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Court of Appeals
Division II
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No. 52420-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

HARRY K. WAYMOTH, III
Appellant.

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

The Honorable John C. Skinder
Cause No. 17-1-02132-34

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether trial defense counsel provides effective assistance of counsel by obtaining a plea bargain from the State, discussing the strengths and weaknesses of the defense case, and advising their client regarding the plea bargain.

2. Whether a plea is knowing, voluntary and intelligently entered, when it is made after advice from counsel, occurs with a written acknowledgement that it is voluntary, and is entered after a lengthy colloquy with the trial court.

3. Whether the trial court abuses its discretion when it denies a motion to withdraw a guilty plea, where the plea was entered after advice from counsel, occurs with a written acknowledgement that it is voluntary, and is entered after a lengthy colloquy with the trial court, such that the trial court finds that no manifest injustice has occurred.

4. Whether the 2018 amendment to RCW 10.82.090 requires that this Court remand the case to the Superior Court to remove language regarding interest accrual on legal financial obligations.

B. STATEMENT OF THE CASE.

The appellant, Harry K. Waymoth, III, was charged by way of a First Amended Information with two counts of rape of a child in the first degree, two counts of child molestation in the first degree, and one count of assault of a child in the third degree for his conduct involving child victim, A.R.E. CP 30-31. The State sought to introduce child hearsay statements pursuant to RCW 9A.44.120, and the trial court heard argument on that motion. CP 15-22; 2 RP 3-96.[1] The trial court found the statements made by A.R.E. reliable and admissible. 2 RP 95-96.

Following the child hearsay hearing, the parties discussed motions in limine with the trial court. 2 RP 96. During that portion of the hearing, Waymoth's defense counsel, Kevin Griffin, indicated an intent to call witnesses to testify regarding an alleged false accusation that A.R.E. had made against an individual identified as "Mr. Morrell." 2 RP 100. Specifically, defense counsel indicated that the witnesses would be called to testify that "Mr. Morrell was

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1 The State received four volumes of the Verbatim Report of Proceedings for this case. For the purposes of this brief they will be referred to as follows; 1 RP-Contains hearings from December 12, 2017, January 31, 2018, March 15, 2018, April 9, 2018, and August 1, 2018, reported by Ralph H. Beswick; 2 RP contains the Child Hearsay Hearing held on February 5, 2018, and the Change of Plea Hearing held on February 6, 2018, reported by Ralph H. Beswick; 3 RP Contains the hearing held on May 21, 2018, reported by Aurora Shackell; and 4 RP contains the Motion to Withdraw Plea Hearing and Sentencing Hearing held on August 13, 2018, reported by Sonya Wilcox.

visiting their home, was using the restroom, and the child came in and then came out and told people there that Mr. Morrell had exposed himself to her." 2 RP 100.

The prosecutor noted that the State objected pursuant to ER 404(b) and ER 608. 2 RP 102-103. The prosecutor noted that the defense could question A.R.E., but it would have to be during cross examination and extrinsic witnesses would be precluded under ER 608. 2 RP 101. The trial court noted that Washington courts have "held that rule 608 means what it says, that the defendant may cross-examine the complaining witness about the possibility of prior false complaints, but if the witness denies making false complaints, the inquiry is at an end." 2 RP 104. The trial court then stated, "at this point I'm not prepared to rule," and later indicated, "

> The law is the law here, and I'm not certain whether we're going to get to the point of that particular allegation, but I think at this point what would be appropriate is there will not be any mention of this incident involving Mr. Morrell's allegation that [A.R.E.] accused him of exposing himself to her unless you have a ruling from the court and any argument or mention of that would only occur outside the presence of the jury."

