

FILED
Court of Appeals
Division II
State of Washington
12/27/2018 4:22 PM

NO. 51845-7-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

PABLO LARA BELLON,

Appellant.

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

OPENING BRIEF OF APPELLANT

KATE R. HUBER
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
katehuber@washapp.org
wapofficemail@washapp.org

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A. INTRODUCTION

Pablo Bellon, a 48-year-old father with no prior criminal record, agreed to a diversion contract to resolve assault of a child charges stemming from an incident involving his daughter. The contract contained an agreement to a stipulated facts bench trial and a waiver of Mr. Bellon's core constitutional rights, including the rights to the presumption of innocence, against self-incrimination, to trial by jury, and to confrontation.

This Court should reverse both counts of conviction for insufficient evidence. In the alternative, the contract failed to inform Mr. Bellon he faced mandatory terms of community custody on both charges and misinformed Mr. Bellon of his standard sentencing ranges. Because the diversion contract misinformed Mr. Bellon of the direct consequences of waiving his constitutional rights, Mr. Bellon did not knowingly, intelligently, and voluntarily waive his constitutional rights, and the contract is invalid. This Court should reverse Mr. Bellon's convictions.

At a minimum, this Court should remand for a resentencing hearing. The court misunderstood its authority and failed to consider Mr. Bellon's motion for a sentence below the standard range based on mitigating circumstances. The court abused its discretion when it declined to consider Mr. Bellon's motion based on an erroneous belief it lacked the discretion to do so.

B. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to prove beyond a reasonable doubt every element of assault of a child in the second degree.

2. The State presented insufficient evidence to prove beyond a reasonable doubt every element of assault of a child in the third degree.

3. Mr. Bellon did not knowingly, intelligently, and voluntarily waive his constitutional rights where the diversion contract misinformed Mr. Bellon of the direct consequences of the waiver, rendering the contract and his convictions invalid.

4. The court erred by failing to recognize or exercise its discretion to consider whether mitigating circumstances justified an exceptional sentence below the standard range.

5. The court imposed the criminal filing fee and ordered immediate accrual of interest which are no longer authorized under the recent amendments to the legal financial obligation (LFO) statutes.

6. The court erred in entering Finding of Fact (Re: Diversion Revocation) 13. CP 76.

7. The court erred in entering Finding of Fact (Re: Diversion Revocation) 14. CP 76.

8. The court erred in entering Finding of Fact (Re: Bench Trial) 7. CP 78.

9. The court erred in entering Finding of Fact (Re: Bench Trial) 9. CP 79.

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. State and federal due process require the State to present sufficient evidence to prove beyond a reasonable doubt every element of a charged offense. Strangulation is an essential element of assault of a child in the second degree. However, the State presented entirely contradictory and inconsistent evidence on this element. Did the State present insufficient evidence of assault of a child in the second degree where only a modicum of evidence supports one of the essential elements?

2. Assault of a child in the third degree requires proof of substantial pain extending for a period sufficient to cause considerable suffering. Here, the State did not present any evidence establishing that the pain was substantial or that it caused considerable suffering and extended for a sufficient period of time. Did the State present insufficient evidence of assault in the third degree?

3. Federal and state due process require that a defendant knowingly, intelligently, and voluntarily waive certain core constitutional rights in order for the waiver to be valid. Cases have held a waiver is not voluntary where it is based on misinformation of the direct consequences of the waiver. Here, the diversion contract in which Mr. Bellon waived

his constitutional rights failed to inform him he faced mandatory terms of community custody and misinformed him of his standard guideline ranges. Where the diversion contract misinformed Mr. Bellon of the direct consequences of his waiver of constitutional rights, was Mr. Bellon's waiver of constitutional rights by the contract involuntary such that the contract is invalid and his convictions predicated on the contract must be reversed?

4. Courts possess the discretion to impose an exceptional sentence below the standard range where substantial and compelling mitigating circumstances justify a lower sentence. Where a court fails to recognize or to exercise its discretion to consider a mitigating circumstance or erroneously believes it lacks the discretion to consider a mitigating circumstance, a court abuses its discretion. Here the court believed it lacked the discretion to consider Mr. Bellon's motion for a sentence below the standard range based on mitigating circumstances. Should this court reverse and remand for a new sentencing hearing for the court to exercise its discretion and consider whether the proposed mitigating circumstances justify a sentence below the standard range?

5. Recent amendments to the LFO statutes prohibit the imposition of a filing fee or the accrual of interest where a person is indigent. These amendments apply prospectively to cases pending on direct appeal.

Should this Court strike the criminal filing fee and immediate accrual of interest, which are no longer authorized by statute?

D. STATEMENT OF THE CASE

Mr. Bellon was a 48 year old divorced father of three children who shared custody of his children with his ex-wife. Ex. 1, Incident/Investigation Report p.4.¹ His children lived with him every other week and every other Wednesday. *Id.* Mr. Bellon, who earned both a college and a master's degree, worked for twenty years at the Lucky Eagle Casino & Hotel, eventually earning the title of Director of Information Technology. CP 81-82.

Mr. Bellon has no prior criminal record. CP 85, 103. But in 2016, he was charged with assault of a child in the second and third degrees in relation to an allegation involving his then eight-year-old daughter, B.E.B. CP 4. B.E.B. alleged Mr. Bellon picked her up by her neck and shook her and also picked her up by her stomach and squeezed her stomach. Ex. 1, Arrest Report. Medical personal examined B.E.B. but did not treat her for any injuries, nor did B.E.B. sustain any marks on her neck. Ex. 1, Incident/Investigation Report p.4-5; Ex. 1, pictures. B.E.B. described the

¹ Exhibit 1 is a packet of materials that constitutes the stipulated documents on which the court tried the case. CP 80. The materials are: Arrest Report, Incident/Investigation Report, six photographs of B.E.B., and Transcript of Interview of Complaining Witness: [B.E.B.]. Ex. 1. For clarity's sake, citations will be to "Ex. 1" followed by a reference to the particular material within the exhibit.

incident as “he choked me” and reported “it hurt,” but acknowledged she was able to scream and breathe during the incident. CP 37-38.² She said her stomach and back hurt for “a couple of days” as well. CP 40.

