

NO. 46967-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

BRIAN BUCKMAN,

Appellant.

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

The Honorable Nelson Hunt, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court exceeded its sentencing authority by imposing an indeterminate sentence under RCW 9.94A.507(2) of a minimum of 114 months and a maximum of life for second degree rape of a child.

2. The court erred in accepting appellant Brian Buckmans's guilty plea when the plea was not knowing, voluntary, and intelligent because it misadvised the appellant regarding the statutory maximum sentence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A guilty plea is only knowing, voluntary, and intelligent if the defendant is properly informed of all the direct consequences of his plea including the statutory maximum penalties. In pleading guilty, appellant Brian Buckman was misinformed about the statutory maximum. Was his guilty plea knowing, voluntary, and intelligent?

Assignment of Error 1.

2. The appellant was seventeen years old at the time of the alleged offense. RCW 9.94A.507 requires a trial court to impose an indeterminate sentence with a maximum of life imprisonment for non-persistent offenders who have committed, among other offenses, second degree child rape, when they

were at least 18 years old. Here, the appellant was 17 years old during the charging period of his offense. Did the trial court exceed its statutory sentencing authority by imposing an indeterminate term for the offense? Assignment of Error 2.

C. STATEMENT OF THE CASE

The State charged the appellant, Brian Buckman with second degree rape of a child, which was alleged to have occurred between May 1, 2010 and September 30, 2010. Clerk's Papers (CP) 1-3. Mr. Buckman, who was incorrectly informed that he would be sentenced to an indeterminate sentence and that he faced the maximum penalty of life in prison if convicted, entered a guilty plea to the charge on January 26, 2012, with the expectation of receiving a sentence under the Special Sex Offender Sentencing Act (SSOSA).¹ Report of Proceedings (RP) (11/18/14) at 16. Section 6(a) of the guilty plea form listed the standard range as 86 to 114 months and lists the statutory maximum prison term as "life." CP 5. In taking the plea, the court reiterated this misinformation. RP (1/26/12) at 3.

The matter came on for sentencing on March 7, 2012. The trial court

¹ The record of proceedings consists of seven volumes: RP (1/26/12), RP (6/17/14), RP (6/19/14), RP (9/18/14), RP (10/30/14), RP (10/31/14), and RP (11/18/14).

imposed standard range minimum sentence of 114 months and a maximum sentence of life. The court then suspended the terms and imposed a sentence pursuant to SSOSA. CP 65-79. The court also imposed a number of community placement conditions as part of the SSOSA sentence.

On September 11, 2012, the State moved to revoke the SSOSA. At a revocation hearing on October 10, 2012, Mr. Buckman stipulated that he had committed each of the allegations. The trial court revoked Mr. Buckman's suspended sentence and ordered him to serve his indeterminate term. Mr. Buckman appealed the revocation of SSOSA.²

Mr. Buckman moved to withdraw his guilty plea pursuant to CrR 7.8 on September 4, 2014 and was appointed counsel. CP 85. Defense counsel argued that Mr. Buckman was entitled to withdraw his plea because he was misinformed by former counsel that he faced a maximum of life in prison in spite of the fact that he was seventeen years old at the time of offense and therefore was ineligible to be sentenced to life. RP (10/31/14) at 6-8. The lower court denied Mr. Buckman's motion to withdraw his plea and also denied his motion to impose a determinate sentence within the standard range. RP (10/31/14) at 10-12; RP (11/18/14) at 15. The court entered an Order Denying Motions on November 18, 2014. CP 127-28.

Timely notice of appeal was filed November 26, 2014. CP 135-137.

This appeal follows.

D. ARGUMENT

**BECAUSE HE WAS NOT ADVISED OF THE
STATUTORY MAXIMUM PENALTY FOR HIS
OFFENSE MR. BUCKMAN IS ENTITLED TO
WITHDRAW HIS GUILTY PLEA**

In pleading guilty, Mr. Buckman was misinformed about the statutory maximum for second degree rape of a child. Accordingly, Mr. Buckman did not make a knowing, voluntary, and intelligent guilty plea and therefore is entitled to withdraw his guilty plea.