2 RP 104.

Following that hearing, Waymoth asked Mr. Griffin if he could look into whether or not a plea bargain was available. 4 RP

36, 57. Griffin spoke with the prosecutor that night and received a specific settlement offer that included dismissing Counts 1 and 2 in exchange for pleas to Counts 3, 4, and 5. 4 RP 57. The following morning, Griffin requested time to speak with his client regarding the new offer from the State. 2 RP 112. Waymoth indicated that he wished to accept the State's offer. 2 RP 114. The trial court reviewed a signed statement of defendant on plea of guilty and engaged in a lengthy colloquy with Waymoth regarding his intention to enter a plea. CP 36-47, 2 RP 116-132. During the colloquy, the trial court paused three times to allow Waymoth to confer with counsel. 2 RP 118, 121, 124. Ultimately, the Court found that Waymoth was "making a knowing, voluntary and intelligent decision to plead guilty." 2 RP 131.

Waymoth filed a motion to withdraw his guilty plea alleging ineffective assistance of counsel. CP 69-75. Following a hearing, at which Waymoth and Griffin testified, the trial court denied the motion to withdraw the guilty plea. 4 RP 86-87. The trial court noted that it was in "the unique position of being able to view the people before the Court." 4 RP 85. The trial court stated, "The claim that Mr. Griffin was ineffective in this case, I don't agree. Mr. Griffin, in the Court's view, was providing effective representation to

Mr. Waymoth." 4 RP 86. The trial court also noted that Waymoth "made a difficult decision when he decided to plead guilty," and "he took time, and he explained his reasons for pleading guilty in a very logical way." 4 RP 86.

Following the motion hearing, the trial court sentenced Waymoth to a total term of confinement of 96 months to life on counts 3 and 4, and 12 months on count 5. 4 RP 110-111, CP 96-97. This appeal follows. Additional facts are included as necessary in the argument section below.

C. ARGUMENT

1. Waymoth's trial counsel effectively assisted him in making a knowing, voluntary, and intelligent plea of guilty.

The Sixth Amendment right to effective assistance of counsel encompasses the plea process. In re Pers. Restraint of Riley, 122 Wn.2d 772, 780, 863 P.2d 554 (1993); McMann v. Richardson, 397 U.S. 759, 771, 90 C. Ct. 1441, 25 L. Ed. 2d 763 (1970). Counsel's faulty advice can render the defendant's guilty plea involuntary or unintelligent. Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 88 L. Ed.2d 203 (1985); McMann, 397 U.S. at 770-71. To establish the plea was involuntary or unintelligent because of counsel's inadequate advice, the defendant must satisfy the

familiar two-part Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2025, 80 L. Ed. 2d 674 (1984), test for ineffective assistance claims—first, objectively unreasonable performance, and second, prejudice to the defendant. Ordinary due process analysis does not apply. Hill, 474 U.S. at 56-58. (verbatim from State v. Sandoval, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011).

During plea bargaining, counsel must "'actually and substantially [assist] his client in deciding whether to plead guilty.'" State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (quoting State v. Cameron, 30 Wn. App. 229, 232, 633 P.2d 901 (1981)). Counsel's duty includes communicating actual offers, discussing tentative plea negotiations, and discussing the strengths and weaknesses of the defendant's case so that what to expect and makes an informed decision on whether to plead guilty. State v. James, 48 Wn. App. 353, 362, 739 P.2d 1161 (1987).

A. Waymoth fails to demonstrate deficient performance of counsel.

Waymoth's argument centers on advice that his attorney gave him regarding whether or not he would be able to introduce extrinsic evidence regarding a prior incident where A.R.E. allegedly walked into the bathroom and accused an individual, Mr. Morrell, of

showing her his genitals. RP 101. It is highly unlikely that this evidence would have been presented to the jury if Waymoth had not entered a plea of guilty.

Pursuant to Evidence Rule (ER) 608(b), "specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility...may not be proven by extrinsic evidence." In the discretion of the Court, such incidents may, "if probative of truthfulness or untruthfulness," be inquired into on cross examination of the witness. ER 608(b). In his brief, Waymoth agrees, the specific past conduct of the witness, probative of the witness' credibility, may only be proved by questioning during examination of the witness and not by any extrinsic evidence. Brief of Appellant, at 21; State v. Simonson, 82 Wn.App. 226, 234, 917 P.2d 599 (1996). The cross-examiner must "take the answer" of the witness and may not call a second witness to contradict the first as to whether the credibility-impeaching incident occurred. State v. Barnes, 146 Wn.App. 28, 37, 204 P.3d 230 (2008).

