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Division III  
State of Washington  
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No. 37143-3-III

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

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STATE OF WASHINGTON, Respondent

v.

MARTINIANO CAMACHO, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF BENTON COUNTY  
THE HONORABLE JUDGE JOSEPH M. BURROWES

---

BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

- A. Mr. Camacho's conviction was entered in violation of his Sixth Amendment right and Wash. Const. art. I, § 21 right to a jury trial.
- B. Mr. Camacho did not knowingly, voluntarily, and intelligently waive his constitutional right to a jury trial.
- C. The trial court abused its discretion when it did not consider Mr. Camacho's request for an exceptional downward sentence.

ISSUE 1: The state and federal constitutions require that an accused person be provided with a jury trial unless he knowingly, intelligently, and voluntarily waives that right. Did the trial court violate Mr. Camacho's right to a jury trial when it acted as the fact finder and there was no evidence he knowingly, and intelligently waived his right?

ISSUE 2: Following Mr. Camacho's request for an exceptional downward sentence, did the trial court abuse its discretion by refusing to consider his mental health issues or the failed self-defense claim?

## II. STATEMENT OF FACTS

On July 31, 2019, Benton County prosecutors charged Martiniano Camacho by amended information with one count of second-degree

assault with notice of a deadly weapon allegation and enhancement. CP 17-18.

At his first appearance, Mr. Camacho asked for a lower bail as he was impecunious and “on mental health” SSI. 8/1/19 RP 8, 10. He told the court he was on a mental health treatment regimen. 8/1/19 RP 11.

At the September 4, 2019 hearing Mr. Camacho told the court he wanted to represent himself. 9/4/19 RP 3. The court continued the matter. 9/4/19 RP 15-16.

At the September 18, 2019 hearing Mr. Camacho reaffirmed he wanted to represent himself. 9/18/19 RP 15. He reported “I took a test already. And I passed it with flying colors. The guy that came in to evaluate me to see that I know what was going on in the courtroom - - he was like, “Wow, you fly - - you passed this with flying colors...”<sup>1</sup> 9/18/19 RP 15. He requested a court appointed standby counsel, but not his assigned attorney. 9/18/19 RP 15-16.

In response to the court colloquy for self-representation, Mr. Camacho said the maximum penalty was 220 months. The court corrected him it was 120 months. 9/18/19 RP 17, 19. Mr. Camacho reported he took

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<sup>1</sup> There is no evidence in the court record that Mr. Camacho underwent a competency evaluation for this matter. However, there was a brief discussion at arraignment that he had not missed his court dates in Franklin County, and it possible the evaluation was for a matter in the district court. 8/1/19 RP 11.

medications for attention deficient disorder. 9/18/19 RP 21. When asked if he had other mental health diagnoses, Mr. Camacho responded that he could not speak to that, but offered to provide his doctor's name. 9/18/19 RP 22. The court made no further inquiry about his mental health.

The court granted the motion and appointed defense counsel to serve as standby counsel. 9/18/19 RP 23-24. Mr. Camacho also moved for a bench trial. RP 27. The court directed him to use the proper form, to ensure that a person "is properly advised of their rights with regards to making that [jury trial waiver] choice." RP 28.

The following week, Mr. Camacho told the court he had neglected to bring the waiver with him. 9/25/19 RP 9. The court did not conduct an advisement of rights colloquy with Mr. Camacho. See 9/18/19 and 9/25/19 *generally*. The matter proceeded to a bench trial without further discussion of a waiver of jury trial rights, or a filed written waiver. See 9/30/19 *generally*.

#### Substantive Facts

Anthony Matthews testified he and some friends stopped at the Maverick store about 1 a.m. on July 27, 2019. While in the parking lot Matthews heard people nearby yelling and arguing in the street. 9/30/19 RP 11.

Matthews saw Mr. Camacho talking to himself as he walked by him on his way to the store. RP 11, 13. He turned his back to Mr. Camacho, and then realized Mr. Camacho had come up behind him and was yelling. RP 14. He could not understand what Mr. Camacho was saying but told him to back up. RP 14. He initially testified that Mr. Camacho said, "Don't touch me I'm going to kill you", but later admitted he told the police that Mr. Camacho said, "Don't put your fucking hands on me." 9/30/19 RP 14-15, 37. He saw Mr. Camacho had a knife in his hand. 9/30/19 RP 14-15. After he told Mr. Camacho to calm down, Mr. Camacho chased him with the knife, making swinging motions. RP 15. Matthews' friend, Jamell Goree, tackled Mr. Camacho and held him down until the police arrived. 9/30/19 RP 54-55.