Due process requires a defendant's guilty plea be knowing, voluntary, and intelligent. *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); *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004) (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)). In addition to this constitutional minimum, CrR 4.2 also provides safeguards to ensure the voluntariness of guilty pleas:

The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.

²Court of Appeals Cause No. 44147-1-II.

CrR 4.2 (d); *State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980).

An involuntary plea constitutes a manifest injustice, and a defendant may raise this claim of error for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 6-8, 17 P.3d 591 (2001); *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

If a defendant is misinformed of a direct consequence of his plea, the plea is involuntary. *In re Bradley*, 165 Wn.2d 934, 939, 205 P.3d 123 (2009); *Mendoza*, 157 Wn.2d at 591; *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). The statutory maximum for a charged offense is a direct consequence of a guilty plea. *Weyrich*, 163 Wn.2d at 557; *In re Stockwell*, 161 Wn. App. 329, 335, 254 P.3d 899 (2011). The defendant need not establish a causal link between the misinformation and his decision to plead guilty. *Isadore*, 151 Wn.2d at 302 (defendant misinformed community custody did not apply); *Weyrich*, 163 Wn.2d at 557 (defendant misinformed statutory maximum on plea to theft five years instead of ten years).

The burden of showing a manifest injustice sufficient to warrant withdrawal of a guilty plea rests with the defendant. *State v. Codiga*, 162 Wn.2d 912, 929, 175 P.3d 1082 (2008).

This Court reviews the circumstances of a guilty plea de novo. *Young v. Konz*, 91 Wn.2d 532, 536, 588 P.2d 1360 (1979). During the plea colloquy, the court orally misadvised Mr. Buckamn as to the statutory maximum sentence. The court stated:

THE COURT: Do you understand the elements, those are the things each of which the State is required to prove beyond a reasonable doubt in order to convict you of this charge?

MR. BUCKMAN: Yes.

THE COURT: Do you understand that the maximum penalty here is life in prison and as \$50,000 fine?

MR. BUCKMAN: Yes.

RP (1/26/12) at 2-3.

Mr. Buckman's guilty plea was involuntary because he was misinformed in the guilty plea form and during the change of plea hearing that the statutory maximum penalty for second degree rape of a child is life in prison, rather than the standard range of 86 to 114 months, due to his status as a juvenile at the time of the offense. CP 4-14. Mr. Buckman chose to enter a guilty plea to the offense and seek SSOSA as a result of the notification that he potentially faced life in prison.

Where a plea is entered into involuntarily, a defendant may choose to specifically enforce the agreement or to withdraw the plea. *State v. Miller*, 110 Wn.2d 528, 536, 756 P.2d 122 (1988). The prosecutor bears the burden of showing that the defendant's choice would result in an injustice. *Id.* Here,

the correct sentence did not act as a boon to Mr. Buckman; he relied on the incorrect information that he faced life in prison to enter his guilty plea. Because Mr. Buckman was not advised of the correct statutory maximum penalty for the offense to which he pleaded guilty, his guilty plea was not knowing, voluntary, and intelligent. Due process dictates that Mr. Buckman be allowed to withdraw his guilty plea.

2. IN THE ALTERNATIVE, THE TRIAL COURT EXCEEDED ITS SENTENCING AUTHORITY BY IMPOSING AN INDETERMINATE SENTENCES BECAUSE BUCKMAN WAS NOT YET 18 YEARS OLD DURING THE CHARGING PERIOD.

Mr. Buckman pleaded guilty under RCW 9.94A.670, which authorizes a trial court to suspend a standard range sentence for certain first-time sex offenders, including those who commit second degree child rape, and who meet other conditions. RCW 9.94A.670(2). When the trial court decides a SSOSA is appropriate, the court must impose a sentence or, according to RCW 9.94A.507, a minimum sentence term, within the standard range.