The proffered testimony was also likely inadmissible pursuant to ER 404(b). Evidence of a false allegation "asks the jury to make the improper inference that because the complaining

witness lied before, she must also be lying now." State v. Lee, 188 Wn.2d 473, 493-494, 396 P.3d 316 (2017). This type of propensity evidence is typically disfavored pursuant to ER 404(b). Id. at 490.

The information regarding the alleged false allegation in this particular case demonstrates that the proposed evidence would have had minimal relevance at best. The specific allegation against Mr. Morrell was that he was using the restroom, A.R.E. came in and then exited and told people the Morrell had "exposed himself to her." RP 100. The facts relied upon for Waymoth's plea, which would have been presented at trial, involved oral-vaginal and oral-penile contact, and a vibrator. RP 44-47, 62, 65, 66-67, CP 44, Supp CP __.

In Lee, the State Supreme Court noted that the false allegation that the defense sought to present "had minimal probative value because it did not relate to an issue in the case. Rather than demonstrate a specific bias or motive to lie, which would be highly probative, the evidence invited the jury to infer" that the victim "was lying because she lied in the past." Id. at 488. Here, the evidence would have been even less probative. Evidence that a child walked into the bathroom and saw male genitalia is very different than allegations of oral sexual intercourse

and vibrators. Even if true, the proffered evidence would not have provided a motive for A.R.E. to lie about Waymoth's conduct, nor would it demonstrate a specific bias against Waymoth. While Waymoth argues in his brief that the evidence could have been admitted to demonstrate a motive to lie or an intent to fabricate, there is no basis in the record for such a conclusion. The record makes it clear that the intent of the evidence would have been to ask the jury to make an impermissible propensity inference.

Before the trial court admits evidence of other bad acts, those acts must be "(1) identify the purpose for which the evidence is sought to be introduced, (2) determine whether the evidence is relevant to prove an element of the crime charged and (3) weigh the probative value of the evidence against its prejudicial effect." State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). Additionally, the party offering the evidence has the burden of proving by a preponderance of the evidence that the misconduct actually occurred. Id. Given the minimal relevance to the crimes charged, Waymoth likely could not have succeeded in admitting the proposed testimony pursuant to ER 404(b). Certainly on the record before this Court, it cannot be said that advice from trial counsel indicating that the evidence was unlikely to be admitted was outside

the range of competence required of attorneys representing criminal defendants.

Waymoth's argument that the evidence could have been admitted pursuant to ER 607 is likewise without merit. ER 607 reads, "The credibility of a witness may be attacked by any party, including the party calling the witness." This rule is not an end around to ER 608, and like ER 608, would generally allow questioning of A.R.E. regarding the prior alleged allegations, not the introduction of extrinsic evidence.

During the discussion of ER 608 with the trial court, the prosecutor clearly indicated that A.R.E. had said, "I don't know who you're talking about," when she had been interviewed regarding the alleged prior allegation a week before trial. 2 RP 103. ER 607 would not magically open the door to extrinsic witnesses on the issue if she responded that way during trial. A witness cannot generally be contradicted on a collateral matter, and extrinsic evidence that does not directly contradict a witness' statement is not per se admissible under ER 607. State v. Perez-Valdez, 172 Wn.2d 808, 817, 265 P.3d 853 (2011). Moreover, if contradictory evidence is hearsay, or otherwise objectionable under some other rule, it should be excluded. Jacqueline's Wash. V. Mercantile

Stores Co., 80 Wn.2d 784, 789, 498 P.2d 870 (1972); State v. Hubbard, 103 Wn.2d 570, 575-576, 693 P.2d 718 (1985).

When Waymoth's trial counsel, Mr. Griffin, informed Waymoth that there was a real possibility that the trial court was not going to allow the witnesses provide extrinsic evidence of alleged false allegations, he did exactly what a trial attorney is supposed to do. 4 RP 54. As Griffin noted, the defense "would have presented an argument that the Court was incorrect," and argued that "it wasn't absolutely a mandatory bar to" admissibility; however, the rules of evidence "certainly created a major obstacle." 4 RP 54. Nothing in that advice was incorrect. The rules of evidence likely would have excluded the proposed evidence.

