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Court of Appeals
Division II
State of Washington
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NO. 54480-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

TIMOTHY ALLEN FARWELL, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.18-1-00631-7

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (564) 397-2261

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **After Farwell was properly informed of both his standard sentence range and the statutory maximum, he entered his guilty plea knowingly, voluntarily, and intelligently.**
- II. **The State concedes that the sentencing court impermissibly imposed discretionary costs on Farwell after finding him indigent and ordering that only mandatory costs would be imposed.**

STATEMENT OF THE CASE

Timothy Allen Farwell was originally charged by information with Assault in the Second Degree against Kristen Scrivines and Interference with Reporting of Domestic Violence for an incident occurring on or about March 1, 2018. CP 5-6. Each count also contained the special allegation of domestic violence. CP 5-6. The State amended the information twice to charge counts of bail jumping after Farwell missed two court appearances. CP 7-10. Eventually the parties reached an agreement in which Farwell would plead guilty to amended charges of Assault in the Third Degree and Attempted Bail Jumping. CP 11-12, 24-26.

As part of the plea process, Farwell submitted a Statement of Defendant on Plea of Guilty modeled after the State form and pursuant to CrR 4.2(g). CP 13-23. That form listed the counts to which he was

pleading and the standard sentence range, term of community custody, and maximum term and fine for each count. CP 14. The parties appeared in court on December 6, 2019 for Farwell's guilty plea and sentencing. RP 3-7 (12/6/19). As part of the plea colloquy, the court reiterated Farwell's standard sentence range and the maximum term for each of the crimes to which he was pleading guilty. RP 3-7 (12/6/19). The court then accepted Farwell's guilty plea and sentenced him to a standard range sentence of 60 days confinement. RP 7-8, 10, 15 (12/6/19); CP 39-48.

Farwell filed a timely notice of appeal. CP 51. He now argues that his guilty plea was not entered knowingly, intelligently, and voluntarily because the court advised him of what the statutory maximum term was for each of the crimes to which he pleaded guilty. Brief of Appellant at 2, 4-11.

ARGUMENT

I. After Farwell was properly informed of both his standard sentence range and the statutory maximum, he entered his guilty plea knowingly, voluntarily, and intelligently.

Due process "requires that a defendant's guilty plea be knowing, voluntary, and intelligent." *State v. Weyrich*, 163 Wn.2d 554, 556, 182 P.3d 965 (2008) (citation omitted). Generally, a plea may be considered involuntary when a defendant is misinformed about a direct consequence

of his or her guilty plea. *In re Stockwell*, 179 Wn.2d 588, 594, 316 P.3d 1007 (2014) (citing *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006)). For example, “[a] defendant must be informed of *the statutory maximum* for a charged crime, as this is a direct consequence of his guilty plea.” *Weyrich*, 163 Wn.2d at 557 (emphasis added); *Stockwell*, 179 Wn.2d at 596; *State v. Kennar*, 135 Wn.App. 68, 73-76, 143 P.3d 326 (2006); *In re Matthews*, 128 Wn.App. 267, 272-73, 115 P.3d 1043 (2005).

A defendant must also be informed of the standard sentence range for the charged crimes. *Kennar*, 135 Wn.App. at 74-75; CrR 4.2. Accordingly, a defendant must be informed of both his standard sentence range and the statutory maximum term for the crimes to which he or she is pleading guilty in order to enter the plea knowingly, voluntarily, and intelligently.

Here, Farwell relies on *Blakely v. Washington* and *State v. Knotek*, for the proposition that the “maximum term” about which Farwell was supposed to be informed was the standard sentence range and not the statutory maximum term and that the court, by informing him that the “maximum term” for his crime was the statutory maximum, misadvised Farwell about the direct consequences of his plea. 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); 136 Wn.App. 412, 425, 149 P.3d 676 (2006); Br. of App. at 6-11. In making this argument, Farwell

completely ignores the cases since *Knotek* that have directly rejected its holding. *See* Br. of App.

