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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

COLEMAN JOSEPH NEESER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge Timothy L. Ashcraft

No. 16-1-02502-3

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the lower court properly deny defendant's motion to withdraw his knowing and voluntary guilty plea where defendant was given a valid Information outlining the elements of the charge against him, he affirmed in writing that his attorney adequately informed him of those elements, and he affirmed verbally that he was adequately informed of the elements? (Appellant's Assignments of Error 1-2).
2. Should this Court remand for the lower court to strike the Criminal Filing Fee and interest accrual provision? (Appellant's Assignments of Error 3).

B. STATEMENT OF THE CASE.

1. PROCEDURE

On June 20, 2016, the Pierce County Prosecuting Attorney charged Coleman Joseph Neeser ("defendant") by Information with Assault in the Second Degree while armed with a shotgun in violation of RCW 9A.36.021, invoking RCW 9.94A.530. CP 3-4. On that same day, the court ordered defendant to undergo a competency evaluation in the Pierce County Jail.

CP 5-10. Based on that evaluation, the court committed defendant to Western State Hospital for competency restoration. CP 21-23.

Over the next year, defendant underwent several evaluations and attempts to restore his competency. CP 5-10, 11-20, 21-23, 25-26, 27-37, 38-46, 47-52, 53-59, 60-62, 63-75, 76-80, 81-82, 83-84, 85-94, 149-50, 151-53. Defendant was eventually deemed competent to stand trial on May 10, 2017. CP 83-84. On June 21, 2017, the defendant entered an *Alford*¹ plea of guilty as charged in Pierce County Superior Court before the Honorable Judge Timothy L. Ashcraft. 06-21-18 RP 1-4; CP 103. In response to that plea, the State recommended sentencing be set over. CP 98. If defendant maintained law abiding behavior, was involved in no similar incidents, and complied with treatment in the community, the State agreed to allow defendant to withdraw his plea and plead guilty instead to Assault in the Second Degree without the sentencing enhancement. 06-21-17 RP 2-3; CP 98.

The court engaged in a full colloquy with defendant. 06-21-17 RP 3-10. Defendant affirmed that he reviewed the Statement of Defendant on

¹ See generally, *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (“An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime”); accord *State v. Newton*, 87 Wn.2d 363, 372, 552 P.2d 682 (1976).

Plea of Guilty² with his attorney, that his attorney answered all his questions, and that he did not need more time to review it or ask additional questions. 06-21-17 RP 4-5. When the court asked, "Are you aware of the elements of that charge that the State would have to prove beyond a reasonable doubt at trial?" Defendant replied, "Yes, sir." *Id.* at 5. The court also explained that the standard range sentence was "three to nine months plus the 36 months firearms enhancement, [and] community custody of 18 months with a maximum term of ten years and a fine of \$20,000." *Id.* Defendant confirmed he understood this and that he may be subject to the any sentence in that range if he violated the terms of the plea. *Id.* at 5-6. Finally, defendant stated he understood his rights to a full and fair trial and that he was giving those up by pleading guilty. *Id.* at 6-8.

The court also received the full, written Statement of Defendant. CP 95-104. On the first page, under the heading "I Have Been Informed and Fully Understand That" is the following:

(b) I am charged with the crime(s) of: Assault 2 - FASE
as set out in the Original Information, dated, 6/20/16, a copy of which I hereby
acknowledge previously receiving and reviewing with my lawyer. x [Signature]
(Defendant's initials)

The elements of this crime these crimes
are as set out in the Original Information, dated 6/20/16 a copy of which I hereby
acknowledge previously receiving and reviewing with my lawyer. x [Signature]
(Defendant's initials)

² Hereinafter, "Statement of Defendant."

CP 95. The above referenced Original Information charges defendant with Assault in the Second Degree, alleging he:

did unlawfully and feloniously, under circumstances not amounting to assault in the first degree: (a) intentionally assaults another and thereby recklessly inflict substantial bodily harm; (b) intentionally and unlawfully cause substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; (c) *assaults another with a deadly weapon*; (d) with intent to inflict bodily harm, administer to or cause to be taken by another, poison or any other destructive or noxious substance; (e) with intent to commit a felony, assaults another; (f) knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or (g) assault another by strangulation or suffocation...