At Waymoth's direction, Griffin reached out to the State to see what options were available and obtained a plea bargain that resulted in the two most serious charges being dismissed. RP 8/13/18) 57, 60. While Waymoth was frustrated with the risk involved, he made a fully informed and strategic decision to take the offer rather than risking that he would be convicted of the greater charges. 4 RP 58, 121, 124-132.

Mr. Waymoth's counsel clearly and accurately discussed the strengths and weaknesses of the defense case with Waymoth. Mr.

Griffin negotiated a more favorable resolution for Waymoth and explained the risk of going to trial and the potential that the trial court could exclude extrinsic evidence of alleged false allegations. With full knowledge, and accurate information, Waymoth elected to accept the State's offer rather than take the risks associated with trial. Mr. Griffin did exactly what is expected of defense counsel; his performance was not deficient.

B. Waymoth cannot demonstrate prejudice where the record indicates that he chose to enter his plea, knowing that the trial court had not made a definitive ruling on the issue of whether extrinsic witnesses would be allowed to testify.

For the reasons stated above, the record does not demonstrate deficient performance of counsel; however, even if Waymoth could somehow demonstrate that his counsel's performance was deficient, he cannot show prejudice on this record.

Prejudice occurs when but for the deficient performance, the outcome would have been different. In re Pers. Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1996). The appellant the burden of showing prejudice, meaning that "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." State v.

McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251, 1256 (1995). "When a challenge to a guilty plea is based on a claim of ineffective assistance of counsel, the prejudice prong is analyzed in terms of whether counsel's performance affected the plea process." Hill v. Lockhart, 474 U.S. 52, 59, 88 L.Ed. 203, 106 S.Ct. 366 (1985); State v. Garcia, 57 Wn.App. 927, 932-933, 791 P.2d 244 (1990); *review denied*, 115 Wn.2d 1010 (1990). In other words, "the defendant must satisfy the court that there is a reasonable probability that, but for counsel's deficient performance, he or she would not have pleaded guilty and would have insisted on going to trial." Garcia, 57 Wn.App. at 922; Hill, 474 U.S. at 59.

The trial court stopped the change of plea hearing to make it clear that the court had not made a definitive ruling on whether or not Waymoth's proposed witnesses would be allowed to testify. 2 RP 118. Mr. Griffin testified that, "we still had all the opportunities of impeachment. We had a lack of physical evidence. We had my client's testimony. It could have been compelling." 4 RP 56. Griffin also indicated that had the matter proceeded to trial, the defense "would have presented an argument that either the Court was incorrect, which of course I think would have been our position, but

it wasn't absolutely a mandatory bar to this, but it certainly created a major obstacle." 4 RP 54.

The record indicates that Waymoth was aware that the defense still had avenues that could be pursued, even the prosecutor acknowledged that the defense would have the opportunity to cross examine A.R.E., but Waymoth elected to enter a plea anyway. 2 RP 101; 4 RP 57; 2 RP 131. A bare allegation that an appellant would not have pleaded guilty if they had known all of the consequences of the please is not sufficient to establish prejudice. In re Pers. Restraint of Riley, 122 Wn.2d 772, 782, 863 P.2d 554 (1993). Here, Waymoth's bare allegation that he would not have entered his plea if Mr. Griffin had discussed additional rules of evidence with him is insufficient to demonstrate prejudice. This is especially true when all of the facts that Waymoth was aware of at the time of his plea are considered, including the fact that the State acknowledged that ER 608 would allow cross examination of A.R.E. on the issue, that Griffin had discussed other impeachment opportunities with Waymoth, and that the trial court had informed him that no ruling had occurred on the issue. With all of the information, Waymoth elected to accept the offer. It is

unlikely that further explanation of the rules of evidence would have changed his mind.