Although Mr. Bellon denied the charges, in an attempt to save his daughter and his family the trauma of an ongoing criminal case and an eventual trial, Mr. Bellon agreed to a diversion contract³ in lieu of fighting the case. CP 82; Supp. CP ___, sub. no. 84 p.5-7; 5/7/18 RP 20-21, 27-29. Under the terms of the contract, the parties agreed Mr. Bellon would participate in the Friendship Diversion Program for 24 months. CP 5. If he successfully completed the program and complied with the terms of the diversion contract, the State agreed to dismiss the pending charges. CP 6. If he failed to successfully complete the program and comply with the terms of the contract, the State would recommence the prosecution. CP 6.

In addition, the diversion contract included several stipulations and waivers of Mr. Bellon’s constitutional rights. Specifically, in the event the

² The Transcript of Interview of Complaining Witness: [B.E.B.] appears in both Exhibit 1 and at CP 29-53. The CP citation is used for clarity.

³ The agreement between Mr. Bellon and the State is titled, “Declaration of Defendant, Waiver of Jury Trial, Stipulation to Facts Sufficient for Guilt.” CP 5-9. It is referred to here as the diversion contract. Mr. Bellon agreed to this diversion contract at his January 19, 2017, court date. 1/19/17 RP 3-8. In addition, following his contract with the State, Mr. Bellon also entered into a contract with the services provider, Friendship Diversion Services, on May 19, 2017. 1/8/18 RP 9-10. The contract discussed in this brief is the January 19, 2017, contract with the State. A copy of the diversion contract appears at CP 5-9 and is attached as Appendix One.

prosecution recommenced, Mr. Bellon agreed to a stipulated facts bench trial, stipulated to the admissibility of his statements to law enforcement and waived all legal challenges, and waived his constitutional rights to a jury trial, to a speedy trial, to a public trial, to confrontation, to present a defense, to testify, to appeal, and to the presumption of innocence.⁴ CP 6-7. In addition, Mr. Bellon waived his statutory speedy trial right and waived extradition. CP 9; 1/19/17 RP 4-7. The written diversion contract did not include an explicit statement that Mr. Bellon knowingly, intelligently, and voluntarily waived his constitutional rights. CP 5-9. The court did not ask Bellon at the court appearance whether he knowingly, intelligently, and voluntarily waived his constitutional rights. 1/19/17 RP 3-8.

⁴ Paragraph 7: “I stipulate that this court may determine my guilt or innocence for the charge presently filed against me in this matter based solely upon the law enforcement/investigating agency’s report on which this prosecution was based.”

Paragraph 8: “I stipulate that any statements which I have provided to law enforcement, the investigating agency, and/or the Thurston County Prosecuting Attorney’s Office relating to this matter are admissible for this court to consider at the time it determines my guilt or innocence as described above, and I waive any and all objections I may have to the admission of such statement(s) for the court’s consideration.”

Paragraph 9: “I understand that, by this process, I am giving up the following constitutional rights: the right to a jury trial; the right to a speedy and public trial by an impartial jury in the county where the crime(s) is/are alleged to have been committed; the right to hear and question witnesses who testify against me; the right to call witnesses in my own behalf and at no expense to me; the right to testify or not to testify; the right to appeal a determination of guilty after trial; and the presumption of my innocence until the charge(s) has/have been proven beyond a reasonable doubt or I enter a plea(s) of guilty.”

Paragraph 17: “By my signature below I waive any and all defenses to the commission of the charge(s) filed against me.”

Shortly after Mr. Bellon agreed to the contract, Mr. Bellon was arrested for driving while under the influence. 4/20/17 RP 4. However, the parties maintained the agreement, and Mr. Bellon signed a contract with Friendship Diversion Services. 4/20/17 RP 4; 1/8/18 RP 7.

Mr. Bellon complied with all of his classes and services coordinated through Friendship Diversion Services. 1/8/18 RP 24-25. He participated in domestic violence treatment, parenting classes, and a chemical dependency evaluation and treatment. 1/8/18 RP 24-25. Despite his successful performance in the underlying services, Mr. Bellon failed to comply with all the terms of his contract with Friendship Diversion Services, thereby violating his diversion contract with the State. The State moved to revoke the diversion contract, and the court held a hearing. CP 11-15; 1/8/18 RP 1-58.

Mr. Bellon's case manager testified and stated Mr. Bellon missed four reports to his case manager at Friendship and also missed several payments. 1/8/18 RP 11-18; CP 12. Mr. Bellon explained he experienced an extremely stressful and chaotic time following the passing of his father and the declining health of his mother and became preoccupied with family obligations. 1/8/18 RP 27-33. Although he continued participation in the underlying services, he admitted he missed a couple of appointments with his case manager and payments to Friendship. *Id.* He

also explained that some confusion with his mail after he moved into his mother's house to assist her contributed to his failure to remedy the situation in a timely manner. 1/8/18 RP 27-28.

The court found Mr. Bellon violated the contract and granted the State's motion to revoke the diversion contract. 1/8/18 RP 48-52; CP 76-77.

In accordance with the diversion contract, the court held a stipulated facts bench trial. CP 79-80; 4/9/18 RP 3-58. Mr. Bellon was not permitted to present evidence, to challenge the stipulated documents, to challenge his statements to the police, or to testify. *Id.* The court decided the case based on the stipulated facts under the diversion contract. CP 79-80. Per the contract, the court considered the arrest report, an investigation/incident report, six photographs of B.E.B., and a transcript of an interview with B.E.B. Ex. 1; CP 80 (Conclusion of Law 6). Based on that limited evidence, the court found Mr. Bellon guilty of assault of a child in the second and third degrees. CP 80, 102.

At sentencing, Mr. Bellon moved for an exceptional sentence below the standard range. CP 89-95; 5/7/18 RP 14-30. Mr. Bellon presented several mitigating circumstances. CP 89-95. Mr. Bellon supported his motion with a lengthy letter he wrote to the court and twenty

letters of support from family and community members. Supp. CP ____, sub. nos. 77, 84, 90.