CP 3 (emphasis added). Based on the Statement of Defendant and defendant's representations during the colloquy, the court found the plea was "knowing, voluntary, and intelligent, with an understanding of the nature of the charge and the consequences of the plea." 06-21-17 RP 9-10. Therefore, the court accepted the plea. *Id.* at 10.

Defendant did not abide by the terms of that plea. 10-12-18 RP 9. On September 21, 2017, defendant was ordered to appear for sentencing on November 15, 2017. CP 167. Sentencing was continued until January 30, 2018, and defendant then requested, and was granted, the appointment of an independent expert to assess his competency. CP 168-70. Defendant failed to appear on January 30, 2018, and the court issued a Bench Warrant for his arrest. CP 171. Defendant then commenced a cycle of quashing

bench warrants, getting a new hearing, and then failing to appear at that hearing. From January to August of 2018, defendant failed to appear for a court-ordered hearing four times, each resulting in a bench warrant. 11-09-18 RP 19; CP 171-74. This only stopped when defendant was held in custody without bail. CP 175-76.

Defendant began to contest his plea on September 28, 2018. 09-28-17 RP 4. Though that hearing served only as a grant of continuance giving his newly appointed counsel time to review the matter, defendant alleged he did not have “proper representation,” “they went past [his] sentencing date,” and he “was past the point of [his] plea.” *Id.* at 2-4. On October 12, 2018, defense counsel stated defendant was “pursuing a motion to withdraw plea based on misrepresentation by current and former DAC counsel.” 10-12-18 RP 3. Defense counsel requested set-over to file that motion and a timely sentencing motion. *Id.* at 4-5. Defendant then appeared *pro se* to verbally request new defense counsel. *Id.* at 7-8, 11-13. The court denied defendant’s verbal motion. *Id.* at 14.

On November 9, 2018, a hearing was held on defendant’s motion to withdraw his plea in front of Judge Ashcraft. 11-09-18 RP 1-2. The State entered the Plea Worksheet, the Statement of Defendant, and the transcript of the colloquy into evidence. *Id.* at 16-17; CP (Exhibits 1-3). Defendant testified. 11-09-18 RP 8-16. His testimony was largely incomprehensible

but focused on his confusion of the degrees of assault under Washington law and his displeasure with being subject to competency proceedings. *Id.* at 9-10.³ Defendant did not clearly state that his attorney was ineffective or misleading nor did he meaningfully supplement the record with information otherwise calling the plea process into question. *See generally, Id.* at 8-16. In fact, at one point defendant testified that “if nothing else happened,⁴ *then the plea was fine.*” 11-09-18 RP 11 (emphasis added).

The court found no issues of concern with the plea colloquy between the court and defendant. *Id.* at 18. Thus, the court denied the motion to withdraw the plea, finding it was “knowing, voluntary, and intelligent.” *Id.* at 18-19. The court then proceeded to sentencing. *Id.* at 19. It imposed three months for Assault in the Second Degree and 36 months for the firearm sentencing enhancement, totaling 39 months in confinement, and waived nonmandatory Legal Financial Obligations (LFOs). CP 132; 11-09-18 RP 25.

³ In the cited section of testimony, defendant claims the degree of assault of was not specified in the information. This is incorrect. *See* CP 3 (charging defendant with “the crime of ASSAULT IN THE SECOND DEGREE”) (emphasis original).

⁴ Though unclear, this appears to refer to the competency issues and other charges defendant was dealing with at the time. 11-09-18 RP 11-12.

2. FACTS

On June 19, 2016, Ralph Carroll was inside his home when heard defendant yelling from Carroll's driveway. CP 1, 113. Carroll went outside and approached defendant, asking "What the fuck are doing in my driveway?" CP 1. Carroll approached, unaware defendant – who was standing behind a car – was holding a shotgun at waist level. *Id.* When Carroll was about three feet from defendant, defendant leveled the shotgun at Carroll as if he was going to shoot Carroll. *Id.* Defendant started yelling, "Who is in the motorhome?" *Id.* Carroll told defendant he was calling the police to come arrest defendant. *Id.* When defendant continued ranting and asking Carroll about who was in Carroll's garage, Carroll called the police. *Id.* Defendant then returned home. *Id.*

