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STATE OF WASHINGTON

No. 25470-4-III

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

A.N.J., A Minor

Petitioner.

CORRECTED PETITION FOR DISCRETIONARY REVIEW

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¹ (Available at http://www.aclu-wa.org/library_files/Unfulfilled%20Promise%20of%20Gideon.pdf.)

² (Available at [http://seattletimes.nwsourc.com/news/local/unequaldefense/.](http://seattletimes.nwsourc.com/news/local/unequaldefense/))

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³ (Available at http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines.)

⁴ (Available at <http://www.defensenet.org/resources/WDAstand.htm>.)

⁵ (Available at <http://www.wsba.org/lawyers/groups/blueribbonreport.pdf>.)

A. Identity of Petitioner

A. N. J., a minor, respectfully petitions this Court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. Court of Appeals Decision

The petitioner requests review of the Court of Appeals' Unpublished Opinion filed January 8, 2008, denying his motion to withdraw his plea. A copy of the decision is in the Appendix at pages 1 through 17.

C. Issue Presented for Review

An attorney was appointed to represent A.N.J. under a public defense regime that has since been the subject of widespread and justifiable condemnation.⁶ As happened in many other unfortunate cases, A.N.J. pled guilty under this regime without the effective assistance of counsel. He does not seek an acquittal or declaration of his innocence from this Court, but only a withdrawal of his plea so that his case may be heard with the benefit of representation to which he is entitled under the Sixth Amendment of the U.S. Constitution.

⁶ Most notably two important reports and a investigative reporting series highlighted particular problems in Grant County which are also manifest in this case. See Washington State Bar Ass'n, *Report of the WSBA Blue Ribbon Panel on Criminal Defense*, at 9 (May 15, 2004); American Civil Liberties Union of Washington, *The Unfulfilled Promise of Gideon: Washington's Flawed System of Public Defense for the Poor*, *passim* (Mar. 2004); Ken Armstrong, et al., "An Unequal Defense: The Failed Promise of Justice for the Poor," *Seattle Times*, *passim* (Apr. 4-6, 2004). This is not a comment on the current state of public defense in Grant County.

D. Statement of the Case

Douglas Anderson, a former contract public defender for Grant County, pled his client A.N.J. guilty to First Degree Child Molestation after spending, by all accounts, a maximum of one hour and thirty minutes (1:30) on the case. In actuality, testimony at a later motion to withdraw the guilty plea revealed that it is more probable Mr. Anderson spent no more than fifty-five minutes (0:55).⁷ In either case, the amount of time is consistent with Mr. Anderson's caseload of 240 juvenile offender cases plus "a shade under 200" dependency and truancy cases.⁸

1. Chronology. The case against A.N.J. was filed on July 2, 2004.⁹ A.N.J. had his first court appearance on July 19, 2004. Mr. Anderson was not present for the preliminary appearance.¹⁰ Since Mr. Anderson was not present, arraignment was continued until August 2, 2004.

Between the first appearance and arraignment, Mr. Anderson met with A.N.J. and his father on one occasion.¹¹ According to A.N.J.'s father, this meeting lasted only five minutes.¹² Mr. Anderson did not disagree with this estimate. About the substance of this first meeting, Mr. Anderson

⁷ See the Appendix to this brief for citations to the record and supporting calculations.

⁸ (CP 148-149 [Transcript, Sept. 2, 2005, at 13:24-28, 14:1-4 & 25-27].) Of Mr. Anderson's dependency caseload, thirty (30) to forty (40) were what he described as "active" during any given month. (CP 92 [Transcript, Mar. 16, 2006, at 30:21].)

⁹ (CP 1.)

¹⁰ (CP 115 [Transcript, Mar. 16, 2006, at 53:18-24].) His notice of appearance was not filed until ten (10) days later, on July 29, 2004. (CP 2.)