Officers observed Mr. Camacho's presentation and speculated he might be under the influence of methamphetamine. 9/30/19 RP 90-91. Mr. Camacho later confirmed he had used methamphetamines that day. 9/30/19 RP 104.

Mr. Camacho testified as he was walking by the men in the parking lot, he heard them say, "Fuck this nigger. Fuck this nigger, man. Let's fuck this nigger up." 9/30/19 RP 97. He walked back to them and asked why they cussed at him. He said Matthews made gestures, and Mr. Camacho told him to get his hands off of him. Mr. Camacho testified he

pulled his knife because he was afraid, and believed he had to defend himself. 9/30/19 RP 98, 109.

The trial court entered written findings of fact and concluded the State proved beyond a reasonable doubt that Mr. Camacho committed second degree assault and was armed with a deadly weapon other than a firearm. CP 42-44.

Before sentencing, in a letter dated October 7, 2019, Mr. Camacho asked the court to consider a “diminished capacity resolution”. He detailed his mental health diagnosis of post-traumatic stress disorder, paranoid schizophrenia, and bipolar disorder. He named his physician, and mental health counselor, and two of the medications he used to manage his mental illnesses. CP 29.

At the sentencing hearing the court acknowledged it had received two letters from Mr. Camacho. Finding they were ex parte communication the court filed the letters but stated it would take no action on them. 10/18/19 RP 33. CP 29.

Mr. Camacho asked the court to “sentence me under diminished capacity, if it’s okay, because I am on mental health. I was doing mental health on the streets. They got me on medication right now. I’m taking them twice. One of them is Zyprexa. Yeah. And the other one is Zyminthol [phonetic].” 10/18/19 RP 39. He also told the court “Just

asking, Your Honor, that you take consideration that, you know, I don't go out looking for trouble. You know? I was worried that night...I was walking, and I heard these people in those two cars talking, you know... And then, when the – that guy was trying to grab my hand, that's when I pulled the knife out and I said, 'man if you guys don't leave me alone, I'll be forced to defend myself. Leave me alone.' He was trying to grab my arm..." 10/18/19 RP 42. He also asked the court to consider he believed he was forced to defend himself. 10/18/19 RP 41.

In pronouncing sentence, the court said,

I am very grateful -- I will use your words -that " no one got stabbed." I'm also grateful that it isn't but for some folks intervening that this event could have been a lot worse. And it has no mitigating factors that I can see by you, sir.

10/18/19 RP 43.

The court imposed a 96-month sentence, which included the 12-month enhancement for the deadly weapon. CP 35. The court ordered chemical dependency treatment because it believed Mr. Camacho had an "addiction problem" and to undergo an evaluation for treatment for substance abuse disorder and mental health as a condition of his community custody. 10/18/19 RP 42-43; CP 36. Mr. Camacho makes this timely appeal. CP 46-47.

### III. ARGUMENT

#### A. The Oral Waiver Of Trial By Jury Was Insufficient Because The Waiver Of The Constitutional Right Was Not Made Knowingly Or Intelligently.

Every criminal defendant is guaranteed the right to a jury trial under both the state and federal constitutions. U.S. Const. Amend. VI; art. I, § 21. The Washington State constitution does not explicitly provide for waiver of a jury trial in a criminal matter<sup>2</sup>. However, case law and the criminal rules of evidence support a waiver of the right in a criminal trial. *City of Bellevue v. Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984); CrR 6.1(a).

A challenge that the jury trial right was not waived is a manifest constitutional error that can be raised for the first time on appeal. RAP 1.5(a)(3); *State v. Hos*, 154 Wn. App. 238, 250, 225 P.3d 389 (2010).

It is well established that constitutional rights are subject to waiver by an accused. *State v. Forza*, 70 Wn.2d 69, 71, 422 P.2d 475 (1966). Waiver of a fundamental right is only valid where it was done knowingly, intelligently, and voluntarily. *State v. Bugai*, 30 Wn. App. 156, 157, 632 P.2d 917 (1981). The burden to establish a valid waiver lies with

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<sup>2</sup> The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for *waiving of the jury in civil cases* where the consent of the parties interested is given thereto. Art. I, § 21.

the State, not the defendant. *State v. Wicke*, 91 Wn.2d 638, 645, 591 P.2d 452 (1979). The validity of the waiver is reviewed de novo and the reviewing court must indulge every reasonable presumption against a waiver of the right to a jury trial. *State v. Ramirez–Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007); *Acrey*, 103 Wn.2d at 207.