Carroll stated this is not the first time defendant has threatened to kill Carroll's family. *Id.* Carroll told police that law enforcement had been called several times when defendant threatened to kill others or discharged his gun. *Id.* Carroll's brother confirmed some of the events and captured some of the events – including defendant walking away while holding a shotgun – on video which he showed deputies. *Id.* Deputies arrived at defendant's mobile home to find it riddled with shotgun holes. CP 2. Deputies secured a shotgun left outside the home on a hot tub cover and noticed spent shotgun shells littering the ground. *Id.* Both the door and

every window of the home appeared shot out from the inside. *Id.* Defendant initially refused to exit the home. *Id.*

After about an hour of negotiations between defendant and law enforcement, defendant exited on his own. *Id.* Defendant claimed he heard calls for help from his neighbor's house and went to investigate with his allegedly unloaded shotgun. CP 2; 11-09-18 RP 9, 23, 25. He claimed he pointed the gun but not at Carroll and only when Carroll ran towards him. CP 2; 11-09-18 RP 3. Defendant told deputies his family are "Eberkenzzzer demonized wolf," that "God talks through me," and asked, "Angels why are they doing this?" CP 2.

C. ARGUMENT.

1. APPELLATE COURTS WILL ONLY OVERTURN A LOWER COURT'S DENIAL OF A MOTION TO WITHDRAW A PLEA WHERE THE LOWER COURT'S ABUSE OF DISCRETION HAS RESULTED IN MANIFEST INJUSTICE, WHICH IS NOT PRESENT HERE.

The enforcement of valid plea agreements is of profound public importance. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008) (citations omitted). To be valid, a guilty plea must be made intelligently, voluntarily, and with full knowledge of its consequences when viewed in the totality of the circumstances. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996) (citing *Wood v. Morris*, 87 Wn.2d 501, 505-6, 554 P.2d

1032 (1976)). Courts may allow the withdrawal of plea only when it appears necessary to correct a manifest injustice. CrR 4.2(f); *accord Codiga*, 162 Wn.2d at 922–23.

“A manifest injustice exists where (1) the plea was not ratified by the defendant; (2) the plea was not voluntary; (3) counsel was ineffective; or (4) the plea agreement was not kept.” *State v. DeClue*, 157 Wn. App. 787, 792, 239 P.3d 377 (2010) (citing *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192, 199 (2001), *abrogated on other grounds by State v. Sisouvanh*, 175 Wn.2d 607, 290 P.3d 942 (2012)). Defendant bears the burden of meeting this demanding standard by proving that he suffered a manifest injustice that was “obvious, directly observable, overt, [and] not obscure.” *In re Personal Restraint of Clements*, 125 Wn. App. 634, 640, 106 P.3d 244 (2005). This burden is demanding because “ample safeguards exist to protect the defendant's rights before the trial court accepts the plea.” *DeClue*, 157 Wn. App. at 792 (citing *State v. Taylor*, 83 Wn.2d 594, 597, 521 P.2d 699 (1974)).

Defendant argues that a claim that a plea was not made voluntarily and intelligently is reviewed de novo, citing *State v. Harris*, 4 Wn. App. 2d. 506, 422 P.3d 482 (2018). Appellant’s Brief at 6. However, to reach that holding *Harris* relied on *State v. Bradshaw*, 152 Wn.2d 528, 531, 98 P.3d 1190 (2004), which stands for only the general proposition that

constitutional issues are reviewed de novo. Neither *Harris* nor *Bradshaw* analyzed why reviewing whether a plea is made voluntarily and intelligently should be treated as a constitutional issue that is reviewed de novo, despite precedent indicating otherwise. *Harris*, 4 Wn. App. 2d. at 513; *Bradshaw*, 152 Wn.2d at 531. In fact, *Bradshaw* does not even involve a plea. *Bradshaw*, 152 Wn.2d at 531.

On the other hand, in *Marshall*, 144 Wn.2d at 280, the Washington Supreme Court clearly stated: “We will not reverse a trial court's order on a defense motion to withdraw guilty plea absent abuse of discretion.” *Marshall*, 144 Wn.2d at 280 (citing *State v. Olmsted*, 70 Wn.2d 116, 422 P.2d 312 (1966)). *Marshall* is part of a 75-year history of uninterrupted precedent stating the same. See *DeClue*, 157 Wn. App. at 791; *Olmsted*, 70 Wn.2d at 118; *State v. Rose*, 42 Wn.2d 509, 517–18, 256 P.2d 493 (1953); *State v. Hensley*, 20 Wn.2d 95, 101, 145 P.2d 1014 (1944) (citations omitted).