¹¹ (CP 174 [Transcript, Sept. 2, 2005, at 39:18-21]; CP 116 [Transcript, Mar. 16, 2006, at 55:20-21].)

testified: “Initially, he [A.N.J.] was not agreeing with the information in the police reports.”¹³

Mr. Anderson was present at the arraignment on August 2, 2004. He appeared that day on behalf of numerous juvenile defendants. He met with A.N.J. and his parents in court before the arraignment. A.N.J.’s mother described this meeting as lasting “probably” ten minutes.¹⁴ A.N.J.’s father described it as “very short.”¹⁵ Mr. Anderson did not disagree with these estimates. About the substance of the pre-arraignment meeting, Mr. Anderson testified that he had not received any information from A.N.J. or his parents indicating that A.N.J. was, in fact, guilty of anything.¹⁶ To the contrary, Mr. Anderson acknowledged that the charges were a “shock” to A.N.J. and his parents.¹⁷

From the arraignment on August 2, 2004, through the pretrial conference on September 14, 2004, Mr. Anderson did not meet with or speak to A.N.J. There were several telephone calls initiated by A.N.J.’s father.¹⁸ These calls were required as a condition of A.N.J.’s release pending trial; he was ordered to maintain weekly contact with his attorney.¹⁹ Normally, Mr. Anderson was not in the office, so A.N.J.’s father would simply leave a

¹² (CP 119 [Transcript, Mar. 16, 2006, at 57:9].)

¹³ (CP 174 [Transcript, Sept. 2, 2005, at 39:7].)

¹⁴ (CP 193 [Transcript, Sept. 2, 2005, at 58:22].)

¹⁵ (CP 120 [Transcript, Mar. 16, 2006, at 58:2-3].)

¹⁶ (CP 175 [Transcript, Sept. 2, 2005, at 40:25-27].)

¹⁷ (CP 175 [Transcript, Sept. 2, 2005, at 40:16-18].)

¹⁸ (CP 176 [Transcript, Sept. 2, 2005, at 41:1-5].)

message for him.²⁰ At the pretrial conference on September 14, 2004, there is no indication of any substantive discussion between Mr. Anderson and A.N.J. or his parents.²¹

On September 15, 2004, Mr. Anderson received a plea bargain offer from the prosecutor.²² No plea had been sought or offered before that date.²³ The note describing the substance of the plea offer indicated that, if A.N.J. did not accept the plea, then it would be necessary for Mr. Anderson to request a continuance of the trial scheduled for a mere seven days later.²⁴

On September 17, 2004, Mr. Anderson met with A.N.J. and both of his parents. As for the substance of this meeting, Mr. Anderson initially testified that he spent “well over a half hour” explaining the Statement on Plea of Guilty.²⁵ He testified at length about each and every paragraph of the form that he ostensibly explained to A.N.J. and his parents.²⁶ However, he later admitted that this testimony was false, and that he did not even have the Statement on Plea of Guilty form at the September 17, 2004, meeting.²⁷

¹⁹ (CP 176 [Transcript, Sept. 2, 2005, at 41:7-12].)

²⁰ (CP 121 [Transcript, Mar. 16, 2006, at 59:4-5].)

²¹ (CP 75 [Transcript, Mar. 16, 2006, at 13:4-16].)

²² (CP 74 [Transcript, Mar. 16, 2006, at 12:15-28]; CP 82 [Transcript, Mar. 16, 2006, at 20:2-3].)

²³ (CP 75 [Transcript, Mar. 16, 2006, at 13:1-3].)

²⁴ (CP 74 [Transcript, Mar. 16, 2006, at 12:26-28].)

²⁵ (CP 176-177 [Transcript, Sept. 2, 2005, at 41:27-42:1].)

²⁶ (CP 178 [Transcript, Sept. 2, 2005, at 43: 5-10].)

²⁷ (CP 77 [Transcript, Mar. 16, 2006, at 15:1-10].)

On the previously scheduled trial date, September 22, 2004, A.N.J. and his parents saw the Statement on Plea of Guilty for the first time.²⁸ Mr. Anderson had a large “stack” of files, and there was a full room of people waiting to see him.²⁹ A.N.J. and his parents waited their turn, until Mr. Anderson called them in to meet with him.³⁰ He spent a total of five minutes talking to them.³¹ Mr. Anderson told A.N.J. to sign the Statement on Plea of Guilty and tell the judge that he had read it, even though A.N.J. had not read all of it in the short time available.³² The trial court judge accepted the plea after a brief colloquy.³³

2. Substance of September 17, 2004, meeting. Apart from the review of the plea agreement that Mr. Anderson admitted never happened at the September 17, 2004, meeting, Mr. Anderson testified: “I explained to them what the offer was now and at the end of that meeting, it was determined that he would take the deal.”³⁴ “Then I just briefly discussed with him the fact that he would be required to register as a sex offender and it was

²⁸ (CP 194-195 [Transcript, Sept. 2, 2005, at 59:11 & 60:14].)

