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Court of Appeals
Division II
State of Washington
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No. 50769-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ELIZABETH GENE MCVEY,

Appellant.

On Appeal from the Pierce County Superior Court
Cause Nos. 15-1-00033-2, 15-1-00710-8 & 16-1-02407-8
The Honorable Gretchen Leanderson, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The State breached the plea agreement and violated Elizabeth McVey's right to due process.

II. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Did Elizabeth McVey breach the plea agreement by failing to comply with the terms of release pending sentencing, where the terms of release were not included in McVey's written plea statement as part of the agreement, where McVey's written plea statement did not include anything to indicate that her failure to comply with the terms of release would breach the agreement, and where there was no discussion at the plea hearing to indicate that McVey knew or understood that a failure to comply with the terms of release would breach the agreement?
2. Did the State breach the plea agreement and violate Elizabeth McVey's right to due process by advocating for a longer sentence than it promised to recommend?
3. Did the State breach the plea agreement and violate Elizabeth McVey's right to due process by enforcing the plea agreement and holding McVey to her guilty pleas while advocating for a longer sentence than it promised to

recommend.

III. STATEMENT OF THE CASE

The State charged Elizabeth Gene McVey with 16 crimes under three different cause numbers. Under 15-1-00033-2, the State charged four counts of identity theft, two counts of forgery, one count of unlawful possession of a controlled substance, one count of unlawful use of drug paraphernalia, two counts of possessing stolen property, and two counts of bail jumping. (CP 94-99) Under cause number 15-1-00710-8, the State charged one count of forgery, one count of attempted theft, and one count of bail jumping. (CP 7-8) And under cause number 16-1-02407-8, the State charged one count of theft of rental or leased property. (CP 185)

McVey and the State reached a global plea agreement on all three cause numbers. McVey agreed to plead guilty to four counts of second degree identity theft, one count of unlawful possession of a controlled substance, one count of forgery, and one count of theft of rental or leased property. (CP 37, 39-48, 139-41, 143-52, 185, 193-202) The State agreed to recommend a residential Drug Offender Sentencing Alternative (DOSA) sentence and to recommend concurrent sentences at the midpoint of McVey's

standard range. (CP 42, 146, 196) McVey stated that she was "entering into this plea to take advantage of the states [*sic.*] recommendation."[1] (CP 47, 151, 201)

The plea hearing occurred on October 13, 2016. McVey acknowledged that she understood the charges and the consequence of pleading guilty. (10/13/16 RP 21, 22-30, 30-37, 37-47)[2] She indicated that she understood the State would recommend a DOSA sentence in exchange for her plea. (10/13/16 RP 21-22, 25-26, 34-35, 44-45) The trial court found that McVey entered her plea knowingly, voluntarily and with an understanding of the consequences, and found a factual basis for the charges. (10/13/16 RP 29-30, 37, 47)

The trial court set the sentencing hearing for December 9, 2016, so that McVey could be screened for a DOSA sentence. (10/13/16 RP 47-48) The court released McVey pending sentencing. As a condition of release, McVey was required to either post a bond rider or report to jail within 24 hours.[3] (RP 49;

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[1] A copy of McVey's written Statement of Defendant on Plea of Guilty from 15-1-00033-2 is attached in Appendix A. Aside from the charges plead to and length of the sentence recommendation agreed to, the written Statements for the three cause numbers are identical in all relevant respects.

[2] The transcripts will be referred to by the date of the proceeding.

[3] A copy of the Order Establishing Conditions Pending Sentencing from 15-1-00033-2 is attached in Appendix B. The Orders for the three cause numbers are identical in all relevant respects.

