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Court of Appeals  
Division II  
State of Washington  
1/12/2018 1:06 PM

No. 49957-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Stacia Stroop,**

Appellant.

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Clark County Superior Court Cause No. 16-1-01477-1  
and 13-1-01928-1

The Honorable Judge Robert A. Lewis

**Appellant's Opening Brief**

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## **ISSUES AND ASSIGNMENTS OF ERROR**

1. Ms. Stroop's guilty pleas were entered in violation of her Fourteenth Amendment right to due process.
2. The record does not affirmatively establish that Ms. Stroop's guilty pleas were knowing, intelligent, and voluntary.
3. The State improperly filed Ms. Stroop's 2016 charges after expiration of the statute of limitations.
4. The trial judge erred by accepting Ms. Stroop's guilty pleas to a package deal that included a charge filed after expiration of the statute of limitations.
5. The trial judge lacked authority to sentence Ms. Stroop on her delivery conviction filed under the 2016 cause number.
6. Ms. Stroop pled guilty to reduced charges because she erroneously believed she was facing three (improperly filed) Class B felonies and associated school bus stop enhancements.
7. Ms. Stroop must be allowed to withdraw her guilty pleas to all charges, since the pleas were part of an indivisible package deal.

**ISSUE 1:** The statute of limitations bars the State from filing charges after the limitations period has elapsed. Did the trial court err by allowing the State to pursue charges filed after the statute of limitations had expired?

**ISSUE 2:** The record of a plea hearing must affirmatively establish the accused person's understanding of the law, the facts, and the relationship between the two. Did Ms. Stroop's guilty pleas violate due process because the record does not affirmatively establish that she knew she was pleading guilty to an offense filed after expiration of the statute of limitations?

**ISSUE 3:** A statute of limitations may be waived, but only if charges are properly filed before it expires. Is Ms. Stroop's guilty plea to the 2016 offense void because the State filed charges after expiration of the limitations period?

**ISSUE 4:** An indivisible plea agreement may be set aside based on the invalidity of any component guilty plea. Must Ms.

Stroop be permitted to withdraw her guilty pleas, which were part of a “package deal” to resolve multiple charges?

8. Ms. Stroop was denied her Sixth and Fourteenth Amendment right to the effective assistance of counsel.
9. Defense counsel provided ineffective assistance by failing to recognize that the three-year statute of limitations barred Ms. Stroop's 2016 charges.
10. Defense counsel provided ineffective assistance by failing to seek dismissal of charges filed after the limitations period had expired.
11. Defense counsel provided ineffective assistance by allowing Ms. Stroop to plead guilty to an invalid charge as part of a package deal involving dismissal of additional charges filed after expiration of the statute of limitations.

**ISSUE 5:** An accused person is constitutionally entitled to the effective assistance of counsel during the plea bargaining process. Was Ms. Stroop denied her right to effective assistance when her attorney (a) failed to seek dismissal of the improperly filed 2016 charges prior to plea bargaining, and (c) urged her to accept a package deal involving a guilty plea to an invalid charge and the illusory “benefit” stemming from dismissal of other invalid charges?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Stacia Stroop is a single mother who came upon difficulties in supporting her family. RP 143, 148. While not a drug user herself, she tried selling drugs to earn money. RP 34-35. In April of 2013, she got caught and admitted it. She even completed a written statement admitting her acts when arrested. RP 34-35, 121.

In October of 2013, the State charged her with possession of a controlled substance with intent to deliver with a school zone enhancement, possession of a controlled substance<sup>1</sup> and unlawful possession of a firearm in the second degree.<sup>2</sup> CP 1. In May of 2015, the State added a firearm enhancement to the possession with intent charge. CP 3.

In July of 2016, the State filed a new Information under a new cause number, alleging three acts of delivery between February 1, 2013 and April 3, 2013.<sup>3</sup> Information filed 7/13/16, Supp. CP. Each count carried a school zone enhancement. Information filed 7/13/16, Supp. CP.

The State offered a global resolution for both cases. In the case charged in 2013, Ms. Stroop would plead to unlawful possession of a

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<sup>1</sup> The State later removed the charge of simple possession. CP 105.

<sup>2</sup> This was filed under cause number 13-1-01928-1.

<sup>3</sup> This was a new cause number, 16-1-01477-1.

firearm. RP 139; CP 119. In the case charged in 2016, she would enter a guilty plea to delivery of methamphetamine. RP 139-140; Amended Information filed 10/11/16, Supp. CP. The remaining charges and enhancements would be dismissed. RP 142; CP 134-135.