²⁹ (CP 196 [Transcript, Sept. 2, 2005, at 61:11-23].)

³⁰ (CP 196 [Transcript, Sept. 2, 2005, at 61:24-25].)

³¹ (CP 197 [Transcript, Sept. 2, 2005, at 62:3].)

³² (CP 198-199 [Transcript, Sept. 2, 2005, at 63:27-64:5].) To read the statement on plea of guilty takes about one-half (1/2) of an hour. (CP 157 [Transcript, Sept. 2, 2005, at 22:3-13].) The longest and most complicated section pertains specifically to sex offenses. (CP 157 [Transcript, Sept. 2, 2005, at :22:20-23].)

³³ (CP 206-212.)

³⁴ (CP 75 [Transcript, Mar. 16, 2005, at 13:22-23].)

somewhere in that range that the question came up about having this matter removed from his record.”³⁵

The question was whether or not a guilty plea would eventually come off of A.N.J.’s record or be sealed. For her part, A.N.J.’s mother testified about asking the question:

I remember asking Mr. Anderson if he found out when it would be off his record, and he said he hadn’t had time to look into that. Because we had asked him before, when it would come off of [A.N.J.’s] record.³⁶

And then I said exactly, I remember, I said ‘when does this come off his record?’ I didn’t say ‘does it’ I said ‘when.’ Because he’s a minor and I don’t know the law, I’m no lawyer.³⁷

A.N.J.’s father confirmed this testimony:

My wife asked him [Mr. Anderson] when this would come off his [A.N.J.’s] records, and Mr. Anderson’s reply was, ‘I’m not sure. The laws change all the time. I’ll have to check into it and get back to you.’ And [A.N.J.’s mother] looked very relieved at that point.³⁸

Mr. Anderson’s response to the question was “the laws change all the time, I’ll have to look into it. It’s either 18 or 21.”³⁹

For his part, Mr. Anderson never denied the substance of this conversation. He confirmed telling A.N.J.’s parents that the charges could be

³⁵ (CP 178-179 [Transcript, Sept. 2, 2005, at 43:28-44:2].)

³⁶ (CP 197 [Transcript, Sept. 2, 2005, at 62:26-28].)

³⁷ (CP 198 [Transcript, Sept. 2, 2005, at 63:9-11].)

³⁸ (CP 122 [Transcript, Mar. 16, 2006, at 60:1-3; brackets added].)

³⁹ (CP 198 [Transcript, Sept. 2, 2005, at 63:12-13]; accord CP 122 [Transcript, Mar. 16, 2006, at 60:6-9; “this might come off his [A.N.J.’s] record between years 18 and 21”].)

“removed” from A.N.J.’s record between “18-21 years of age.”⁴⁰ He acknowledged that “did not know exactly what the law stated,” and that he needed to research the question further.⁴¹ He also conceded that he never provided the fruits of that research to A.N.J. or his parents because, as he testified, “honestly, it may have just slipped my mind.”⁴² He never informed A.N.J. or his parents that First Degree Child Molestation does not come off of a child’s record and is not subject to sealing.⁴³

When A.N.J.’s parents learned a short time later that their son’s guilty plea would *not* come off of his record and could *not* be sealed, they immediately sought the assistance of counsel to file a motion to withdraw the guilty plea.⁴⁴ If it had not been for the misinformation received from Mr. Anderson, A.N.J.’s parents “would have never had him plead guilty.”⁴⁵

3. Summary of representation by Mr. Anderson.⁴⁶ Throughout his representation of A.N.J., Mr. Anderson never met with A.N.J. alone. He never discussed the need for a confidential relationship or the attorney-client privilege.⁴⁷ Instead, he always met with A.N.J. in the presence of his parents.

⁴⁰ (CP 35; Exhibit 2 [¶ 9].)

⁴¹ (CP 35; Exhibit 2 [¶ 9].)

⁴² (CP 179 [Transcript, Sept. 2, 2005, at 44:12-19].)