CP 227-28, 231-32, 235-36)

McVey failed to post the rider or report to jail within 24 hours. (12/08/16 RP 53-54; CP 229, 233, 237) McVey was eventually arrested on a warrant and taken into custody. (06/23/16 RP 56-57) At the sentencing hearing held on June 23, 2017, the prosecutor asserted that because McVey did not comply with the terms of release after the plea hearing, the State was no longer obligated to make the agreed-upon sentence recommendation. (06/23/16 RP 57) Instead of recommending a mid-range sentence and residential DOSA, the prosecutor asked the court to impose the high end of the standard range for each crime. (06/23/16 RP 57-59) The trial court adopted the State's recommendation and sentenced McVey to concurrent sentences totaling 24 months of confinement, in addition to a term of community custody, fines and other conditions. (06/23/16 RP 67-69; CP 55, 58-60, 159, 162-64, 209, 212-14) McVey timely appealed. (CP 65, 172, 219)

IV. ARGUMENT & AUTHORITIES

When a defendant pleads guilty, he or she waives important constitutional rights, including the right to a jury trial, to confront one's accusers, to present witnesses, to remain silent, and to be convicted by proof beyond a reasonable doubt. State v.

Tourtellotte, 88 Wn.2d 579, 583, 564 P.2d 799 (1977) (citing Santobello v. New York, 404 U.S. 257, 260, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)).

Because plea agreements concern fundamental rights of the accused, constitutional due process considerations come into play. State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1998). For example, due process requires the prosecutor to adhere to the terms of the agreement. Sledge, 133 Wn.2d at 839 (citing Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); United States v. Harvey, 791 F.2d 294, 300 (4th Cir. 1986)). "The State is expected to keep its bargains unless the defendant has failed to keep his or hers." State v. Hall, 32 Wn. App. 108, 110, 645 P.2d 1143 (1982). This includes making the specific sentencing recommendation that the State promised the defendant it would make. Sledge, 133 Wn.2d at 840; State v. Coppin, 57 Wn. App. 866, 874, 791 P.2d 228 (1990).

"A 'plea bargain is analogous to a contract right' and its terms are read as a contract." State v. Armstrong, 109 Wn. App.

458, 461, 35 P.3d 397 (2001).[4] However, because a plea is valid only if the defendant understands its consequences at the time it is entered, the court cannot read any term in a way the defendant did not understand at the time of the entry of the plea. See State v. Thomas, 79 Wn. App. 32, 39, 899 P.2d 1312 (1995).

When one party breaches the plea agreement, the non-breaching party may either rescind the agreement or specifically enforce it. Armstrong, 109 Wn. App. at 462 (citing Black's Law Dictionary 1308 (7th ed.1999); Thomas, 79 Wn. App. at 37). When the State "opts to specifically enforce [the agreement], its subsequent rights are necessarily measured by the agreement itself." Thomas, 79 Wn. App. at 37-38.

For example, in Thomas, the defendant pleaded guilty to first degree rendering criminal assistance and agreed to testify against his co-defendant. 79 Wn. App. at 33. In exchange, the State agreed to recommend a sentence of twenty-nine months and not file an additional charge. 79 Wn. App. at 42.

The written plea agreement specifically provided: "The State

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[4] Footnotes omitted; quoting State v. James, 35 Wn. App. 351, 355, 666 P.2d 943 (1983); citing State v. Thomas, 79 Wn. App. 32, 37, 899 P.2d 1312 (1995); Sledge, 133 Wn.2d at 838 ("[i]n analyzing this plea agreement ... we resort to basic principles of contract.").

agrees to file no further charges or sentence enhancements (and: No additional charges arising from the ... robbery[.])." Thomas, 79 Wn. App. at 39-40. It also provided:

> [Thomas] agrees to fully and truthfully cooperate with law enforcement agents concerning their investigation of the ... robbery ... and any related unlawful activity. He further agrees to testify fully and truthfully at any trials or proceedings[.] [He] further understands that he remains liable and subject to prosecution for his role in the ... robbery and any related criminal activity of which he does not fully advise agents of the State.

79 Wn. App. at 40. When Thomas later refused to testify against his co-defendant, the State obtained an order declaring that he breached his plea agreement, and charged and convicted Thomas of the robbery. 79 Wn. App. at 34.