The doctrine of precedent, known as *stare decisis*, gives much needed to stability to court made-law but is not an absolute impediment to change. *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108, 1110 (2016) (citation omitted); STARE DECISIS, Black's Law Dictionary (10th ed. 2014). However, the truth remains that “[w]ithout the stabilizing effect of this doctrine, law could become subject to incautious action or the whims

of current holders of judicial office.” *In re Stranger Creek & Tributaries in Stevens Cty.*, 77 Wn.2d 649, 653, 466 P.2d 508, 511 (1970). Accordingly, this Court should “not overturn an established rule unless the party challenging it makes a clear showing that the rule is incorrect and harmful.” *Grisby v. Herzog*, 190 Wn. App. 786, 808, 362 P.3d 763 (2015). No such showing has been made here, and it is not evident that this Court considered any such showing in *Harris*, 4 Wn. App. 2d. at 513. Therefore, this Court should use the abuse of discretion standard to review defendant’s claim, declining to follow its previous departure from our Supreme Court’s precedent.

“A trial court abuses its discretion when it bases its decision on untenable grounds or reasons.” *State v. Pugh*, 153 Wn. App. 569, 576, 222 P.3d 821 (2009). Here, the trial court did not abuse its discretion in denying defendant’s motion to withdraw his knowing and voluntary guilty plea where he was informed of the essential elements of the charge against by a valid information, he reviewed and signed the Statement of Defendant, and the court engaged in a full colloquy with him.

- a. Defendant's access to the information charging him with Assault in the Second Degree, his signature on the Statement of Defendant on Plea of Guilty, and his colloquy with the court create a well-nigh irrefutable presumption that his guilty plea was voluntary.

Defendant attacks the validity of his plea in just one way, that he did not understand the nature of the charges against him.⁵ App.Br. at 4. Understanding the nature of the charges is a requirement found within voluntariness. *State v. Holsworth*, 93 Wn.2d 148, 155–56, 607 P.2d 845, 849 (1980) (citations omitted) (a plea cannot be voluntary, and thus satisfy the requirements of due process, without real notice of the nature of the charge). To understand the nature of the offense, defendant must be aware of the acts – and requisite state of mind those acts must be performed in – which constitute a crime. *Id.* at 153 n.3. “Apprising the defendant of the nature of the offense need not always require a description of every element of the offense.” *Id.* (citations and quotation marks omitted). Possession of an adequate information, if evidenced by the record, can be sufficient notice of the nature of the offense. *In re Personal Restraint of Montoya*, 109 Wn.2d 270, 278–79, 744 P.2d 340 (1987).

⁵ Defendant makes no explicit allegations in his opening brief that the plea was not ratified, his counsel was ineffective, or that the State breached the terms of the agreement and rightfully so, such contentions would be unsupported by the record. Courts of appeals should not “consider contentions unsupported by argument or citation to authority.” *State v. Mills*, 80 Wn. App. 231, 234, 907 P.2d 316 (1995); *see also*, *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

“An information which notifies a defendant of the nature of the crime to which he pleads guilty creates a presumption that the plea was knowing, voluntary and intelligent.” *In re Personal Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993). Additionally, “[w]hen a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary.” *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998) (citations omitted); *see also, Branch*, 129 Wn.2d at 642 (“defendant's signature on a plea statement is strong evidence of a plea's voluntariness”). “When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.” *State v. Perez*, 33 Wn. App. 258, 262, 654 P.2d 708 (1982).

Defendant relies heavily on *State v. S.M.*, 100 Wn. App. 401, 996 P.2d 1111 (2000), which is not at all similar to this case. S.M. did not meet with his appointed counsel until immediately before his plea hearing. *Id.* at 403. S.M. signed the plea statement in a meeting with his mother, a school counselor, and his attorney's legal-assistant wife. *Id.* S.M.'s attorney never discussed the substance of his plea, only the procedure of making it. *Id.* This Court found the legal assistant's advice both deficient and prejudicial. *Id.* at 411-12 (where the legal assistant misrepresented the burden of proof,

failed to inform S.M. that refusing to testify could not be held against him, she not read S.M. the plea form, she did not ensure S.M. read the plea form, and she did not accurately represent the chance S.M. would have to register as a sex offender). It is unsurprising that this Court found a simple “yes” insufficient proof that S.M.’s plea was knowing and voluntary in the light of the wholesale lack of any assistance from his attorney. However, this is not the case here.

