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A. ASSIGNMENTS OF ERROR

1. The trial court's failure to indicate which facts supported the elements of the crimes charged rendered Mr. Dryden's pleas involuntary.

2. The trial court's failure to inform Mr. Dryden of the maximum sentence range rendered Mr. Dryden's pleas involuntary.

3. The trial court's misinforming Mr. Dryden of the correct maximum punishment rendered Mr. Dryden's pleas involuntary.

Issues Presented on Appeal

1. Did the trial court's failure to indicate which facts supported the elements of the crimes charged, render Mr. Dryden's pleas involuntary?

2. Did the trial court's failure to inform Mr. Dryden of the maximum sentence range render Mr. Dryden's pleas involuntary?

3. Did the trial court's misinforming Mr. Dryden of the correct maximum punishment render Mr. Dryden's pleas involuntary?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Christopher Dryden pleaded guilty to two charges of possession of methamphetamines. CP 3-11 (cause # 10-1-00001-4); CP 9-17 (cause # 10-1-00207-6); and one charge of trafficking in stolen property. CP 13-17 (cause # 10-1-00318-8). The trial court imposed standard range consecutive sentences on the same date. CP 12-18 (cause # 10-1-00001-4); CP 18-26 (cause # 10-1-00207-6); CP 18-26 (cause # 10-1-00318-8). The trial court imposed 12 months in cause number 10-1-00318-8, six months in 10-1-00001-4, and six months in 10-1-00207-6. Id.

This timely appeal follows. CP 19 (cause # 10-1-00001-4); CP 27 (cause # 10-1-00207-6); CP 27 (cause # 10-1-00318-8).

2. SUBSTANTIVE FACTS

During the plea hearing presumably¹ under cause

1 The report of proceedings lists three cause numbers on the cover page but the substance of the proceedings do not indicate the cause number for this plea hearing. However, the two other plea hearings held on different dates indicate the cause numbers, leaving cause number 10-1-00001-4 the

number 10-1-00001-4, the trial court simply asked Mr. Dryden if he read and understood the plea agreement, to which he answered in the affirmative. RP 2-3 (May 3, 2011). The trial court accepted the plea. Id. Mr. Dryden indicated that he read the May 3, 2010 plea statement and knew he was being charged with possession of methamphetamine and stated "On January 2nd, I had methamphetamine in my possession." RP 3 (May 3, 2010).

There was no discussion of the maximum or minimum sentence. Id. The plea statement contained the standard range sentence and Mr. Dryden indicated he understood the document. RP 2-3 (May 3, 2010). The plea agreement recommended 30 days and listed the standard range as 0-6 months with a five year maximum. Supp. CP (Plea Agreement May 3, 2011). The plea agreement did not consider consecutive sentences. Id. The statement of defendant on plea of guilty indicated a maximum sentence of either 5years in custody "or" a 10,000 fine. CP 3-11.

During the June 28, 2011 for cause # 10-1-00207-6, Mr.

remaining cause number on appeal.

Dryden indicated that he knew his plea was to possession of methamphetamine. RP 3 (June 28, 2011). Mr. Dryden was asked to describe what he did. Mr. Dryden responded, "When I was confronted by the police and they searched me I had methamphetamine on me." RP 4 (June 28, 2011). There was no discussion the sentence range. Mr. Dryden indicated he read and understood the plea agreement which contained the standard range sentence of 0-6 months, for count one and 0-90 days for count two. CP 4-8. The statement of defendant on plea of guilty indicated a maximum of 5years in custody "or" a \$10,000 fine. CP 9-17

During the September 13, 2010 plea hearing under cause number 10-1-00318-8, the trial court asked Mr. Dryden's attorney if she "had sufficient time to go forward with the plea today?". RP 7 (September 13, 2011). The court asked Mr. Dryden, "you understand the situation.[sic]". Mr. Dryden indicated "I do". RP 8 (September 13, 2011). Mr. Dryden further indicated that he had not been threatened or made or made promises as an inducement to plead guilty and that he knew the state was recommending eight months in jail. RP 8,

10 (September 13, 2010); CP 13-17. There was no discussion of consecutive sentences. The court accepted the plea as knowing, voluntary and intelligent. CP 10 (September 13, 2010).

