FILED
Court of Appeals
Division II
State of Washington
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No. 50899-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

PATRICK MICHAEL BELSER,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT[1]

The trial court failed to advise Mr. Belser of the nature and classification of the offenses and the maximum sentences for each rendering his waiver of his right to counsel involuntary and unknowing.

Mr. Belser contends that, in its colloquy, the trial court failed to advise him of the nature and classification of the offenses for which he faced trial and the maximum sentences he faced. The colloquy must, at a minimum, consist of informing the defendant of the nature and classification of the charge and the maximum penalty upon conviction. *State v. Mehrabian*, 175 Wn.App. 678, 690, 308 P.3d 660 (2013). A waiver of the right to counsel is invalid if the trial court does not inform the defendant of the maximum penalty for the charged crime and the defendant is not otherwise aware of the maximum penalty. *State v. Howard*, 1 Wn.App.2d 420, 429-30, 405 P.3d 1039 (2017).

The State contends that the trial court's sole statement that Mr. Belser faced "[p]otentially up to life" was sufficient to comply with this requirement. Brief of Respondent at 10, quoting RP 3-34. Conspicuously absent from the State's response is any citation or

[1] The State concedes several of the conditions of community custody were are improper and asks this Court to remand to the trial court. Brief of Respondent at 11-13. Mr. Belser asks this Court to accept the State's concession and order the matter remanded.

discussion of the decision in *State v. Silva*, 108 Wn.App. 536, 31 P.3d 729 (2001). The decision in *Silva* puts to rest the State's argument, thus requiring reversal of Mr. Belser's convictions.

This Court's decision in *Howard*, *supra*, distilled the facts in *Silva*:

> In *Silva*, the record showed that the defendant understood the nature and gravity of the charges against him, was aware of the risks attendant with self-representation, twice had represented himself in other trials, and had demonstrated exceptional skill in presenting pretrial motions. 108 Wn.App. at 540-41, 31 P.3d 729. However, the trial court's colloquy failed to inform the defendant of, among other things, the maximum possible penalties he faced. *Id.* at 540, 31 P.3d 729.

Howard, 1 Wn.App.2d at 427, *quoting Silva*, 108 Wn.App. at 540-41. The Court of Appeals in *Silva* found the failure to inform Mr. Silva of the maximum sentence rendered his waiver of counsel invalid and required reversal. 108 Wn.App. at 541.

Following *Silva*, this Court in *Howard* found the trial court's statement in the colloquy that the defendant faced a "substantial" period of imprisonment" was insufficient as well. 1 Wn.App.2d at 430-31. This Court rejected an argument similar to that put forward by the State here:

> Finally, no court has held or even suggested that a defendant can knowingly or intelligently waive the right

> to counsel without being informed or otherwise being aware of the maximum penalty for the charged crime. And no court has held that a "totality of the circumstances" can overcome the defendant's lack of knowledge regarding the maximum penalty.

Id, at 429.

In light of this Court's decision in *Howard*, the State's argument that Mr. Belser was advised of the charges when he was arraigned, as well as being advised by his attorney must fail. Mr. Belser's waiver of his right to counsel was not a knowing, voluntary, intelligent waiver and his convictions must be reversed.

B. CONCLUSION

For the reasons stated, Mr. Belser asks this Court to reverse his convictions.

DATED this 24th day of September 2018.

Respectfully submitted,

s/Thomas M. Kummerow

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	)	
Appellant.	)	

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