Kennar, for instance, analyzed and rejected the exact argument that Farwell makes by looking to our Supreme Court's adoption of CrR 4.2 and the associated guilty plea form and concluding that the "Court's intent was clear: a defendant should be informed of *both* the applicable standard sentence range and the statutory maximum sentence established by the legislature for the charged offense." 135 Wn.App. at 74-75 (emphasis added). *Kennar* also surveyed "prior appellate decisions concerning direct consequences of guilty pleas" and determined that "[b]oth the statutory maximum sentence determined by the legislature and the applicable standard sentence range have been declared to be direct consequences of a guilty plea about which a defendant must be informed in order to satisfy due process requirements." *Id.* (internal citations omitted). Finally, as *Kennar* concisely noted in rejecting *Knotek*'s reliance on *Blakely*: "*Blakely* is a sentencing case, not a plea entry case." *Id.* at 75.

In *Weyrich*, our Supreme Court reached the same conclusion explicitly holding that "[a] defendant must be informed of the *statutory maximum* for a charged crime, as this is a direct consequence of his guilty plea." 163 Wn.2d at 557 (emphasis added) (citing CrR 4.2(g)). More recently, in 2014, our Supreme Court in *Stockwell* reiterated this holding,

stating that “[a] guilty plea may be considered involuntary when it is based on misinformation regarding a direct consequence of the plea, *which includes the statutory maximum*. 179 Wn.2d at 594-96 (emphasis added) (citation omitted). And our Courts of Appeals, including this Court, have repeatedly rejected arguments like Farwell’s that rely on *Buckley* or *Knotek* to claim misadvisement when the defendant was informed of the statutory maximum term for the crimes to which he or she pleaded. *State v. Tricomo*, 193 Wn.App. 1037, 2016 WL 2347041 (2016); *State v. Denatale*, 4 Wn.App.2d 1005, 2018 WL 2716937 (2018)¹; *State v. Drammeh*, 2 Wn.App.2d 1003, 2018 WL 417989 (2018); *State v. Eltown-Ibrahim*, 11 Wn.App.2d 1025, 2019 WL 6134361 (2019); *State v. Elliott*, 9 Wn.App.2d 1084, 2019 WL 3554927 (2019); *State v. Land*, 4 Wn.App.2d 1084, 2018 WL 3996897 (2018).²

Consequently, this Court should reject Farwell’s argument otherwise and hold that his guilty plea was made knowingly, voluntarily, and intelligently. Farwell’s convictions and sentence should be affirmed.

¹ This Court’s opinions in *Tricomo* and *Denatale* are unpublished. Pursuant to GR 14.1, those opinions “may be accorded such persuasive value as the court deems appropriate.”

² *Drammeh*, *Eltown-Ibrahim*, *Elliott*, and *Land* are all unpublished opinions. Pursuant to GR 14.1, those opinions “may be accorded such persuasive value as the court deems appropriate.”

II. The State concedes that the sentencing court impermissibly imposed discretionary costs on Farwell after finding him indigent and ordering that only mandatory costs would be imposed.

Here, the trial court indicated an intention to strike all discretionary fines and fees and found Farwell indigent. RP 15 (12/6/19); CP 30, 41-43.³ Nonetheless, the judgment and sentence included two discretionary legal financial obligations: the supervision fee and the \$100 domestic violence assessment. *See State v. Smith*, 9 Wn.App.2d 122, 127-28, 442 P.3d 265 (2019). Because the trial court intended to strike all non-mandatory fines and fees, this Court should remand to strike the supervision fee and the domestic violence assessment.

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³ In the State’s view the judge found Farwell indigent and checked the appropriate boxes, but the elongated strokes appear to have led Farwell to believe that the “trial judge crossed out this section.” Br. of App. at 13.

CONCLUSION

For the reasons above, Farwell's conviction and sentence should be affirmed, but the case should be remanded to strike the non-mandatory LFOs.

DATED this 16th day of September, 2020.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:



AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

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