C. ARGUMENT

MR. DRYDEN'S PLEA WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT IN VIOLATION OF THE DUE PROCESS CLAUSE WHERE HE WAS NOT INFORMED OF THE CORRECT MAXIMUM SENTENCE FOR HIS CRIMES AND HE WAS NOT MADE AWARE OF THE FACTS IN SUPPORT OF THE ELEMENTS OF THE CRIMES CHARGED.

Due process requires that a defendant's guilty plea must be knowing, voluntary and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Weyrich*, 163 Wn.2d 554, 556, 182 P.3d 965 (2008); *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A defendant may challenge the voluntariness of his plea where he is misinformed of the sentencing consequences. *Mendoza*, 157 Wn.2d at 587–91. The defendant need not establish a causal link between the misinformation and his decision to plead guilty. *Weyrich*, 163 Wn.2d at 557; *Mendoza*, 157 Wn.2d at 590; *In re Pers. Restraint of Isadore*, 151 Wash.2d 294, 302,

88 P.3d 390 (2004).

a. Facts in Support of Elements of Crimes.

Recently the State Supreme Court in *State v. Codiga*, 162 Wn.2d 912, 175 P.3d 1082 (2008) explained that a trial court must assure that a defendant understands the elements of the crimes charged and “the facts of his or her case in relation to the elements of the crime charged, protecting the defendant from pleading guilty without understanding that his or her conduct falls within the charged crime.” *Codiga*, 162 Wn. App. 923-924 (citations omitted).

In *Codiga*, the plea agreement listed the elements of the crimes charged and the defendant specifically stipulated that there were facts sufficient to support the plea and approved the trial court’s reading of the statement of probable cause to find the facts necessary to support the plea. *Codiga*, 162 Wn. 2d at 924.

Codiga is factually distinguishable and legally on point to Mr. Dryden’s cases. In Mr. Dryden’s case, Mr. Dryden did not stipulate that there were facts sufficient to support a factual basis for the plea, and the trial court did not rely on a reading

of the statement of probable cause to find a factual basis for the pleas.

In Mr. Dryden's cases, the trial court never discussed which facts were sufficient to support the essential elements of the crimes charged. There is nothing in the record to indicate that Mr. Dryden understood which facts supported the elements of the crimes charged.

In Mr. Dryden's case, the facts were not discussed, during the plea hearing. Rather Mr. Dryden was asked what he did in the possession cases and he stated that he possessed methamphetamine. RP 2-3 (May 3, 2010); RP 4 (June 28, 2010). And during the plea on the trafficking case, the court asked Mr. Dryden, "Did yourecklessly traffic in stolen property belonging to U.S. Cellular." RP 10 (September 13, 2010).

Following *Codiga* Mr. Dryden's pleas were involuntary because he was not informed of the acts needed to support his pleas.

- b. Failure To Accurately Inform Defendant of Maximum Term of Punishment.

Similarly, the failure to inform the defendant of all of the direct consequences of the plea including the maximum and minimum sentences renders a plea involuntary. *Weyrich*, 163 Wn.2d at 557.

All class C felonies are punishable as follows under RCW 9A.20.020:

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, **or by both such imprisonment and fine.**

(emphasis added). Possession of methamphetamine is a class C felony. *RCW 69.50.4013*.

In *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), the Supreme Court held that a plea is involuntary when the defendant is misinformed as to the correct maximum or minimum sentence range. *Walsh*, 143 Wn.2d at 7–8. In *Walsh*, the prosecutor and defense counsel miscalculated Walsh's offender score and set forth that miscalculation in the plea agreement. DOC later corrected the error increasing the standard range. *Id.*

Prior to sentencing, Mr. Walsh was not advised of the error. *Walsh*, 143 Wn.2d at 5. The Court invalidated the plea due to the mutual mistake in misstating the maximum standard range and determined that the plea was involuntary. *Walsh*, 143 Wn.2d at at 8.

