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Court of Appeals  
Division II  
State of Washington  
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NO. 51997-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON

Respondent,

v.

SATNAM SINGH RANDHAWA

Appellant.

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

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APPELLANT'S REPLY BRIEF

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## ARGUMENT

### **I. Randhawa's plea was involuntary under CrR 4.2(f).**

In *State v. Williams*, 117 Wn.App. 390, 72 P.3d 741 (2003), the Court of Appeals provided what appeared to be a framework for analyzing a defendant's motion to withdraw a plea under CrR 4.2(f). The defendant in *Williams* argued that his plea was involuntary because he had entered the plea as part of a package deal where his co-defendant son would receive the benefit of a reduced charge. *Williams*, 117 Wn.App. at 394-97.

The Court of Appeals concluded that a prosecutor has an obligation to expressly inform a trial court when a defendant's plea is part of a package deal with a co-defendant's plea. *Id.* at 400. Even though the prosecutor in *Williams* did not inform the trial court of the package deal, the Court of Appeals upheld the trial court's denial of the defendant's motion for four reasons. *Id.* at 400-01. The four reasons were that (1) the same judge entered the guilty pleas of the co-defendants at the same time; (2) the trial court stated on the record at the time of the defendant's plea that his plea was part of a package deal; (3) the defendant received an opportunity to present evidence at an evidentiary hearing on his motion to withdraw; and (4) the evidence presented at the hearing clearly indicated that the defendant's plea was freely and voluntarily made. *Id.*

Like the prosecutor in *Williams*, the prosecutor at Randhawa's change of plea hearing did not expressly inform the trial court that Randhawa had entered into a separate agreement with the State as part of his plea. RP 1-9. However, the four factors that the Court of Appeals cited for why it upheld the trial court's denial of the defendant's motion to withdraw his plea in *Williams* do not apply to Randhawa's case. Randhawa's separate agreement with the State was not entered at the same time as Randhawa's plea, the trial court did not make any reference in the record of Randhawa's plea hearing to any separate agreement apart from the plea agreement, Randhawa did not receive any opportunity to present evidence at an evidentiary hearing on his motion to withdraw his plea, and no evidence was presented at such an evidentiary hearing because the trial court did not hold an evidentiary hearing. *Id.*

## **II. Randhawa's plea did not comply with CrR 4.2(e).**

CrR 4.2(e) provides that the "nature of the agreement and the reasons for the agreement shall be made a part of the record at the time the plea is entered." In *State v. Perez*, 33 Wn.App. 258, 654 P.2d 708 (1982), the Court of Appeals held that "failure to comply with CrR 4.2(e), standing alone, will be grounds for withdrawal of a plea." *Perez*, 33 Wn.App. at 263. The State cited to an unpublished appellate decision, *State v. Hudson*, 192 Wn. App. 1003 (2015), in its

response to support its argument that the circumstances of Randhawa's plea did not violate CrR 4.2(e).

However, the circumstances of Randhawa's plea are distinguishable from the circumstances of the defendant's plea in *Hudson*. In *Hudson*, the Court of Appeals determined that the trial court had reviewed the separate agreement between the defendant and the State, which indicated that the trial court was aware of the nature and reasons for the defendant's plea at the time of the defendant's guilty plea in compliance with CrR 4.2(e). *Hudson*, 192 Wn.App. 1003 at \*2. In Randhawa's case, the trial court was not aware of Randhawa's separate agreement with the State at the time of Randhawa's plea and did not become aware of the separate agreement until after Randhawa pled.

**III. An evidentiary hearing is the only way to determine whether any error regarding Randhawa's plea was harmless or whether the invited error doctrine should apply to Randhawa's case.**

The State argued in its response that any error as to Randhawa's plea was harmless and that the invited error doctrine should apply to Randhawa's case. However, an appellate court should not be able to arrive at either conclusion regarding a defendant's plea without the benefit of reviewing an evidentiary hearing conducted by the trial court. A defendant's testimony and credibility could be evaluated at such a hearing. The trial court did not hold any evidentiary hearing regarding Randhawa's plea.

## CONCLUSION

For the reasons stated above and in Randhawa's opening brief, the Court of Appeals should reverse the denial of Randhawa's motion to withdraw his plea pursuant to CrR 4.2(f) and CrR 4.2(e) and remand Randhawa's case to the trial court.

DATED this 17th day of December, 2018.

Respectfully submitted,



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	)	
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	)	

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**LAW OFFICE OF ROBERT S. HUFF**

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