The court ruled it had no authority to consider Mr. Bellon's request for a sentence below the standard range based on Mr. Bellon's mitigating circumstances and stated the only discretion it possessed was to determine a sentence within the standard range. 5/7/18 RP 39. The court sentenced Mr. Bellon to 31 months and 3 months, concurrent, followed by 18 months and 12 months of community custody, concurrent. CP 105-06; 5/7/18 RP 39-40. The court imposed only LFOs it considered mandatory, including the \$200 criminal filing fee. CP 107; 5/7/18 RP 40. The court also imposed the immediate accrual of interest from the date of the sentence. CP 108.

E. ARGUMENT

1. The State presented insufficient evidence that Mr. Bellon committed the offenses of assault of a child in the second and third degrees.

- a. *The State is required to prove all essential elements of the charged offenses beyond a reasonable doubt.*

The State is required to prove every element of the charged offense beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). A reviewing court must reverse unless it concludes every

rational fact finder could have found each essential element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Vasquez*, 178 Wn.2d 1, 6, 309 P.3d 318 (2013).

b. The State failed to present sufficient evidence of strangulation.

The State charged Mr. Bellon with assault by strangulation. CP 4; RCW 9A.36.130(1)(a), 9A.36.021(1)(g). RCW 9A.04.110(26) defines “strangulation” as “to compress a person’s neck, thereby obstructing the person’s blood flow or ability to breathe, or doing so with the intent to obstruct the person’s blood flow or ability to breathe.” The State argued Mr. Bellon’s actions obstructed B.E.B.’s ability to breathe. CP 4; 4/9/18 RP 31-33.

Here, the stipulated facts establish that Mr. Bellon picked up B.E.B. by her neck and shook her and that he squeezed her neck. Ex. 1, Arrest Report. However, the stipulated facts establish that when that happened B.E.B. both could and could not breathe. Ex. 1, Incident/Investigation Report p.4; CP 37-40. When B.E.B. was explicitly asked if she could breathe, she stated that she could. CP 37, 40. In addition, B.E.B. had no bruises, marks, or scratches on her neck. Ex. 1, photographs; Ex. 1, Incident/Investigation Report p.5. The State presented

no evidence from medical professionals that B.E.B. had any injuries consistent with being unable to breathe.

Although strangulation does not require complete obstruction, the statute does require at least partial obstruction of the ability to breathe.

State v. Rodriguez, 187 Wn. App. 922, 932-36, 352 P.3d 200 (2015).

Here, the State presented insufficient evidence to prove beyond a reasonable doubt that either partial or complete obstruction occurred.

Even considered in the light most favorable to the State, the totality of the evidence presented was completely inconsistent and contradictory.

It is unreasonable to credit one allegation over the other from the same witness. Presenting merely a “modicum of evidence” on an essential element is “simply inadequate” to be legally sufficient. *Jackson*, 443 U.S. at 320. Without sufficient evidence that Mr. Bellon obstructed B.E.B.’s ability to breathe by at least some degree, the State failed to present sufficient evidence of the essential element of suffocation.

c. The State failed to present sufficient evidence B.E.B. suffered “substantial pain” extending for a “sufficient” period to cause “considerable suffering.”

The State also charged Mr. Bellon with negligent assault causing bodily harm. CP 4; RCW 9A.36.140(1), 9A.36.031(1)(f). Bodily harm is defined as “physical pain or injury, illness, or an impairment of physical condition.” RCW 9A.04.110(4)(a). The statute also requires proof of

“substantial pain that extends for a period sufficient to cause considerable suffering.” RCW 9A.36.031(1)(f).

Here, the stipulated facts established that Mr. Bellon squeezed B.E.B.’s stomach and that it still hurt her when she spoke with the police immediately after the incident. Ex. 1, Arrest Report. The stipulated facts also established her stomach hurt “for a couple of days.” CP 37.

The State presented no evidence as to the level of pain such that either “substantial pain” or “considerable suffering” were established. Instead, the evidence was simply that B.E.B.’s stomach “hurt.” The State presented no evidence that medication or treatment was required, no evidence demonstrating an actual injury, and no evidence describing the intensity or duration of any pain. *See, e.g., State v. Robertson*, 88 Wn. App. 836, 841, 947 P.2d 765 (1997) (finding evidence sufficient where testimony described pain and bruising lasting two weeks and felt “like [her] brain was going to explode”). Without evidence supporting the level and severity of the pain, the State failed to establish both substantial pain and considerable suffering.

d. This court should reverse both assault convictions with instructions to dismiss the charges with prejudice.

The State failed to prove beyond a reasonable doubt either charge of assault. Substantial evidence fails to support the court's findings of fact and conclusions of law to the contrary. CP 78-80.

Where insufficient evidence supports a conviction, double jeopardy prevents the State from retrying the defendant for the same offense. *Burks v. United States*, 437 U.S. 1, 18, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978) ("Since we hold today the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient, the only 'just' remedy available for that court is the direction of a judgment of acquittal."); *State v. Hummel*, 196 Wn. App. 329, 359, 383 P.3d 592 (2016) ("Reversal for insufficient evidence is 'equivalent to an acquittal' and bars retrial for the same offense." (quoting *State v. Wright*, 165 Wn.2d 783, 792, 203 P.3d 1027 (2009))). Insufficient evidence supports both of Mr. Bellon's convictions for assault. Therefore, this Court should reverse with instructions to dismiss the charges.

2. Mr. Bellon did not knowingly, intelligently, and voluntarily waive his constitutional rights, undermining the validity of his convictions predicated on the diversion contract.

a. Due process requires a waiver of core constitutional rights be knowing, intelligent, and voluntary in order to be valid.

A waiver of constitutional rights must be knowing, intelligent, and voluntary. U.S. Const. amend. XIV; Const. art. I, § 3; *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. 2d. 2d (1970) (acknowledging waiver of right to trial must be knowing, intelligent, voluntary); *Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) (holding due process requires constitutional rights against self-incrimination, to trial by jury, and to confrontation must be “voluntarily and understandingly” waived); *Johnson v. Zerbst*, 304 U.S. 458, 465-69, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938) (waiver of right to counsel must be competent and intelligent); *see also State v. A.N.J.*, 168 Wn.2d 91, 117, 225 P.3d 956 (2010) (“Due process requires that a guilty plea may be accepted only upon a showing the accused understands the nature of the charges and enters into the plea intelligently and voluntarily.”).