At the plea hearing the defense attorney opened by stating that he reviewed with defendant “the elements of that charge contained in the Original Information.” 06-21-17 RP 2. Defendant provided additional information in writing via the Statement of Defendant, confirming that he reviewed the elements of Assault in the Second Degree as laid out in the Information. CP 95 (showing defendant’s initials on the relevant lines). The Statement of Defendant later reads “I plead guilty to count(s) I as charged in the Original Information dated 6/20/16. I have received a copy of that Information and reviewed it with my lawyer.” CP 103. Additionally, defendant signed at the end of the Statement of Defendant affirming, in relevant part, “My lawyer has explained to me, and we have fully discussed, all of the above paragraphs ... I understand and acknowledge them all. I have been given a copy of this ‘Statement of Defendant on Plea of Guilty.’ I have no further questions to ask the judge.” CP 103. Finally, the defense

attorney signed the Statement affirming the following, "I have read and discussed this statement with the defendant. I believe the defendant is competent and fully understands the statement." CP 104.

In addition to review of the Information and the written record, the Court engaged in a full colloquy with the defendant. This colloquy includes, in relevant part, the following exchange:

THE COURT: I have a Statement of Defendant on Plea of Guilty in front of me. It is ten pages long. Have you reviewed this document?

THE DEFENDANT: Yes, I have.

THE COURT: Have you reviewed this document with your attorney?

THE DEFENDANT: Yes, I have.

THE COURT: Has your attorney answered all of your questions about this document?

THE DEFENDANT: Yes, he has.

THE COURT: Do you have any further questions about this document?

THE DEFENDANT: No, sir.

THE COURT: Do you wish any additional time to go through this document with your attorney?

THE DEFENDANT: No, sir.

THE COURT: According to the Original Information and the Statement of Defendant on Plea of Guilty, you are charged with one count of Assault 2 with a firearms enhancement. Is this your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: Are you aware of the elements of that charge that the State would have to prove beyond a reasonable doubt at trial?

THE DEFENDANT: Yes, sir.

06-21-17 RP 4-5. This is similar to *Matter of Keene*, 95 Wn.2d 203, 206-7, 622 P.2d 360 (1980), where Keene told the lower court he read the plea statement and that its contents were true. The Washington Supreme Court held, “He will not now be heard to deny these facts.” *Id.* at 207. The record, including the Information laying out the elements, the written Statement of Defendant, and the verbal colloquy; give rise to a strong presumption that the plea was made knowingly and voluntarily. Defendant has not overcome this presumption.

- b. This Court should affirm the proper denial of defendant's motion to withdraw his knowing and voluntary guilty plea where he expresses no evidence to refute the presumed voluntariness of his plea, instead merely expressing disbelief that the State considers his previous assaultive behavior of spitting on someone less serious than pointing a shotgun at his neighbor.

Defendant bases his attack on the “clear” confusion he expressed at the withdrawal hearing about whether he had to touch the victim to be convicted of Assault in the Second Degree. App.Br. at 9. Two things are worth noting in response to defendant's claim. First, defendant only challenged his plea after he violated its terms and faced a sentence of up to 45 months confinement. 09-28-17 RP 4; CP 167 (defendant first ordered to sentencing for violating September 21, 2017, first contested his plea on the record on September 28, 2018). Second, even if defendant was – as he claims – truly confused about whether the State had to prove physical contact to convict him of Assault in the Second Degree, it would have been entirely inconsequential to his understanding of the charge against him.

An individual may commit Assault in the Second Degree by pointing a deadly weapon at another “with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.” RCW

9A.36.021(1)(c); WPIC 35.19, 35.50; *see also*, *State v. Johnson*, 29 Wn. App. 807, 816, 631 P.2d 413 (1981) (“second degree assault is committed when, within shooting distance, one points a loaded gun at another”). It is a well settled proposition that weapon need not be actually loaded, “[a]pparent power to do bodily harm with the weapon is the only prerequisite.” *State v. Thompson*, 13 Wn. App. 1, 3, 533 P.2d 395, 397 (1975).

