Respondent has brought his motion to dismiss in this case pursuant to CrR 8.3(b). Dismissal
6 under CrR 8.3(b) is an extraordinary remedy which the court should impose only in an egregious case of
7 governmental mismanagement or misconduct, resulting in material prejudice to the rights of the accused.
8 The Respondent has the burden to prove such mismanagement or misconduct and resulting prejudice.

9 2. While the State has argued that a dismissal under CrR 8.3(b) should not even be considered by this
10 court because guilty pleas have been entered and so a criminal prosecution is not now ongoing, there could
11 still be shown a violation of constitutional due process if the Respondent could prove the allegations made
12 in this case, and therefore the court chooses to consider the defendant's allegations and the evidence
13 presented in regard to them.

14 3. This court concludes that there was ^{inappropriate} involvement by Prosecuting Attorney Michael Golden in the
15 prosecution of this case, and therefore no governmental misconduct in that regard.  

16 4. This court further concludes that Prosecuting Attorney Michael Golden did not influence, nor attempt
17 to influence, Kristine Wallace in the advice she gave her son regarding whether to accept the state's plea
18 offer in this case, and therefore did not violate the Respondent's attorney-client privilege in that regard.

19 5. This court further concludes that no confidential communication between Jonathan Meyer and the
20 Respondent was communicated to Prosecuting Attorney Michael Golden during the prosecution of this case,
21 and therefore the Respondent's attorney-client privilege was not violated in that regard.

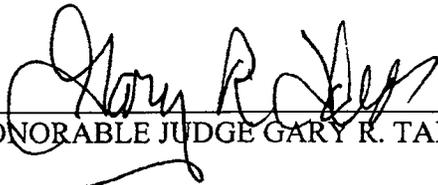
22 6. This court further concludes that the plea agreement reached by the parties in this case was not the
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1 result of overreaching by the State but rather was the result of effective plea negotiations by respondent's
2 counsel, and that the Respondent was not prejudiced by the manner in which that plea agreement was
3 reached.
4

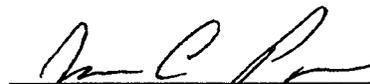
5 7. This court further concludes that the Respondent entered his pleas of guilt in this case with a full
6 understanding of his rights and did so freely and voluntarily, and that the Respondent was not prejudiced by
7 the circumstances in which he made his choice to plead guilty.

8 Based upon this court's Findings of Fact and Conclusions of Law, as set forth above, the defendant's
9 motion to dismiss is hereby denied.

10 DATED this 25th day of March, 2008.
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HONORABLE JUDGE GARY R. TABOR

PRESENTED BY:


JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTY

APPROVED AS TO FORM:


JONATHAN L. MEYER /WSBA #28238
ATTORNEY FOR DEFENDANT

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 37656-3-II
)	
Z.H.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 4TH DAY OF SEPTEMBER, 2008, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] JAMES POWERS
THURSTON COUNTY PROSECUTOR'S OFFICE
2000 LAKERIDGE DRIVE SW
OLYMPIA, WA 98502-6001

- [X] Z.H.
520 FLYNN ROAD
SILVER CREEK, WA 98585

03 SEP -- 2 AM 9:55
STATE OF WASHINGTON
BY  DEPUTY
COURT OF APPEALS
DIVISION II

SIGNED IN SEATTLE WASHINGTON, THIS 4TH DAY OF SEPTEMBER, 2008.

x 