2. Waymoth's plea was knowingly, voluntarily and intelligently entered.

When a defendant completes a written plea statement, acknowledges that he has read and understood it, and that the contents are true, the plea is presumed to be voluntary. State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). When the defendant tells the judge that he is pleading voluntarily, the presumption that he did is "well nigh irrefutable." Id. at 262.

Before Waymoth entered his change of plea, the trial court gave him time to speak with his attorney regarding it. 2 RP 113-114. Waymoth signed a statement of defendant on plea of guilty which was handed up to the Court. 2 RP 115; CP 36-47. In that document, Waymoth clearly indicated, "I make this plea freely and voluntarily. No one has threatened harm of any kind to me or to any other person to make me make this plea." CP 43, 44.

When Waymoth indicated that his questions had been answered, "For the most part," the trial court paused and inquired further to make sure that Waymoth was fully aware of the ramifications of pleading guilty. 2 RP 118. The trial court

acknowledged that pleading guilty can be "stressful" and allowed more time for Waymoth to talk with his attorney. 2 RP 117-118.

Following that conversation, Waymoth stated, "Being what me and my attorney had discussed, this being the best option in light of having our evidence denied for trial." 2 RP 118. The trial court again stopped its colloquy and informed Waymoth that the trial court had not made a ruling denying the defense any evidence. 2 RP 118. His attorney then explained that they had discussed the ways that the rules of evidence operate which "could permit the court to prohibit the introduction of prior false allegations of sexual nature." 2 RP 119. The trial court further explained that it had not made a definitive ruling and advised that Waymoth would have the opportunity to argue the issue further if he elected to continue with trial. 2 RP 120.

The trial court then asked Waymoth:

> "...it sounds like based on the conversations you've had with Mr. Griffin (defense counsel) you feel in terms of weighing the possible positive outcomes versus the possible negative outcomes of going to trial, you're choosing this path of pleading guilty to take advantage of having only those counts - - dealing with only those counts as opposed to the also the possibility of counts one and two."

2 RP 121. Waymoth's response was "yeah." 2 RP 121. Immediately thereafter, the trial court stated:

> "I have an independent inquiry that I need to make sure that you're doing this knowingly, voluntarily and intelligently. Because if you don't want to do this, we will simply proceed with the trial. We have a jury that's been called. They're here."

2 RP 121-122.

When Waymoth answered indicating that he would like to prove his innocence, and that he felt that he "may not be allowed to have [his] testimonial evidence," the trial court again stated, "you can simply just have the trial," and gave Waymoth additional time to speak with his attorney. 2 RP 123-124. Following the additional discussion with his attorney, Waymoth indicated that his intent was to plead guilty. 2 RP 124. Waymoth indicated that he had sufficient time to get all of his questions answered, understood the constitutional rights that he was giving up, and understood the standard range of confinement and community custody. 2 RP 125-126. Waymoth further acknowledged that nobody had made any threats to get him to enter the agreement or promises not contained in the agreement. 2 RP 131. It is clear from the record that Waymoth weighed his options, was aware that the trial court had not ruled on the evidentiary issue that had been raised, and

knowingly, voluntarily and intelligently elected to enter a plea rather than risk the possible alternative consequences.

Waymoth now argues that he was under pressure during the negotiation process. There will always be stress involved in the decision of whether or not a plea of guilty is appropriate. *See*, Commonwealth v. Williams, 71 Mass.App. Ct. 348, 354-355, 881 N.E. 2d 1148 (2008)(Emotional and physical distress of pleading guilty does not negate the voluntariness of the plea). The trial court acknowledged that the decision whether or not to plead guilty is stressful. 2 RP 117-118. When the trial court inquires orally of the defendant and satisfies itself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is nearly irrefutable. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1128 (1996).

Waymoth cites to State v. Frederick, 100 Wn.2d 550, 556, 674 P.2d 136 (1983), *overruled on other grounds*, Thompson v. Department of Licensing, 138 Wn.2d 783, 794 (982 P.2d 601 (1999), to argue the external pressures can make a plea involuntary. However, the external pressure argued in Frederick was evidence that a co-defendant had threatened to kill the defendant if he did not enter a guilty plea. Id. at 553. Here,

Waymoth's attorney properly advised him of the State's offer, the trial court gave Waymoth several opportunities to discuss the offer with his attorney, and his attorney discussed the positives and negatives of entering a plea, without coercion. 4 RP 59. Waymoth's attorney, recommended that "he resolve the case," but tried "desperately not to push [Waymoth] too hard." RP 8/13/18 59. Based on the totality of the circumstances, the plea was knowingly, voluntary and intelligently entered.