In *Boykin*, the Supreme Court held a guilty plea may not stand without proof the defendant voluntarily, intelligently, and understandingly waived the constitutional rights encompassed by the plea. 395 U.S. at

243. Specifically, the Court recognized the rights against self-incrimination, the right to trial by jury, and the right to confrontation. *Id.* Where a defendant does not “voluntarily and understandingly” waive these rights, he does not voluntarily and understandingly enter his guilty plea and, thus, the plea may not stand. *Id.* at 244.

Under *Boykin* and its progeny, it is not the label of “guilty plea” or the particular vehicle by which rights are waived that inures due process protections. Rather, it is the identity of the particular constitutional rights being waived that requires due process be satisfied.⁵ The Washington Supreme Court recognized as much in *Wood v. Morris*, 87 Wn.2d 501, 505-06, 554 P.2d 1032 (1976). In *Wood*, the Court acknowledged that *Boykin* “established as a matter of constitutional due process that a guilty plea may stand only if the record in some manner indicates **an intelligent and voluntary waiver of the three enumerated constitutional rights,**” referring to the waiver of the rights to trial by jury, to confrontation, and against self-incrimination. 87 Wn.2d at 506 (emphasis added); accord *State v. Holsworth*, 93 Wn.2d 148, 153, 607 P.2d 845 (1980). Thus, in order for a court to enforce a waiver of certain constitutional rights, the

⁵ Guilty pleas incur certain additional procedural protections by statute and court rule as well. See CrR 4.2; RCW 9.94A.431 – 9.94A.460, 10.40.200.

State must establish the defendant knowingly, intelligently, and voluntarily waived those rights.

b. A waiver of rights is involuntary where the individual is misinformed of the consequences of the waiver.

A voluntary waiver of constitutional rights, which occurs most often in the context of a guilty plea, requires that the defendant be informed of all direct consequences of the waiver. *Brady*, 397 U.S. at 748 (“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). A direct consequence of a guilty plea by which one’s constitutional rights are waived includes consequences affecting the range of the defendant’s punishment. *Ross*, 129 Wn.2d at 284. Our courts have long held the statutory maximum term and length of a sentence are direct consequences of a plea. *State v. Weyrich*, 163 Wn.2d 554, 556-57, 182 P.3d 965 (2008); *State v. Mendoza*, 157 Wn.2d 582, 590, 141 P.3d 49 (2006); *see also State v. Morley*, 134 Wn.2d 588, 621, 952 P.2d 167 (1998).

A waiver of core constitutional rights is involuntary where a defendant is not accurately informed of the sentencing consequences.

Weyrich, 163 Wn.2d at 556-57. This applies not only to terms of confinement but also to terms of community custody. *State v. Barber*, 170 Wn.2d 854, 858, 248 P.3d 494 (2001) (holding “there is no dispute that [defendant] was misinformed as to a direct consequence” where agreement did not inform defendant of mandatory term of community custody); *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003) (“[F]ailure to inform a defendant that he will be subject to mandatory community placement if he pleads guilty will render the plea invalid.”); *Ross*, 129 Wn.2d at 287-88 (finding defendant’s plea involuntary where court did not inform defendant of direct consequence of mandatory community placement, in addition to maximum prison sentence). In addition, misinformation about the length of a sentence renders the plea involuntary. *Mendoza*, 157 Wn.2d at 590. This is true even if the actual, correct sentence is shorter than the mistaken sentence of which the defendant was advised. *Id.* at 590-91 (finding guilty plea involuntary where defendant was misinformed of inaccurate higher sentence based on miscalculated offender score).

c. *The diversion contract misinformed Mr. Bellon of the consequence of his waiver of core constitutional rights.*

i. Mr. Bellon waived his core constitutional rights in the diversion contract.

The diversion contract included both stipulations and waivers. CP 5-9. Mr. Bellon agreed to a stipulated facts trial and agreed not to mount legal or factual challenges to the admissibility or the content of the State's evidence. CP 6. In addition, Mr. Bellon, waived his constitutional rights to a jury trial, to a speedy trial, to a public trial, to his right against self-incrimination, to confrontation, to present a defense, to testify, to appeal, and to the presumption of innocence. CP 6-8. Mr. Bellon also waived his statutory speedy trial right and waived extradition. CP 9; 1/19/17 RP 4-7. Thus, Mr. Bellon waived the three core rights protected by due process under *Boykin*, as well as numerous other essential constitutional rights.

ii. The diversion contract misinformed Mr. Bellon of the direct consequences of waiving his core constitutional rights.

The diversion contract in which Mr. Bellon waived his constitutional rights did not advise Mr. Bellon he faced any mandatory community custody. CP 5-7. However, Count 1 required community custody in the amount of 18 months and Count 2 in the amount of 12 months. CP 106; RCW 9.94A.701(2) (mandating 18 months community custody for offenders sentenced for violent offense); RCW

9.94A.030(55)(a)(ix) (including assault of a child in the second degree as “violent offense”); RCW 9.94A.701(3)(a) (mandating one year community custody for “any crime against persons”); RCW 9.94A.411(2)(a) (including assault of a child in the third degree as “crimes against persons”). Mr. Bellon was not informed of this direct sentencing consequence.

In addition, the diversion contract in which Mr. Bellon waived his constitutional rights informed Mr. Bellon he faced a standard range of 36 to 48 months on Count 1 and 3 to 8 months on Count 2. CP 6. This was incorrect. Mr. Bellon’s actual standard range was 31 to 41 months on Count 1 and 1 to 3 months on Count 2. CP 104; RCW 9.94A.510 (standard ranges for offenses with seriousness levels of nine and three with offender scores of zero).

Thus, the diversion contract misinformed Mr. Bellon of two direct consequences of his waiver of constitutional rights – the requirement and lengths of the mandatory community custody terms and the length of the custodial sentences. Because the diversion contract misinformed Mr. Bellon of two direct consequences of his waiver of constitutional rights, Mr. Bellon’s waiver was involuntary.