The matter was addressed in court multiple times. RP 117-149. Ms. Stroop was hesitant to agree to a prison sentence, because it meant leaving her daughter in someone else's care. RP 117-137, 143. Her attorney urged her to accept the deal, noting that she would likely lose at trial given her written confession. RP 120. During the colloquy on the matter no one mentioned that the charges filed in 2016 had been filed after the statute of limitations expired. RP 117-149.

The court accepted the pleas and followed the recommendation of the State. CP 141-149; Felony Judgment and Sentence filed 11/18/16, Supp. CP. Ms. Stroop was sent to prison for 20 months, and she timely appealed.<sup>4</sup> CP 156; Felony Judgment and Sentence filed 11/18/16, Notice of Appeal filed 12/16/16, Supp. CP.

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<sup>4</sup> While her Notice of Appeal was timely, it took some time and appellate action to convince the trial court to appoint an attorney. See Rulings dated 1/20/17 and 9/25/17, Court of Appeals Cause Nos. 49997-5-II and 49957-6-II.

## ARGUMENT

**I. MS. STROOP MUST BE ALLOWED TO WITHDRAW HER GUILTY PLEAS BECAUSE THEY WERE ENTERED IN VIOLATION OF HER FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.**

- A. The State bears the burden of proving the validity of Ms. Stroop's guilty pleas.

Constitutional violations are reviewed *de novo*. *State v. E.J.J.*, 183 Wn.2d 497, 501, 354 P.3d 815 (2015). The voluntariness of a guilty plea may be raised for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001); *State v. Mendoza*, 157 Wn.2d 582, 589, 141 P.3d 49 (2006).

Due process requires an affirmative showing that an accused person's guilty plea is knowing, intelligent, and voluntary. U.S. Const. Amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969); *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). Absent an affirmative showing that a guilty plea is knowing, intelligent, and voluntary, the plea must be vacated. *State v. A.N.J.*, 168 Wn.2d 91, 119, 225 P.3d 956 (2010).

The State bears the burden of proving the validity of a guilty plea. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). To satisfy the requirements of due process, the accused person must understand the law, the facts, and the relationship between the two. *State v. R.L.D.*, 132 Wn. App. 699, 706, 133 P.3d 505 (2006). A guilty plea cannot be "truly

voluntary unless the defendant possesses an understanding of the law in relation to the facts.” *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

- B. Ms. Stroop’s guilty pleas were constitutionally invalid: the indivisible plea agreement involved charges improperly filed after expiration of the statute of limitations, Ms. Stroop was not aware that the charges were time-barred, and she did not (and could not have) expressly waive application of the statute.

The State may not file criminal charges after expiration of the applicable statute of limitations. *See, e.g., In re Stoudmire*, 141 Wn.2d 342, 5 P.3d 1240 (2000); *State v. Willingham*, 169 Wn.2d 192, 234 P.3d 211 (2010). A plea bargain cannot exceed the statutory authority given to the courts. *Stoudmire*, 141 Wn.2d at 355.

A drug offense may not be prosecuted “more than three years after its commission.” RCW 9A.04.080(1)(i). In this case, the charges filed under the 2016 cause number were invalid under RCW 9A.04.080(1)(i).

Ms. Stroop was alleged to have delivered methamphetamine on three occasions prior to April 3, 2013. Information filed 7/13/16, Motion in Support of Issuance of Summons filed 7/13/16, Supp. CP. The Information was filed on July 13, 2016, more than three years after commission of the last offense. Information filed 7/13/16, Supp. CP.

The 2016 delivery charges were therefore untimely under RCW 9A.04.080(1)(i). Although a person may waive a statute of limitations,

waiver is effective only if it is (a) explicit, and (b) entered before the statute of limitations has run, while the court still has authority to sentence the defendant. *State v. Peltier*, 181 Wn.2d 290, 297, 332 P.3d 457 (2014); *see also In re Matter of Swagerty*, 186 Wn.2d 801, 809–10, 383 P.3d 454 (2016) (“as long as the statute of limitations has not yet run at the time of charging on the original, more serious charges, the defendant may knowingly and expressly waive an expired statute of limitations on lesser charges to take advantage of a beneficial plea offer.”)

In *Swagerty*,

the statute of limitations had expired on three of the four charges that were part of [the] plea agreement before [the defendant] was charged... [He] did not expressly waive the expired statute of limitations on the lesser charges. Thus, the trial court exceeded its authority in entering judgment.

*Id.*, at 810. Similarly, in *Stoudmire*, the defendant did not (and could not) waive the statute of limitations for charges filed after its expiration.

*Stoudmire*, 141 Wn.2d at 355.<sup>5</sup>

Ms. Stroop did not expressly waive application of the statute of limitations. Furthermore, any waiver would have been ineffective, since the 2016 delivery charges weren’t filed until after expiration of the limitations period. *Id.*; *Swagerty*, 186 Wn.2d at 809–10.