On appeal, this Court found that nothing in the language of the agreement "states or implies that if Thomas breaches his obligation to testify fully and truthfully, he will be subject to prosecution for the [robbery]." Thomas, 79 Wn. App. at 41. And nothing in the record showed that Thomas, at the time he entered his plea, was "advised of or understood the meaning that the State now ascribes" to the agreement. 79 Wn. App. at 41. Because of the plea agreement's "peculiar language," the State was not released from its obligations after Thomas refused to testify. 79

Wn. App. at 41. In light of the plea agreement's wording, the State could either rescind or enforce the agreement; it could not hold Thomas to his plea agreement *and* charge him with the robbery. 79 Wn. App. at 41. Because the State chose to enforce the agreement, it was not free to file additional charges.

More recently, in Armstrong, the defendant pleaded guilty to second degree malicious mischief. 109 Wn. App. at 460. In exchange for Armstrong's plea, the State agreed to forego sentence enhancements and additional charges, including residential burglary and harassment. Armstrong later failed to appear for sentencing. 109 Wn. App. at 460. The State then filed a notice of violation of plea agreement, seeking to enforce the agreement's penalty clause. This clause provided: "The defendant agrees that if ... [he] fails to appear for sentencing, the State is released from the obligations of this agreement, but that [he] will still be bound to the guilty plea." 109 Wn. App. at 460 fn. 1.

The trial court found that Armstrong violated the plea agreement by failing to appear for sentencing. Armstrong, 109 Wn. App. at 460. But, despite the language of the agreement, the trial court only allowed the State to choose between either (1) rescinding the agreement and filing new charges, or (2) enforcing

the agreement and making the agreed-upon recommendations. 109 Wn. App. at 461.

This Court reversed. The Armstrong Court noted that, unlike the agreement in Thomas, Armstrong's plea agreement had a clause requiring him to maintain his guilty plea *and* be punished if he breached it. 109 Wn. App. at 464. The Court found that "the plea agreement … is unambiguous. It specifically provided that should Armstrong fail to appear for sentencing, he would be bound by his guilty plea and the State would be released from its obligations—as to both additional charges and a sentencing recommendation." 109 Wn. App. at 465.

In this case, the State agreed to recommend mid-range sentences and a residential DOSA in exchange for McVey's guilty plea to seven offenses. (CP 42, 146, 196; 10/13/16 RP 21-22, 25-26, 34-35, 44-45) There was nothing in McVey's plea statement or in the colloquy with the court to indicate that McVey agreed or understood that her failure to post a bail rider or report to jail could be considered a breach of the plea agreement. The terms of release were not even discussed until after McVey's guilty pleas were proffered to and accepted by the trial court. (10/13/16 RP 47-51) There was simply nothing to indicate that the terms of release

were connected to the plea agreement in any way. While McVey was certainly subject to new charges for failing to comply, compliance with the terms of release were not part of the plea agreement.

Accordingly, McVey's failure to comply with the terms of release was not a breach of the actual agreement and did not release the State from its obligations under the agreement. Furthermore, unlike the prosecutors in Thomas and Armstrong, the State did not file a notice of violation or seek an order declaring that McVey breached the plea agreement. Instead, the prosecutor unilaterally declared that McVey had breached the agreement and proceeded to recommend a high-end non-DOSA sentence. (06/23/16 RP 57-59) The State, not McVey, breached the plea agreement.

But even if McVey did breach the agreement by failing to comply with the terms of release, the State's choice of remedy was limited. Unlike in Armstrong, there was no penalty clause in the agreement that bound McVey to her plea while releasing the State from its promised sentencing recommendation. So the State had two options: rescind the agreement or specifically enforce it. Armstrong, 109 Wn. App. at 462; Thomas, 79 Wn. App. at 37.