The court made a general inquiry into Mr. Bellon’s waiver of rights. 1/19/17 RP 5-7. The court’s colloquy did not mention community

custody or the standard range, nor did the court independently inform Mr. Bellon of either. 1/19/17 RP 3-8.

d. The diversion contract is invalid.

Mr. Bellon involuntarily waived his core constitutional rights because the diversion contract misinformed him of the direct consequences of his waiver. Because Mr. Bellon did not knowingly, intelligently, and voluntarily waive his constitutional rights, the diversion contract by which he waived those rights is invalid.

The remedy for an involuntary waiver of rights based on misinformation is a withdrawal of the waiver. This often occurs in the context of a waiver of rights through a guilty plea. Where an agreement by which a defendant waives core constitutional rights does not comply with due process requirements, a defendant is entitled to withdraw the agreement. *State v. Walsh*, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001) (recognizing defendants are entitled to withdraw guilty pleas based on misinformation); *Barber*, 170 Wn.2d at 855 (withdrawal of plea is remedy for involuntary plea).

As explained above, this is based on the core constitutional rights waived by a guilty plea. Here, where Mr. Bellon waived those same core constitutional rights in his diversion contract, the same due process protections apply, and the same remedy should govern. To be clear, Mr.

Bellon is not arguing a general diversion contract automatically triggers the same due process guarantees as a guilty plea, nor is Mr. Bellon arguing a stipulated facts trial automatically requires the procedural protections of a guilty plea. *See State v. Johnson*, 104 Wn.2d 338, 342-43, 705 P.2d 773 (1985) (distinguishing stipulated facts trial from situations in which defendant waives presumption of innocence, right to present defense, right to confrontation, and right to appeal). Rather, the reason Mr. Bellon is entitled to due process protections here is because the agreement induced a waiver of the core constitutional rights identified by the Supreme Court in *Boykin*.

Further, such misinformation about direct consequences rendering a waiver involuntarily is a “manifest error affecting a constitutional right” and can be raised for the first time on appeal. *Walsh*, 143 Wn.2d at 7-8 (discussing RAP 2.5(a)(3)). On direct appeal, reviewing courts must presume this error prejudicial. *Weyrich*, 163 Wn.2d at 557; *In re Personal Restraint of Stockwell*, 179 Wn.2d 588, 596, 316 P.3d 1007 (2014) (noting challenges to pleas as involuntary based on incorrect sentencing range information are entitled to presumption of prejudice on direct appeal). Defendants “need not establish a causal link” between their waiver of core constitutional rights and the misinformation. *Weyrich*, 163 Wn.2d at 557.

In addition, here the error actually prejudiced Mr. Bellon. The diversion contract omitted the direct sentencing consequence of the mandatory community custody terms and contained inaccurate sentencing ranges. The court imposed two terms of community custody – 18 months and 12 months – while the diversion contract by which Mr. Bellon waived his constitutional rights informed him of neither.

e. The convictions based on the diversion contract must be reversed.

The diversion contract misinformed Mr. Bellon of the direct consequences of his waiver of constitutional rights. Therefore, Mr. Bellon's waiver of constitutional rights was not knowing, intelligent, and voluntary, and the diversion contract is invalid. This Court should reverse Mr. Bellon's convictions and remand the matter with instructions to permit Mr. Bellon to withdraw his agreement to the diversion contract.

3. The court denied Mr. Bellon's motion for an exceptional sentence below the standard range because it misunderstood its discretion to consider mitigating circumstances.

a. The Sentencing Reform Act authorizes courts to impose sentences below the standard range.

Courts are generally required to impose a standard range sentence. RCW 9.94A.505(2)(a)(i). Standard range sentences reflect the legislature's assessment of the appropriate punishment for an offense,

adjusted for an offender's criminal history. *State v. Amo*, 76 Wn. App. 129, 133, 882 P.2d 1188 (1994).

However, courts may impose a sentence below the standard range where mitigating circumstances established by a preponderance of the evidence offer a substantial and compelling reason to depart from the standard range. RCW 9.94A.535. RCW 9.94A.535(1) contains a nonexhaustive list of mitigating circumstances on which a court may rely to impose a sentence below the standard range. Courts may consider any mitigating circumstances as long as they were not necessarily considered by the legislature in establishing the standard range sentence and are “sufficiently substantial and compelling to distinguish the crime in question from others in the same category.” *State v. O'Dell*, 183 Wn.2d 680, 690, 358 P.3d 359 (2015) (quoting *State v. Ha'mim*, 132 Wn.2d 834, 840, 940 P.2d 633 (1997)).

Where a sentencing court “has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range,” defendants may appeal a standard range sentence. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). Defendants are entitled to “actual consideration” of their request for an exceptional sentence, and courts must exercise “meaningful discretion” in deciding whether a departure is appropriate.

State v. Grayson, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005) (remanding for new sentencing hearing where court categorically denied defendant’s request for DOSA sentence). A categorical refusal to impose an exceptional sentence below the standard range is a refusal to exercise discretion. *Id.*

In addition, a court’s erroneous belief that it cannot consider circumstances justifying an exceptional sentence provides grounds for appeal. *State v. McGill*, 112 Wn. App. 95, 97, 47 P.3d 173 (2002); *O’Dell*, 183 Wn.2d at 697 (noting failure to exercise discretion and consider exceptional sentence is abuse of discretion). “[A] trial court’s mistaken belief that it lacked discretion to impose a mitigated exceptional sentence for which a defendant may have been eligible is reversible error.” *State v. Thibodeaux*, ___ Wn. App. 2d ___, 430 P.3d 700, 702 (2018).

Appellate courts review de novo whether particular factors may justify an exceptional sentence. *O’Dell*, 183 Wn.2d at 688.

b. The court failed to recognize its discretion to consider Mr. Bellon’s motion for a sentence below the standard range based on mitigating circumstances.

Here, the court categorically refused to consider Mr. Bellon’s motion for a sentence below the standard range and his mitigating circumstances based on its mistaken belief it lacked discretion to do so. The court discussed the restrictive nature of the Sentencing Reform Act

(SRA), noted sentencing schemes in only two other states “have more restrictions on a judge at this moment than does the State of Washington,” and read extensively from *State v. Law*, 154 Wn.2d 85, 110 P.2d 717 (2005). 5/7/18 RP 33-39. The court specifically ruled it had no authority to consider an exceptional sentence downward:

There's no authority under these circumstances to adopt a range -- a sentence outside the standard range. It's reversible error. I can't do it.