To establish validity, a jury trial waiver must either be written per CrR 6.1(a) or an oral waiver on the record. *State v. Treat*, 109 Wn. App. 419, 428, 35 P.3d 1192 (2001).

1. The Record Does Not Contain A Written Signed Waiver That Apprised Mr. Camacho Of His Jury Trial Rights.

Mr. Camacho told Judge Swanberg he wanted a bench trial. 9/18/19 RP 27-28. The record indicates Mr. Camacho prepared a handwritten note as the court said, “I think we have a specific form, Mr. Camacho, that we use for purposes of *making sure that a person is properly advised of their rights with regards to making that choice.*” 9/18/19 RP 17, 28.

The following week, Judge Mitchell asked, “Is there a waiver of jury trial in this case?” Mr. Camacho said, “Yes, your Honor. I want a bench trial. I have the paper with waiver of jury trial in my room. I’m sorry I didn’t bring it here today, but yes, I want a bench trial. I do not want a jury trial.” 9/25/19 RP 9. There is nothing in the record establishing

the “waiver” that Mr. Camacho left in his jail cell was anything more than the handwritten note he had penned a week earlier.

CrR 6.1(a) places the duty of obtaining a written waiver of jury trial on the trial judge<sup>3</sup>. A written waiver requirement is not constitutionally mandated but serves as a procedural safeguard. *Wicke*, 91 Wn.2d at 642. However, “[t]o meet constitutional muster, the record must affirmatively show that the defendant knew of the right to a trial jury and personally and expressly waived it.” *State v. Brand*, 55 Wn. App. 780, 785, 780 P.2d 894 (1989). The *Brand* Court stated, “To date, no Washington case has required *more than a written waiver*.” *Id.*

The failure to comply with the written waiver requirement when raised on appeal for the first time, does not automatically require reversal. *Wicke*, 91 Wn.2d. at 644. However, in this case, because there is no written waiver in the court file the record, there is no demonstration that Mr. Camacho was afforded the procedural safeguard of an *informed* decision to waive a jury. Where there is a written waiver, a colloquy between the defendant and the trial judge is not constitutionally required. *State v. Downs*, 36 Wn. App. 143, 145, 672 P.2d 416 (1983). But, a knowing, intelligent waiver cannot be presumed where there is no written

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<sup>3</sup> CrR 6.1(a): Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial and has consent of the court.

waiver. Without more, the waiver cannot be held to have been knowing, and intelligent. *Id.*

The question before this Court is in the absence of a written waiver, whether the trial court was required to conduct a colloquy to determine whether Mr. Camacho’s oral assertion of waiver was knowing and intelligent. “The validity of *any waiver of a constitutional right*, as well as the *inquiry required by the court to establish the waiver*, will depend on the circumstances of each case, including the defendant’s experience and capabilities.” *State v. Stegall*, 124 Wn.2d 719, 881 P.2d 979 (1994) (citing to *Johnson v. Zerbst* 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed.1461, 146 A.L.R. (1938) (emphasis added)).

In cases where the court file does not contain a written waiver the reviewing Courts consistently look for a colloquy between trial judge and defendant. The Courts have wanted confirmation the defendant knew of his rights, understood those rights, and voluntarily waived them. *State v. Donahue*, 76 Wn. App. 695, 887 P.2d 485 (1995); *State v. Rangel*, 33 Wn. App. 774, 657 P.2d 809 (1983). The colloquy and affirmation were sufficient to constitute substantial compliance with CrR 6.1(a).

The *Rangel* Court noted that *Wicke* held that oral waivers fulfill the purpose of CrR 6.1(a) “by assuring that defendants who waive their right to a jury trial do so *expressly and with full knowledge* of the scope of that

right.” *Id.* at 776. The Court urged prosecutors and trial courts to demand literal compliance with the rule and have a written waiver available for the defendant’s signature.