The State did not rescind the agreement. Instead, the State chose a one-sided enforcement of the agreement. McVey was forced to keep her promise to plead guilty, but the State released itself from its promise to recommend a mid-range DOSA sentence. This is not allowed. The State, having chosen enforcement, was required to meet its obligations under the agreement. See Thomas, 79 Wn. App. at 39 ("The State having elected to specifically enforce the plea agreement, its rights are measured by the terms thereof"). Its failure to make the agreed upon recommendation was a breach of the plea agreement.

McVey did not object below or request that she be allowed to withdraw her plea. However, a party may raise for the first time on appeal a manifest error affecting a constitutional right. *See* RAP 2.5(a). A prosecutor's failure to adhere to the terms of a plea agreement violates the due process rights of the accused. *See e.g.* Sledge, 133 Wn.2d at 839; State v. Harris, 102 Wn. App. 275, 279, 6 P.3d 1218 (2000). And a breach of a plea agreement is a violation of due process. State v. Van Buren, 101 Wn. App. 206, 211-12, 2 P.3d 991 (2000) (citing Mabry v. Johnson, 467 U.S. 504, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984)); U.S. Const. amend. XIV. Thus, whether the prosecutor breached a plea agreement is a

constitutional issue that may be raised for the first time on appeal. See State v. Williams, 103 Wn. App. 231, 235, 11 P.3d 878 (2000); Van Buren, 101 Wn. App. at 211-12; Harris, 102 Wn. App. at 279.

"[A]n error is manifest if it results in actual prejudice to the defendant." State v. WWJ Corp., 138 Wn.2d 595, 602-03, 980 P.2d (1999). The State's breach in this case was obviously prejudicial. The State urged the trial court to reject McVey's request for a DOSA sentence and instead impose sentences at the high end of McVey's standard range. (06/23/16 RP 57-59) Then, after stating that it was "going to follow the recommendation of the prosecutor in this case," the trial court did reject McVey's DOSA request and did impose the maximum possible sentence on each count. (06/23/16 RP 66-69)

When the prosecutor breaches a plea agreement, the appropriate remedy is to remand for the defendant to choose whether to withdraw the guilty plea or specifically enforce the State's agreement. State v. Miller, 110 Wn.2d 528, 535, 756 P.2d 122 (1988). Accordingly, McVey's convictions must be vacated and her pleas set aside, and this case must be remanded so that McVey can choose to withdraw or enforce the agreement.

V. CONCLUSION

McVey did not breach the plea agreement because the conditions of release were unrelated to the agreement, and there is no evidence that McVey was informed or understood that she would breach the agreement if she failed to comply. Instead, the State breached the plea agreement when it failed to make the agreed upon sentencing recommendation, or when it chose to enforce the agreement against McVey without adhering to its obligations under the agreement. McVey's convictions must be vacated.

DATED: February 28, 2018

STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Elizabeth G. McVey

CERTIFICATE OF MAILING

I certify that on 02/28/2018, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Elizabeth G. McVey DOC# 400301, Progress House, 5601 6th Ave., Tacoma, WA 98406.

STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX A

STATEMENT OF DEFENDANT ON PLEA OF GUILTY

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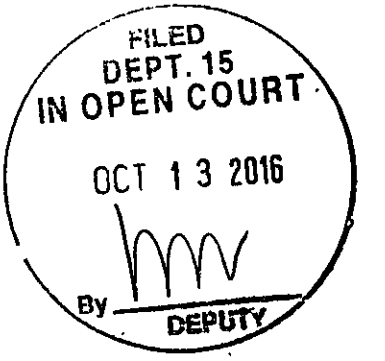
10/17/2016



Superior Court of Washington
For Pierce County

State of Washington, Plaintiff

vs.

ELIZABETH MCVEY, Defendant

No. 15-1-00033-2

Statement of Defendant on Plea of Guilty to Non-Sex Offense (STTDFG)

1. My true name is: ELIZABETH MCVEY.
2. My age is: 52.
3. The last level of education I completed was 12.
4. **I Have Been Informed and Fully Understand That:**

   (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: DANA RYAN.