I have to impose a sentence in the standard range.

5/7/18 RP 39. The only discretion the court acknowledged it had in determining the sentence was to determine the sentence within the standard range. 5/7/18 RP 39 (“Now, within that standard range, I have discretion.”).

The court’s statements are remarkably similar to those this Court found demonstrated an erroneous belief in the court’s lack of authority to consider a non-standard range sentence in *State v. McGill*. 112 Wn. App. at 98-99 (noting trial court’s comments that “the legislature has decided that judges should not have discretion beyond a certain sentencing range” and “I have no option but to sentence you within the range” demonstrate the court’s incorrect belief “it lacked authority to impose an exceptional sentence”).

The court denied Mr. Bellon's motion for an exceptional sentence below the standard range based on mitigating circumstances because it erroneously believed it lacked the authority to consider the mitigating circumstances and grant the motion. It did not consider Mr. Bellon's proposed mitigating factors or whether they were established by a preponderance of the evidence. It did not consider whether the mitigating circumstances were substantial and compelling reasons justifying a departure. Instead, the court found it had no discretion to consider a departure based on the proposed mitigating circumstances. The court refused to exercise its discretion when it refused to consider Mr. Bellon's motion for a sentence below the standard range. *Garcia-Martinez*, 88 Wn. App. at 330. A court commits reversible error when it refuses to meaningfully consider a sentencing option. *Grayson*, 154 Wn.2d at 342.

c. Courts may consider any relevant mitigating circumstances in sentencing.

As the court noted, *Law* suggests the SRA prohibits courts from considering exceptional sentences based on factors personal to the defendant, as opposed to the crime. *Law*, 154 Wn.2d at 89. However, our Supreme Court rejected the heart of this logic in *O'Dell*. 183 Wn.2d 680. *O'Dell* held that courts may consider personal factors relevant to the particular defendant in determining the propriety of an exceptional

sentence. In so holding, *O'Dell* recognized that courts may consider any circumstance that could “amount to a substantial and compelling factor, in particular cases, justifying a sentence below the standard range.” *Id.* at 696. Although *O'Dell* addressed the mitigating factor of youth, its holding does not rely on the uniqueness of this particular characteristic.

To the extent *Law* held the SRA “disallow[s] personal characteristics unrelated to the offense to be considered as mitigating factors,” our Supreme Court effectively rejected this interpretation in *O'Dell*. Instead, *O'Dell* recognizes courts must consider a defendant’s culpability in a broader context and that a defendant’s culpability relates to more than simply his actions at the time of the crime considered in a vacuum. Regardless, the mitigating circumstances Mr. Bellon presented served to distinguish his crimes from others in the same category and addressed his lack of culpability.

d. Mr. Bellon presented mitigating circumstances that distinguished his crime from others in the same category and demonstrated his diminished culpability.

Mr. Bellon offered mitigating circumstances that distinguished his crimes from others in the same category. *Amo*, 76 Wn. App. at 131 (mitigating circumstances “must distinguish the defendant’s *crime* from others in the same category”). Even under *Law*, courts possess the authority to depart based on factors that “relate to the crime, the

defendant's culpability for the crime, or the past criminal record of the defendant." 154 Wn.2d at 89.

Mr. Bellon presented several mitigating circumstances, including that a lower sentence was more consistent with purposes of the SRA, more proportionate with the seriousness of the crime, would protect the public, would minimize the risk of re-offense, and would be a better use of resources. CP 89-95. Mr. Bellon highlighted the progress he made in the services he received under the diversion contract, including his domestic violence and chemical dependency treatment, as well as his significant community service and the absence of any prior criminal history. CP 92-93. Finally, Mr. Bellon distinguished his offense from other offenses in the same categories by arguing he had been deprived of the ability to challenge the offense and present a more accurate account of the incident under the constraints of the diversion contract and that the standard range sentence was too severe for the convictions given this context. CP 92-95. Mr. Bellon supported his motion with a lengthy letter he wrote to the court and twenty letters of support from family and community members. Supp. CP ___, sub. nos. 77, 84, 90.

In his letter to the court, Mr. Bellon offered a family history and explained the contentious relationship he has with his ex-wife, which unfortunately affected their children, explained his mother's declining

health, detailed his work in the diversion program, and highlighted his community service involvement. Supp. CP ____, sub. 84. The letters from family and community supporters detailed his community service and fundraising work on behalf of nonprofits, his progress in his treatment programs, successful employment history, and strong family connections. Supp. CP ____, sub. 77. The information also focused on Mr. Bellon's lack of any prior criminal history as well as the context of the incident which Mr. Bellon was denied from presenting under the terms of the agreement.

In his sentencing memorandum and letters, Mr. Bellon explained how the inconsistencies in the statements of his daughter and other evidence demonstrated the incident for which he was convicted was actually less serious than other crimes in the same categories. He also explained how the diversion contract prevented him from presenting this evidence to the court at trial and explained his motive in agreeing to the diversion contract. Supp. CP ____, sub. no. 84. Where, as here, Mr. Bellon's diversion contract was not pursuant to a statute such as a deferred prosecution under Chapter 10.05 or a therapeutic court under Chapter 2.30, the court cannot assume the constraints of the agreement were considered and intended by the legislature in sentencing. *Amo*, 76 Wn. App. at 133 ("The presumptive standard ranges reflect legislative judgment as to how best to structure a sentencing system.").

Here, Mr. Bellon presented information related to the incident itself that made it less egregious than other crimes in the same category and highlighted how the diversion contract prevented Mr. Bellon from presenting inconsistencies that gave reason to doubt the accuracy of the children's initial statements to police. These are not factors prohibited from supporting an exceptional sentence because they are not factors "the legislature *necessarily* considered . . . when it established the standard range." *O'Dell*, 183 Wn.2d at 690.