RCW 9.94A.507(2) applies to nonpersistent offenders who are convicted of second degree rape of a child and provides an exception to standard range sentences. The trial court is authorized to impose a sentence

to a maximum and a minimum term, with the maximum term being the statutory maximum sentences for the offense. Second degree child rape is a class A felonies. RCW 9A.44.076(2). The statutory maximum sentence for a class A felony is life imprisonment.

In this case, the trial court erroneously imposed the maximum term of life for Mr. Buckman. This is an error because RCW 9.94A.507 does not apply to Mr. Buckman. The statute provides:

[A]n offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

RCW 9.94A.507 (2).

When he pleaded guilty, he admitted he committed the crimes in June, 2010. CP 11. Mr. Buckman was born November 19, 1992. CP 65. Therefore, he turned 18 on November 19, 2010. This charging period comported with the amended information. Mr. Buckman was therefore 17 when he committed the offense. Contrary to the trial court's ruling, under the plain language of RCW 9.94A.507, he was not eligible for an indeterminate sentence with a maximum term of life. RP (10/31/14) at 9-12.

A trial court may impose only those sentences authorized by statute. *In re Postsentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782 (2007).

As noted by the Supreme Court in *State v. Bahl*, case law holds that illegal or erroneous sentences may be challenged for the first time on appeal. *Bahl*, 164 Wn.2d 739, 744-45, 193 P.3d 678 (2008). See also *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999).

A sentencing error can be addressed for the first time on appeal under RAP 2.5 even if the error is not jurisdictional or constitutional. *In re Personal Restraint of Fleming*, 129 Wn.2d 529, 532, 919 P.2d 66 (1996). Appellate courts have the power and duty to correct a sentencing error "upon its discovery," even where the parties not only failed to object but agreed with the sentencing judge. *State v. Loux*, 69 Wn.2d 855, 858, 420 P.2d 693 (1966).

A defendant may therefore challenge an illegal or erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). By imposing an indeterminate sentencing scheme to an ineligible offender, the trial court exceeded its sentencing authority and imposed an illegal sentence. Mr. Buckman may challenge the sentence for the first time on appeal. If this court does not determine that Mr. Buckman should be permitted to withdraw his plea, as argued in Section 1 *supra*, this Court should remand Mr. Buckman's sentence for a determinate, standard range sentence.

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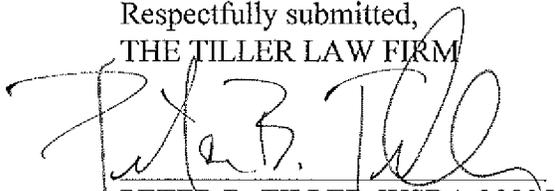
E. CONCLUSION

Mr. Buckman's case should be remanded to the trial court for withdrawal of his guilty plea. In the alternative, this Court should remand the matter to the superior court for resentencing to remove the indeterminate sentencing.

DATED: May 5, 2015.

Respectfully submitted,

THE TILLER LAW FIRM

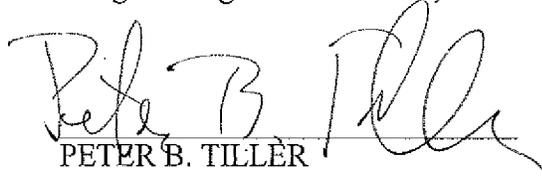


PETER B. TILLER-WSBA 20835
Of Attorneys for Brian Buckman

CERTIFICATE OF SERVICE

The undersigned certifies that on May 5, 2015, that this Appellant's Opening Brief was sent by JIS link to Mr. David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, a true and correct copy was hand delivered to Sara Beigh, Lewis County Prosecutor and a copy was mailed by U.S. mail, postage prepaid, to Brian Buckman, DOC #355481, Airway Heights Correction Center, PO Box 1899, Airway Heights, WA 99001-1899.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 5, 2015.



PETER B. TILLER

RCW 9.94A.670

Special sex offender sentencing alternative.

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the

offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court

and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate

sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

RCW 9.94B.040

Noncompliance with condition or requirement of sentence — Procedure — Penalty.

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated

agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue

the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

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May 05, 2015 - 4:56 PM

Transmittal Letter

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Court of Appeals Case Number: 46967-7

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