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<sup>5</sup> In *Peltier*, by contrast, the defendant made an express waiver before the limitations period expired. *Peltier*, 181 Wn.2d at 298. The *Peltier* court distinguished *Stoudmire* and found the defendant’s waiver effective. *Id.*

Under these circumstances, the State cannot prove the validity of her guilty pleas. *Ross*, 129 Wn.2d at 287; *see also A.N.J.*, 168 Wn.2d at 119. The 2016 charges—including the delivery charge to which she pled guilty—were invalid from their inception.

The remedy available to Ms. Strop is the same remedy granted the petitioner in *Swagerty*: “vacation of all convictions.” *Swagerty*, 186 Wn.2d at 811. This is so because “the plea agreement was one bargain... a ‘package deal.’” *State v. Turley*, 149 Wn.2d 395, 400, 69 P.3d 338 (2003); *see also In re Bradley*, 165 Wn.2d 934, 941, 205 P.3d 123 (2009); *State v. Bisson*, 156 Wn.2d 507, 519–20, 130 P.3d 820 (2006).

Ms. Strop must be allowed to withdraw her pleas to all charges. *Swagerty*, 186 Wn.2d at 811. The case must be remanded for dismissal of the 2016 charges with prejudice. *Id.*

**II. IN THE ALTERNATIVE, MS. STROOP MUST BE ALLOWED TO WITHDRAW HER GUILTY PLEAS BECAUSE SHE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.**

The Sixth Amendment right to effective assistance of counsel encompasses the plea process. *State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). Faulty legal advice can render a guilty plea involuntary or unintelligent. *Id.* A defendant is entitled to withdraw his or her plea if counsel’s deficient performance caused prejudice. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To

show prejudice, the defendant must establish a reasonable probability that he or she would not have pled guilty but for counsel's error. *Sandoval*, 171 Wn.2d at 169.

To provide effective assistance, an attorney must "carry[ ] out the duty to research the relevant law." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). In this case, Ms. Stroop's attorney failed to research the relevant law and provided erroneous legal advice. The incorrect advice prompted Ms. Stroop to accept a package deal without an understanding of the charges she faced.

As outlined above, the 2016 charges were filed after expiration of the statute of limitations. The only valid charges were set forth in the Amended Information filed May 21, 2015 (in the 2013 cause number). CP 3. These included one count of possession with intent to deliver (with a protected zone enhancement and a firearm enhancement), one count of simple possession, and one count of UPF II. CP 3.

Ms. Stroop's attorney should have sought dismissal of the 2016 charges based on the statute of limitations. Furthermore, at the very least, counsel should have engaged in plea bargaining with a proper understanding of the jeopardy faced by Ms. Stroop. Counsel should not have pushed her to plead guilty to an improperly filed charge, in exchange (at least in part) for dismissal of two other improperly filed charges.

Counsel's errors led Ms. Stroop to believe she risked conviction for more charges and imprisonment for a longer period than she actually faced under the properly filed 2013 charges. She was induced to plead guilty under the erroneous belief that she was facing three additional class B felonies with the associated school bus stop enhancements. Information filed 7/13/16, Supp. CP.

The penalties for the 2013 charges and enhancements were substantial. However, there is a reasonable likelihood Ms. Stroop would have rejected the package plea agreement if properly informed that it involved charges filed after expiration of the statute of limitations.

Counsel's faulty legal advice rendered Ms. Stroop's guilty pleas involuntary. *Sandoval*, 171 Wn.2d at 169. But for counsel's error, there is a reasonable probability that she would not have pled guilty. *Id.* She was deprived of the effective assistance of counsel and must be allowed to withdraw her guilty pleas. *Id.* The case must be remanded with instructions to vacate her convictions and dismiss the 2016 charges with prejudice. *Id.*; *Swagerty*, 186 Wn.2d at 811.

### **CONCLUSION**

For the foregoing reasons, Ms. Stroop must be allowed to withdraw her guilty pleas. The case must be remanded with instructions to

dismiss with prejudice the untimely 2016 charges and associated sentence enhancements.

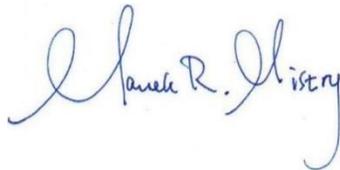
Respectfully submitted on January 12, 2018,

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## CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on January 12, 2018.



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January 12, 2018 - 1:06 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
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**Appellate Court Case Title:** State of Washington, Respondent v Stacia N. Stroop, Appellant  
**Superior Court Case Number:** 16-1-01477-1

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