The Court affirmed its insistence that jury waivers should be made in writing, but may be effective if they are made knowingly, voluntarily and intelligently in open court. *State v. Vasquez*, 109 Wn. App. 310, 321, 34 P.3d 1255 (2001). There, the trial court conducted a personal colloquy with the defendant, along the same lines as in *Rangel*. It found the defendant understood his rights, what a jury trial meant, and affirmed a discussion between attorney and client. The court consented to a bench trial after the defendant stated his preference to waive the jury trial.

In *Hos*, the defendant did not sign a written jury trial waiver. *Hos*, 154 Wn. App. at 252. The court did not question Hos on the record to determine whether she knowingly, intelligently, and voluntarily waived her right to a jury trial, or even whether she understood her rights and discussed them with her defense counsel. The Court reversed her conviction and remanded for a new trial.

Here, Judge Swanberg would not grant a bench trial absent a signed writing that Mr. Camacho had been advised of his rights, understood his rights, and could make a knowing, voluntary, and intelligent relinquishment of the right to a jury trial. Judge Mitchell, the

trial judge, simply asked, “Is there a waiver of jury trial in this case?” The trial judge did not conduct any colloquy to determine whether the relinquishment of the right was knowing or intelligent.

In the absence of a written waiver required under CrR 6.1, no consent by a trial judge after a determination the oral expression was made knowingly and intelligently, this matter must be reversed. The record is inadequate to demonstrate a valid waiver of the constitutional right to a jury trial. *See Wicke*, 91 Wn.2d at 645.

B. The Trial Court Abused Its Discretion When It Failed To Meaningfully Consider Mr. Camacho’s Request For An Exceptional Downward Sentence.

Every defendant is entitled to ask the trial court to consider an exceptional sentence and to have it actually considered. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). When judicial discretion is called for, the judge must exercise some sort of meaningful discretion. *State v. Grayson*, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005).

A trial court abuses its discretion when its decision is “manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.” *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

RCW 9.94A.535(1) authorizes the trial court to exercise its discretion to impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of

the evidence. The court may impose the exceptional sentence if it finds there are substantial and compelling reasons justifying it. The statutory factors are illustrative only and not intended to be exclusive reasons for exceptional sentences. *State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005).

Here, Mr. Camacho presented two mitigating factors for the court to consider: (1) the failed defense of self-defense, and (2) an impaired capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. RCW 9.94A.535(1)(c), (e).

1. The Trial Court's Failure To Meaningfully Consider The Failed Defense of Self Defense As A Mitigating Factor Was Based On An Untenable Reason.

A trial court's decision is made for untenable reasons if it is based on an incorrect standard, or the facts do not meet the requirements of the correct standard. *State v. Dye*, 178 Wn.2d 541, 554, 309 P.3d 1192 (2013). Here, the trial court's reason for not meaningfully considering the failed defense was not supported by the record.

Reasonable force, used in lawfully defending oneself, constitutes lawful self-defense and is a complete defense to the charge. *State v. Whitfield*, 99 Wn. App. 331, 337, 994 P.2d 222 (1999). A court is authorized to treat a failed defense of self-defense as a mitigating factor supporting an exceptional sentence below the standard range. *State v.*

*Jeannotte*, 133 Wn.2d 847, 848, 852, 947 P.2d 1192 (1997). In *State v. Hutsell*, 120 Wn.2d 913, 921, 845 P.2d 1325 (1993), the Supreme Court cited the discussion in D. Boerner, *Sentencing in Washington*, section 9–23 (1985):

The Guidelines contain a number of mitigating factors applicable in situations where circumstances exist which tend to establish defenses to criminal liability but fail. In all these situations, if the defense were established, the conduct would be justified or excused, and thus would not constitute a crime at all. *The inclusion of these factors as mitigating factors recognizes that there will be situations in which a particular legal defense is not fully established*, but where the circumstances that led to the crime, even though falling short of establishing a legal defense, justify distinguishing the conduct from that involved where those circumstances were not present. Allowing variations from the presumptive sentence range where factors exist which distinguish the blameworthiness of a particular defendant's conduct from that normally present in that crime is wholly consistent with the underlying principle. (emphasis added).

Mr. Camacho consistently claimed he heard the men say threatening things to and about him. Mr. Camacho did not pull out a knife until after Matthews made some type of arm motion. Because of what he believed he had already heard, Mr. Camacho reasonably believed he was about to be injured.