3. The trial court did not abuse its discretion when it denied Waymoth's motion to withdraw his plea of guilty.

A trial court's denial of a defense motion to withdraw a guilty plea is reviewed for abuse of discretion. State v. Zhao, 157 Wn.2d 188, 197, 137 P.3d 835 (2006). A motion to withdraw a guilty plea, made prior to sentencing is governed by CrR 4.2(f), which reads:

> The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

The State bears the burden of proving the validity of the guilty plea, but the defendant bears the burden of proving manifest injustice. "'[M]anifest injustice' is defined as 'an injustice that is obvious, directly observable, overt, not obscure.'" State v. Knotek, 136 Wn. App. 412 423, 149 P.3d 676 (2006), (cites omitted). Referring to CrR 4.2(f), Washington courts have said that "There are four possible indicia of 'manifest injustice': (1) the denial of effective counsel, (2) the plea was not ratified by the defendant or one authorized by him to do so, (3) the plea was involuntary, or (4) the plea agreement was not kept by the prosecution." State v. McCollum, 88 Wn. App. 977, 981, 947 P.2d 1235 (1997) (citing to State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974)); State v. Quy Dinh Nguyen, 179 Wn.App.271, 282, 319 P.3d 53 (2013); review denied, 181 Wn.2d 1006, 332 P.3d 985 (2014).

Waymoth argued that he was denied effective assistance of counsel and that his plea was involuntary. For the reasons detailed in the sections above, he has failed to demonstrate a manifest injustice. The trial court did not abuse its discretion when it denied Waymoth's motion to withdraw his plea of guilty.

3. Amendments to RCW 10.82.090 that took place in 2018 are self-explanatory and do not require an order modifying the judgment and sentence.

Waymoth asks this Court to strike language regarding interest accrual from the judgment and sentence. The specific language references RCW 10.82.090. CP 199. Because RCW 10.82.090 now requires that interest not accrue on non-restitution legal financial obligations, by operation of law, no interest is accruing on Waymoth's non-restitution financial obligations following the effective date of the amendment, June 7, 2018. RCW 10.82.090(1). The interest rate set by the statute referenced in the judgment and sentence is zero. There is no need to amend the judgment and sentence as RCW 10.82.090 adequately directs that interest no accrue on non-restitution legal financial obligations.

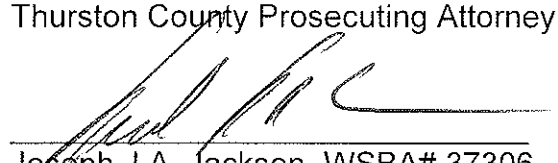
D. CONCLUSION.

The trial court did not abuse its discretion when it denied Waymoth's motion to withdraw his guilty plea. Waymoth failed to demonstrate both the deficient performance prong and the prejudice prong of the Strickland test. The record reveals that Waymoth was provide effective assistance of counsel during the plea negotiation process and made a knowing, voluntary, and intelligent decision to enter his plea of guilty. The 2018 amendment to RCW 10.82.090 does not require that this Court remand this

matter to the Superior Court because by its plain language, the statute dictates the procedure for dealing with interest accrual on legal financial obligations both before and after the enactment date of the amendment. The State respectfully requests that this Court affirm Waymoth's convictions, and all terms of his judgment and sentence.

Respectfully submitted this 23rd day of May, 2019.

JON TUNHEIM
Thurston County Prosecuting Attorney



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CERTIFICATE OF SERVICE

I certify that I served a copy of the BRIEF OF RESPONDENT on the date below as follows:

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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 24th day of MAY, 2019, at Olympia, Washington.

Cynthia Wright

CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

May 24, 2019 - 9:15 AM

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