This was not a case where the court considered the proposed mitigating factors but found they did not offer a substantial and compelling reason to depart from the standard range or found they were not established by a preponderance of the evidence. The court did not consider the proposed factors because it mistakenly believed it could not. A court abuses its discretion when it misapplies the law or fails to understand the scope of its discretion. *Grayson*, 154 Wn.2d at 342. Here, the court did both, depriving Mr. Bellon of his right to have his motion considered and undermining the sentence imposed.

e. Mr. Bellon is entitled to a new sentencing hearing.

The court misunderstood the law and its authority to consider mitigating circumstances and impose an exceptional downward departure. The appropriate remedy when a court misunderstands its discretion is to

permit the defendant an opportunity to have his sentencing motion actually considered. *O'Dell*, 183 Wn.2d at 697 (remanding for resentencing hearing where court failed to exercise its discretion to consider mitigating circumstance of youth); *Grayson*, 154 Wn.2d at 343 (remedy for court's failure to meaningfully consider DOSA sentence is remand for resentencing hearing); *McGill*, 112 Wn. App. at 100 (noting remand for resentencing is the appropriate remedy where court erroneously believed it lacked discretion to consider and impose exceptional sentence downward). Therefore, the sentence should be vacated and a new sentencing hearing ordered.

4. This Court should strike the criminal filing fee and immediate accrual of interest from Mr. Bellon's judgment and sentence.

a. Mr. Bellon was indigent but the court imposed the criminal filing fee and ordered the immediate accrual of interest.

At the time of sentence, Mr. Bellon was indigent and the court treated him as such, imposing only LFOs it considered mandatory. CP 90, 107, 128-29; 5/7/18 RP 40. The court imposed the criminal filing fee and the immediate accrual of interest. CP 107-08.

b. *Ramirez* requires this Court strike the \$200 criminal filing fee and interest accrual from Mr. Bellon's judgment and sentence.

In Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (2018) our legislature amended the LFO statutes to prohibit more clearly courts from imposing costs when a defendant is indigent. Laws of 2018, ch. 269, §6. In doing so, the legislature removed from a court's discretion the nebulous determination of whether a defendant "is or will be able to pay" costs and instead unequivocally mandated that if a person is indigent under the statute, the court may not impose certain costs. RCW 10.01.160(3). Those costs include criminal court filing fees. RCW 36.18.020(2)(h) (prohibiting imposition of criminal court filing fee on indigent defendants); Laws of 2018, ch. 269, § 17(2)(h). In addition, amendments eliminate interest accrual on LFOs except for restitution. RCW 10.82.090(1) ("no interest shall accrue on nonrestitution [LFOs]"); Laws of 2018, ch. 269, § 1. The amendments took effect June 7, 2018.

In *State v. Ramirez*, the Court held these amendments apply prospectively to all defendants whose cases are pending on direct appeal. 191 Wn.2d 732, 747-50, 426 P.3d 714 (2018). A resentencing hearing is unnecessary, and appellate courts may remand with a directive that the LFOs be stricken from the judgment and sentence. *Id.* at 750 (reversing and remanding for trial court to amend judgment and sentence to strike

criminal court filing fee, DNA fee, and all discretionary LFOs); *State v. Lundstrom*, ___ Wn. App. ___, 429 P.3d 1116, 1121 (2018) (following *Ramirez* and reversing imposition of criminal court filing and DNA fees and remanding).

The record is clear the court found Mr. Bellon indigent. However, the court imposed fees and interest which the legislature now prohibits in amended statutes. Under *Ramirez*, these amendment apply prospectively, and this Court should strike the criminal court filing fee and the imposition of interest from Mr. Bellon's judgment and sentence.

F. CONCLUSION

Insufficient evidence supports both convictions. Therefore, this Court should reverse and dismiss both convictions. In addition, Mr. Bellon was misadvised of the direct consequences of the diversion contract and did not knowingly, intelligently, and voluntarily waive his core constitutional rights, rendering the contract and his convictions invalid. This Court should reverse the convictions and remand. Alternatively, even if the Court affirms the convictions, the court misunderstood its discretion at sentencing, and Mr. Bellon is entitled to a new sentencing hearing. Finally, the criminal court filing fee and accrual of interest must be stricken.

DATED this 27th day of December 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Huber', with a long, sweeping underline that extends to the right.

KATE R. HUBER (WSBA 47540)
Washington Appellate Project (91052)
Attorneys for Appellant
katehuber@washapp.org
wapofficemail@washapp.org

APPENDIX 1

4

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2017 JAN 19 PM 12: 17

Linda Myhre Enlow
Thurston County Clerk

16-1-01675-34
WVJTD
Waiver of Jury Trial by Defendant
968074



***IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY***

STATE OF WASHINGTON,

Plaintiff,

vs.

PABLO LARA BELLON,

Defendant.

NO. 16-1-01675-34

DECLARATION OF DEFENDANT,
WAIVER OF JURY TRIAL,
STIPULATION TO FACTS SUFFICIENT
FOR GUILT

COMES NOW the Defendant, having first been fully advised by counsel, and in consideration for entry into the "Friendship" Diversion Program, make the following Declaration:

1. I have no prior conviction(s) for a felony offense in the State of Washington nor in any other state or country, nor have I been convicted of a crime in another state or country which would be considered a felony in the State of Washington, nor do I have any other felony offenses pending in Washington or anywhere;

2. I have never before participated in any diversion or similar program or arrangement for any other felony offense, as defined under section "1" above:

3. I am requesting that the Thurston County Prosecuting Attorney's Office and this Court permit me to enter into the Thurston County "Friendship" Diversion Program for twenty four (24) months which, if I successfully complete the program, will result in the State's agreement to dismiss the pending charge(s) against me in this case;

4. I understand that "successful completion" of this program means that I strictly comply with all program requirements as directed by the administrating agency, "Friendship," which includes: reporting to the

DECLARATION/STIPULATION RE: PRETRIAL CONTINUANCE

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

1 agency as directed; paying administrative costs/assessments; having no criminal law violations during the
2 period of diversion; paying full restitution and any other LFOs under this cause number for damage arising from
3 this case and as determined by "Friendship;" and completing community service hours as directed by Diversion;

4 5. I understand that if I fail to successfully comply with this agreement, I will be removed from
5 the diversion program, and the Thurston County Prosecuting Attorney's Office will recommence prosecution of
6 this case against me;