   (b) I am charged with the crime(s) of: ID THEFT 2 (4 COUNTS) UPCS

   as set out in the AMENDED Information, dated, 10/12/16, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. E.B.M. (Defendant's initials)

   The elements of ☑ this crime ☐ these crimes are as set out in the AMENDED Information, dated 10/12/16 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. E.B.M. (Defendant's initials)

   _____ Additional counts are addressed in Attachment "B"

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

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(a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a ***Standard Sentence Range*** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1 -2	6	17-22 MONTHS			5 YEARS $10,000
• 5	6	12+-24 MONTHS		12 MONTHS	5 YEARS $10,000
• 7-8	6	17-22 MONTHS			5 YEARS $10,000

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Vehicular Homicide, *see* RCW 46.61.520, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

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(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay $500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months

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Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

(g) The prosecuting attorney will make the following recommendation to the judge:

17 MONTHS CTS 1-2-8-7-- RESIDENTIAL DOSA- 12 MONTHS COUNT V CONCURRENT WITH COUNT 1,2,8,7
CONCURENT WITH 16-1-02407-0 AND 15-1-00710-8
NO CONTACT WITH VICTIM
$100 DNA $200 COSTS $500 CVPA $500 DAC
RESTITUTION
12 MONTHS COMMUNITY CUSTODY
UAB

E.J.M.

AM
E.J.M

☑ The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

(*i*) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.

(*ii*) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.

(*iii*) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing

Reform Act.

(*iv*) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

(i) **If I am not a citizen of the United States,** a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) **I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition,** unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

(k) **Loss of voting rights –Acknowledgment, RCW 10.64.140:** After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520, after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by (i) a certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637; (ii) a court order issued by the sentencing court restoring the right, as provided in RCA 9.92.066; (iii) a final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or (iv) a certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Voting before the right is either provisionally or fully restored is a class C felony under RCW 29A.84.660.

(l) **Government assistance may be suspended** during any period of confinement.

(m) **I will be required to have a biological sample collected** for purposes of DNA identification analysis. I will be required to pay a $100.00 DNA collection fee.

Notification Relating to Specific Crimes: If any of the following paragraphs *DO NOT APPLY,* counsel and the defendant shall strike them out. <u>The defendant and the judge</u>

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shall initial all paragraphs that *DO APPLY.*

_____ (n) **This offense is a most serious offense or "strike"** as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

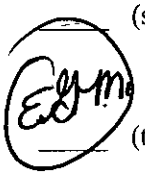
_____ (o) **The judge may sentence me as a first-time offender** instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

_____ (p) The judge may sentence me under the **Parenting Sentencing Alternative** if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.

_____ (q) **If this crime involves kidnapping involving a minor**, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.

_____ (r) **If this is a crime of domestic violence**, I may be ordered to pay a domestic violence assessment of up to $100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

_____ (s) **If this crime involves prostitution, or a drug offense associated with hypodermic needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.



_____ (t) **The judge may sentence me under the drug offender sentencing alternative (DOSA)** if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will

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also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of ***three to six months***, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay $30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

_____ (u) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

_____ (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine,** including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, $3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).

_____ (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

_____ (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds **I used a motor vehicle in the commission of this felony.**

_____ (y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).

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_____ (z) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional; fee of $20 per month.

_____ (aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

_____ (bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to $2,500 per incident.

_____ (cc) The crime of _____ has a mandatory **minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].

_____ (dd) I am being **sentenced for two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

_____ (ee) The offense(s) I am pleading guilty to include(s) a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

_____ (ff) The offense(s) I am pleading guilty to include(s) a **deadly weapon, firearm, or sexual motivation enhancement.** Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

_____ (gg) I am pleading guilty to (1) **unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm**, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to **unlawful possession of more than one firearm**, I must serve each of the sentences for unlawful possession consecutively to each other.