To the extent that defendant argues confusion over this requirement, when he pled guilty he could have believed either that the state must – or must not – prove physical contact. The belief that the State must prove physical contact would have been a mistaken belief. *See supra*. If defendant believed at the time of the plea that the State did *not* have to prove physical contact, then he was correct and there is no issue on appeal. If he mistakenly believed that the State *did* have to prove physical contact, he is essentially arguing that he made his *Alford* plea because he thought the state could prove beyond a reasonable doubt that he assaulted Carroll by physically touching him. However, he now wants to withdraw his plea upon the realization that the State actually has to prove much less. Such an argument is absurd on its face.

It is the uncontested law, and unquestionably a lower standard of proof, that the State need not prove actual physical contact to satisfy the

elements of Assault in the Second Degree. *State v. Osborne*, 102 Wn.2d 87, 684 P.2d 683, 688 (1984), is instructive. There, the court found that even though the defendants were not advised of the knowledge element of the charge against them, they sufficiently understood the nature of the charges where the trier of fact could easily find that element. *Osborne*, 102 Wn.2d at 93–95.

Here, defendant's argument has similarly little practical effect. Defendant was properly aware of the nature of the charge against him, specifically that he was charged with Assault in the Second Degree for pointing a shotgun at his neighbor. In fact, defendant readily admits he did just that – claiming it was justified. 11-09-18 RP 9. Defendant does not appear to argue in his opening brief that his attorney did not review the details of the plea and all relevant documents with him or that he did not actually believe that the State could convict him of Assault in the Second Degree based on the record. *See generally*, App.Br. In fact, defendant has provided no affirmative evidence that he did not understand the nature of the charge against him. He argues only that the Information, the Statement of Defendant, and the colloquy – which case law states together give rise to a well-nigh irrefutable presumption of voluntariness – are insufficient proof that he entered his plea voluntarily.

Defendant essentially asks that he be allowed to withdraw his plea because the State has not proven physical contact with the victim. This is not an element of Assault 2. *Johnson*, 29 Wn. App. at 816; *Thompson*, 13 Wn. App. at 3. Regardless of what defendant was told or believed, his admitted actions would satisfy either identified standard. Any confusion he has is entirely inconsequential and certainly does not rise to the level of obvious, manifest injustice.

2. THIS COURT SHOULD REMAND THIS CASE,
SO THE LOWER COURT MAY STRIKE THE
CRIMINAL FILING FEE AND INTEREST
ACCRUAL PROVISION.

At sentencing, the court imposed a \$500 Crime Victim Assessment, a \$100 DNA Database Fee, and a \$200 Criminal Filing Fee. CP 129. The court waived all non-mandatory legal financial obligations.⁶ 11-9-18 RP 25. The \$500 Crime Victim Assessment is a nonrestitution financial obligation. CP 129-30. The court also ordered that all obligations “bear interest from the date of the judgment until payment in full[.]” CP 130. The defendant’s direct appeal is still pending.

⁶ Though the court did not explicitly find defendant indigent at sentencing, this finding has the same effect. Additionally, the court found the defendant indigent for the purposes of appeal shortly after sentencing. CP 145-46.

House Bill 1783, effective March 27, 2018, amended RCW 10.82.090 to provide that, “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” House Bill 1783 also prohibits the imposition of the \$200 Criminal Filing Fee. As the court held in *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that House Bill 1783 prevents the imposition of the Criminal Filing Fee on indigent defendants and eliminates any interest accrual on nonrestitution legal financial obligations. Because the defendant is indigent, the Criminal Filing Fee and interest accrual provision should be stricken.

D. CONCLUSION.

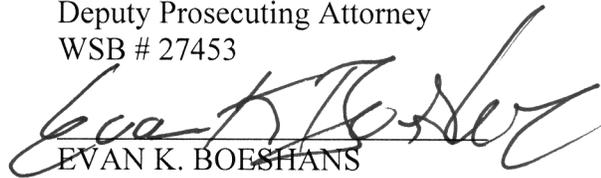
The State respectfully requests this Court affirm the lower court’s proper decision denying defendant’s motion to withdraw his plea, holding that defendant has not shown obvious, manifest injustice. Additionally, this

Court should remand for the lower court to strike the Criminal Filing Fee and interest accrual provision.

DATED: May 29, 2019

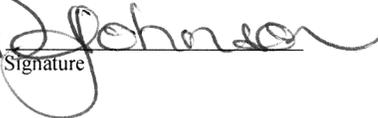
MARY E. ROBNETT
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WSB # 27453


EVAN K. BOESHANS
Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by *efile* U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5/29/19 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

May 29, 2019 - 1:28 PM

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