Similarly in *Weyrich*, the Court invalidated a plea where the defendant was informed that his maximum term was five years rather than the correct ten years. *Weyrich*, 163 Wn.2d at 557.

Walsh and *Weyrich* provide controlling authority for all of Mr. Dryden's pleas, but for different reasons. For # 10-1-00001-4 and 10-1-00207-6, the plea statements incorrectly informed Mr. Dryden that the maximum terms were either five years incarceration **or** a \$10,000 fine rather than the correct five years incarceration **and** a 10,000 fine. RCW 9A.20.020. CP 3-11; 9-17.

Walsh and *Weyrich* are indistinguishable from Mr. Dryden's case. In both cases, the defense and prosecution were mutually mistaken as to the maximum penalty of the

crimes charged which resulted in voiding the guilty pleas. *Weyrich*, 163 Wn.2d at 557; *Walsh*, 143 Wn.2d at 8. 28.

In *Codiga*, citing, to *State v. Miller*, 110 Wn.2d 528, 529, 756 P.2d 122 (1988), overruled on other grounds in *State v. Barber*, 170 Wn.2d 854, 858, 248 P.3d 494 (2010), the State Supreme Court held that “[w]here a criminal history is correct and complete, but the attorneys miscalculate the resulting offender score, then the defendant should not be burdened with assuming the risk of legal mistake.” *Codiga*, 162 Wn.2d at 929, citing, *State v. Miller*, 110 Wn.2d at 529.

In *Barber*, the Court held that where the defendant was misinformed of the community placement, a direct consequence of his plea, his plea was involuntary, *Id.* The issue in *Barber*, not relevant in Mr. Dryden's case, was whether the trial court could permit specific performance of an illegal sentence. The Supreme Court held that it could not. *Barber*, 170 Wn.2d at 872-873.

In Mr. Dryden's case, his offender score was correctly calculated; the prosecutor and defense misstated the maximum term and Mr. Dryden did not assume the risk of the

error. Under these facts, as in *Wyrich*, *Walsh* and *Barber*, Mr. Dryden's plea was involuntary. Withdrawal is the remedy. *Id.*

c. Failure to Advise of Consecutive Sentences

For all of the pleas, Mr. Dryden was not advised that the court was required to impose consecutive sentences. RCW 13.40.180. RCW 13.40.180 provides, "[w]here a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively". *Id.*

RCW 13.34.180 requires that any crimes for which a juvenile was arrested and charged before committing offenses under consideration are to be considered prior criminal history, as long as the juvenile was also convicted of these crimes before sentencing for subsequent crimes; however, crimes that must be grouped together for sentencing are those that were committed before arresting and charging for crimes under consideration but after previous arresting and charging, if any. *Matter of Schellong*, 94 Wn.2d 314, 616 P.2d 1233 (1980).

Mr. Dryden was arrested, charged and convicted with one count possession of methamphetamine by May 3, 2001. CP 3-11. Mr. Dryden was arrested, charged and convicted with

one count possession of methamphetamine by June 28, 2010. And on September 13, 2010, Mr. Dryden was convicted of trafficking in stolen property. CP 4-12. Mr. Dryden's first plea to possession was prior criminal history when Mr. Dryden pleaded to the second count of possession, and both of these counts had to be considered prior criminal history to the trafficking conviction. All of the crimes committed were prior criminal history.

Because MR. Dryden's offenses were prior criminal history and RCW 13.40.180 is mandatory (a direct and immediate consequence of a plea), the trial court was required to provide Mr. Dryden notice of this sentencing consequence. *Weyrich*, 163 Wn.2d at 557; *Mendoza*, 157 Wn.2d at 590. The trial court's failure to provide Mr. Dryden with an accurate understanding of the maximum punishment renders the pleas involuntary.

D. CONCLUSION

Mr. Dryden respectfully requests this Court remand for withdrawal of his pleas due to violation of his due process rights to be adequately informed of the direct and immediate