At the sentencing, the court acknowledged that no one got stabbed, and then said, “I’m also grateful that it isn’t but for some folks intervening that this event could have been a lot worse. And it has no mitigating

factors that I see by you sir.” 10/18/19 RP 43. Yet, the court itself made a finding that Mr. Camacho “dropped the knife in the parking lot during the middle of the assault.” CP 43<sup>4</sup>. In other words, even though he initially believed he had been threatened, Mr. Camacho stopped the assault of his own volition. He was not tackled until after he dropped the knife in the parking lot.

The matter must be remanded for consideration of the failed defense based on the record before the court and its own findings.

2. This Matter Must Be Remanded For The Trial Court To Meaningfully Consider Whether Mr. Camacho Met The Requirements of RCW 9.94A.535(1)(e).

The legislature is responsible for determining the legal punishments for criminal offenses. *State v. Ammons*, 105 Wn.2d 175, 180, 713 P.2d 719, 718 P.2d 796 (1986). Generally, a court must impose a sentence within the standard sentence range established by the SRA for the offense. *State v. Ha'mim*, 132 Wn.2d 834, 839, 940 P.2d 633 (1997) (citing former RCW 9.94A.120(1) (1993)).

RCW 9.94A.535(1)(e) provides a sentencing court with discretion to impose an exceptional sentence below the standard range if it finds that “[t]he defendant’s capacity to appreciate the wrongfulness of his or her

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<sup>4</sup> This Finding of Fact is labeled “e”, but there are two findings labeled “e” and it appears this finding should have been labeled “g”. CP 43.

conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired.” The statute precludes voluntary use of drugs or alcohol. RCW 9.94A.535(1)(e)<sup>5</sup>.

For the mitigation statute to apply, “[t]he record must show both the existence of the mental condition and the connection between the condition and significant impairment of the defendant’s ability to appreciate the wrongfulness of his conduct.” *State v. Hart*, 188 Wn. App. 453, 464, 353 P.3d 253 (2015).

Mr. Camacho wrote a letter to the court asking the court to consider his “diminished capacity”. The court declined to consider the letter. At the sentencing hearing, Mr. Camacho spoke about his mental illness diagnoses of post-traumatic stress disorder, and bipolar disorder. He named the medications necessary to manage his mental disorders, provided his physician’s name, and the community counseling agency he used as part of his treatment regimen.

The court did not address Mr. Camacho’s reasons for requesting an exceptional downward sentence based on mental illness. Neither did the court tell him that he could present expert opinion of his inability to

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<sup>5</sup> In its finding of fact, the court only alluded to the appearance of methamphetamine influence at the time of the incident. CP 43 (Finding of Fact ‘f’). The court did not make a finding that he was under the influence.

appreciate the wrongfulness of his acts through witness testimony, a medical report, or a psychological report.

When a trial court denies a defendant's request for an exceptional downward sentence, "review is limited to circumstances where the 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." *Garcia-Martinez*, 88 Wn. App. at 330. A "failure to exercise discretion is itself an abuse of discretion subject to reversal." *State v. O'Dell*, 183 Wn.2d 680, 697, 358 P.3d 359 (2015).

A trial court abuses its discretion when it gives *no reason* for its discretionary decision, as the reviewing Court cannot say it based its decision on tenable grounds or reasons. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009) (quoting *State v. Hampton*, 107 Wn.2d 403, 409, 728 P.2d 104 (1986)).

Here, the trial court abused its discretion because it gave no reason why it would not consider the mitigating factors. This matter must be remanded to the trial court, with instructions for an evidentiary hearing, at which Mr. Camacho may present evidence of his mental illness and the significant impairment it had on his ability to appreciate the wrongfulness of his conduct or to conform his conduct to the law.

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Camacho respectfully asks this Court to remand the matter to the superior court to allow Mr. Camacho to present expert testimony about his mental illness, and for the court to meaningfully consider imposing an exceptional downward sentence.

Respectfully submitted this 5<sup>th</sup> day of May 2020.



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## CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on May 5, 2020, I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to the following: Benton County Prosecuting Attorney at prosecuting@co.benton.wa.us and to Martiniano Camacho/DOC#752842, Stafford Creek Corrections, 191 Constantine Way, Aberdeen, WA 98520.

*Marie Trombley*

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**May 05, 2020 - 4:29 PM**

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