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_____ (hh) I may be required to register as a felony firearm offender under RCW 9.41.330 and RCW 9.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

_____ (ii) If I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

_____ (jj) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

7. I plead guilty to count(s) 1-2-8-5-7 as charged in the AMENDED Information, dated 10/12/2016. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement

I am entering into this plea to take advantage of the states recommendation, I have reviewed the evidence with my attorney and believe that there is a substantial likelihood that I would be found guilty at trial.

(X) Elizabeth G. McCoy

☐ Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" and/or "Felony Firearm Offender Registration" Attachment, if applicable. I understand and acknowledge them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

(X) Elizabeth G. McCoy
Defendant

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I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

Prosecuting Attorney	Defendant's Lawyer
Carly Roberts 40382	DANA RYAN 17418
Print Name WSBA No.	Print Name WSBA No.

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

☐ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;

☐ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter _____ Print Name _____

FILED IN OPEN COURT
SEP 1. 15
OCT 13 2016
By _____ DEPUTY

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 10-13-2016

Judge GRETCHEN LEANDERSON

APPENDIX B

ORDER ESTABLISHING CONDITIONS PENDING SENTENCING

0018
15-1-00033-2 47755981 ORECRP 10-17-16
14360
10/17/2016

FILED
DEPT. 15
IN OPEN COURT
OCT 13 2016
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. Elizabeth McNeil, Defendant.	CAUSE NO. 15-1-00033-2 ORDER ESTABLISHING CONDITIONS PENDING ~~TRIAL~~ PURSUANT TO CrR 3.2 Sentencing

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending trial in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release conditions:

[ ] Defendant is to be held in custody without bail (no bail hold). ML

[ ] Defendant is to be released on personal recognizance.

[X] Defendant is to be released upon execution of a ~~surety bond~~ RIDER in the amount of $ 15,000 or posting of cash in the amount of $ 15,000. within 24 hours or report to jail by 2:00 pm 10/14/2016

Conditions that take effect upon release from custody:

[ ] Defendant is released to the supervision of _____.

[X] Defendant is to reside/stay only at this address 9211 161st St Ct E, Puyallup, WA

[X] Travel is restricted to Pierce, King, Thurston, and Kitsap Counties.

[X] Defendant is not to drive a motor vehicle without a valid license and insurance.

[X] Defendant is to keep in contact with defense attorney.

Conditions that take effect immediately:

[X] Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.

Richard Olson
Nancy Craig
Ashley Skautvedt
Frank Ortiz

[X] Defendant is to have no contact with the victim(s) or witness(es), to wit: _____.

This includes any attempt to contact, directly or indirectly, by telephone and/or letter.
[ ] Pierce County jail shall monitor phone calls made by the defendant to insure compliance with this directive.

[ ] Defendant is to have no contact with minor children (under age 18) and is not to be on school grounds or playgrounds, except for: _____.

[ ] Defendant is to report to the Pierce County jail by _____ for administrative booking procedure.

[X] Defendant shall not possess weapons or firearms.

[X] Defendant shall not consume or possess alcohol or non-prescription drugs, or associate with any known drug users or sellers.

[ ] Additional conditions of release are included in an attachment:
[ ] BTC [ ] Protective Order [ ] Other _____

[ ] Other _____

FILED
DEPT. 15
IN OPEN COURT
OCT 13 2016
By _____ DEPUTY

[X] Defendant is hereby committed to the custody of the arresting law enforcement agency to be detained by the same until the above stated conditions of release have been met.

DATED this 13 day of October, 2016.

_____
JUDGE/~~COMMISSIONER~~
GRETCHEN LEANDERSON

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney or, if I am representing myself, the Office of the Prosecuting Attorney-informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE OR BAIL IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR $10,000, OR BOTH (RCW 10.19).

Address: _____ Phone: _____

X Elizabeth McVey
DEFENDANT

10/13/16
DATE

10/17/2016 14360 0019

February 28, 2018 - 1:31 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	50769-2
Appellate Court Case Title:	State of Washington, Respondent v. Elizabeth McVey, Appellant
Superior Court Case Number:	15-1-00710-8

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