7 6. If I fail to successfully complete the conditions of this continuance and prosecution is
8 recommenced, I stipulate that the Prosecuting Attorney's Office may submit to this court copies of all materials
9 which make up the law enforcement/investigating agency's reports on which this prosecution is based;

10 7. I stipulate that this court may determine my guilt or innocence for the charge presently filed
11 against me in this matter based solely upon the law enforcement/investigating agency's reports on which this
12 prosecution was based;

13 8. I stipulate that any statements which I have provided to law enforcement, the investigating
14 agency, and/or the Thurston County Prosecuting Attorney's Office relating to this matter are admissible for this
15 court to consider at the time it determines my guilt or innocence as described above, and I waive any and all
16 objections I may have to the admission of such statement(s) for the court's consideration;

17 9. I understand that, by this process, I am giving up the following constitutional rights: the right to
18 a jury trial; the right to a speedy and public trial by an impartial jury in the county where the crime(s) is/are
19 alleged to have been committed; the right to hear and question witnesses who testify against me; the right to call
20 witnesses in my own behalf and at no expense to me; the right to testify or not to testify; the right to appeal a
21 determination of guilty after trial; and the presumption of my innocence until the charge(s) has/have been
22 proven beyond a reasonable doubt or I enter a plea(s) of guilty;

23 10. I understand that the crime(s) with which I am charged have a maximum sentence of 10 years'
24 imprisonment and a \$20,000.00 fine for Count I and a maximum sentence of 5 years imprisonment and a
\$10,000.00 fine for Count II. The standard range for Count I is 36 months to 48 months and the standard range
for Count II is 3 months to 8 months, based on the prosecuting attorney's understanding of my criminal history.

DECLARATION/STIPULATION RE: PRETRIAL CONTINUANCE

JON TUNHEIM
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1 This standard range may increase should I be later convicted of other crimes prior to my sentencing in this case
2 should I fail to successfully complete diversion. Also, if I am later convicted of the present charge(s) against
3 me, I will be prohibited from possessing, owning, or having under my control any firearm unless my right to do
4 so is restored by a court of record.

5 11. I agree that I will pay \$500.00 to the Crime Victims Fund, a \$200.00 filing fee, and restitution
6 in an amount to be determined at a later date through the Clerk of the Thurston County Superior Court

7 12. I agree to enter and successfully complete a Domestic Violence treatment program by a WAC
8 compliant State Certified Domestic Violence Treatment. Bill Notrafrancisco is not an approved domestic
9 violence treatment provider for the purposes of this agreement.

10 13. I will enter and successfully complete parenting classes through a state certified provider.

11 14. I will obtain a chemical dependency evaluation and successfully complete any recommended
12 treatment.

13 15. I agree to abide by any No Contact, Restraining, Protection, or Anti-Harassment orders. A
14 Domestic Violence No Contact Order has been entered with the victim in this case as the protected party. I
15 further agree to have no contact with any minor (other than the victim and her brother) except in the presence of
16 an adult that has knowledge of the pending charges. I also agree not to have contact with the victim's brother
17 except as allowed in a valid parenting plan.

18 16. I agree to not possess any firearms while on supervision.

19 17. By my signature below I waive any and all defenses to the commission of the charge(s) filed
20 against me.

21 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true
22 and correct. Signed in Olympia, Washington this 19th day of January, 2017.

23 Rebb Bellon
24 Defendant

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RESPECTFULLY SUBMITTED:
JON TUNHEIM
Prosecuting Attorney

WITNESSED AND APPROVED FOR
PRESENTATION:

By:


CRAIG E. JURIS, WSBA #31076
Deputy Prosecuting Attorney


S. The Mense
Attorney for Defendant
WSBA # 37480

DECLARATION/STIPULATION RE: PRETRIAL CONTINUANCE

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

16-1-01675-34
WVSPDT
Waiver of Speedy Trial
968075



FILED
Superior Court
Thurston County, Wash.
Linda Myhre Enlow, Clerk

JAN 19 2017
By _____
Deputy

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY
STATE OF WASHINGTON,

vs.

PABLO LARA BELLON,

Plaintiff,

Defendant.

NO. 16-1-01675-34

WAIVER OF TIME FOR TRIAL UNDER
CRIMINAL RULE 3.3

I have been advised by my attorney or by the court that:

(1) I have a right to a speedy trial which, under Rule 3.3 of Criminal Rules for Superior Court, is a trial within sixty (60) days from the date of arraignment in court if I am being held in custody, or within ninety (90) days from the date of my arraignment in court if I have obtained pretrial release from custody.

(2) I may waive such right to speedy trial by signing this waiver so long as I do so voluntarily;

(3) THIS WAIVER IS VALID THROUGH January 19, 2022 AND CONTINUING IN NATURE, UNLESS REVOKED IN WRITING; IT IS NOT LIMITED BY TRIAL DATES CONTEMPORANEOUSLY OR SUBSEQUENTLY SET.

(4) If this waiver is revoked in writing, I will be tried within sixty (60) days of the date that the court and state are served with notice of the revocation if I am being held in custody, or within ninety (90) days from the date that the court and the state are served with notice of the revocation if I have obtained pretrial release from custody.

With that advice in mind, and understood by me, I HEREBY WAIVE MY RIGHT TO SPEEDY TRIAL as described above and acknowledge that I do so freely and voluntarily without force or threats of any kind whatsoever.

DATED: 1-19-17

Pablo Bellon

Defendant

S. The Mense

Attorney for Defendant
WSBA # 37480

APPROVED:

Erik D Price

JUDGE

Erik D Price

WAIVER OF TIME FOR TRIAL UNDER CRIMINAL RULE 3.3

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 51845-7-II
)	
PABLO BELLON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF DECEMBER, 2018, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|-------------------------------------|---|---|---|
| <input checked="" type="checkbox"/> | JOSEPH JACKSON, DPA
[jacksoj@co.thurston.wa.us]
[PAOAppeals@co.thurston.wa.us]
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SIGNED IN SEATTLE, WASHINGTON THIS 27TH DAY OF DECEMBER, 2018.



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Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Telephone (206) 587-2711
Fax (206) 587-2710

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