⁴³ (CP 198 [Transcript, Sept. 2, 2005, at 63:14-16].)

⁴⁴ (Transcript, Sept. 2, 2005, at 74:10-15.)

⁴⁵ (CP 198 [Transcript, Sept. 2, 2005, at 63:18]; *accord* CP 124 [Transcript, Mar. 16, 2006, at 62:3-4].)

⁴⁶ Mr. Anderson’s departures from professional standards of care and ethics, along with others, are described in detail in Exhibit 13 and CP 48-62. The Amended Declaration of John A. Strait was submitted in lieu of direct testimony by stipulation, and he was then subject to cross-examination. (CP 96 [Transcript, Mar. 16, 2006, at 34:16-17].)

⁴⁷ (CP 118 [Transcript, Mar. 16, 2006, at 56:19-24].)

Mr. Anderson expended almost no discernible effort on A.N.J.'s behalf. He filed no motions.⁴⁸ He made no request for discovery.⁴⁹ He filed no pleadings or documents at all other than his initial notice of appearance.⁵⁰

Mr. Anderson did not interview the alleged victim, the alleged victim's parents, the investigating officers, or any other witnesses in the case.⁵¹ He received the names of two witnesses to contact who would testify that the alleged victim in this case was actually abused by another person rather than A.N.J.⁵² Mr. Anderson says that he tried to contact the witnesses by making a telephone call, but he concedes that he "was unsuccessful."⁵³ He does not recall whether he even left a message.⁵⁴

Mr. Anderson did not consider hiring an investigator to interview witnesses or otherwise assist him in his representation of A.N.J.⁵⁵ The ability to hire investigators under Mr. Anderson's contract with Grant County is limited by what Mr. Anderson himself can afford.⁵⁶ All fees for investigative

⁴⁸ (CP 160 [Transcript, Sept. 2, 2005, at 25:4-5].)

⁴⁹ (CP 177 [Transcript, Sept. 2, 2005, at 42:17-20].)

⁵⁰ (CP 160 [Transcript, Sept. 2, 2005, at 25:6-9].)

⁵¹ (CP 151 [Transcript, Sept. 2, 2005, at 16:11-27]; CP 158 [Transcript, Sept. 2, 2005, at 23:4-19].)

⁵² (CP 151-154 [Sept. 2, 2005, at 16:18-19:3]; CP 195 [Transcript, Sept. 2, 2005, at 60:15-22].)

⁵³ (CP 151 [Sept. 2, 2005, at 16:27].)

⁵⁴ (CP 153 [Sept. 2, 2005, at 24-28].)

⁵⁵ (CP 154 [Sept. 2, 2005, at 19:4-15].)

⁵⁶ (CP 154 [Transcript, Sept. 2, 2005, at 19:18-19].)

services come off the top of his cut-rate, fixed-price contract.⁵⁷ Investigators' fees and expenses come directly "out of [his own] pocket."⁵⁸

In a moment of candor, Mr. Anderson admitted that this financial reality creates a disincentive for him to hire investigators.⁵⁹ The strength of the disincentive is revealed by the fact that Mr. Anderson did not hire a single investigator for any one of his 240 juvenile offense cases in 2004.⁶⁰ Reverting to a more defensive posture, Mr. Anderson then denied that there was a need to investigate any of those cases.⁶¹ However, when asked whether he would have hired an investigator in A.N.J.'s case, given sufficient funds, he answered "I'm not sure if I would nor not I can't say for certain, unfortunately."⁶²

Likewise, Mr. Anderson did not hire any expert witnesses. He acknowledged that there is substantial research and literature about risk of false reporting of sex abuse by child victims, but he never consulted with an expert about false reporting in this case or any other child sex abuse case.⁶³ The need for expert assistance was all the more urgent in this case because of the unreliable nature of the child victim interviews conducted by police.⁶⁴ As

⁵⁷ (Exhibit 8.)

⁵⁸ (CP 154 [Transcript, Sept. 2, 2005, at 19:22-24].)

⁵⁹ (CP 154 [Transcript, Sept. 2, 2005, at 19:25-27].)

⁶⁰ (CP 154-155 [Transcript, Sept. 2, 2005, at 19:28-20:10]; CP 80 [Transcript, Mar. 16, 2006, at 18:17].)

⁶¹ (CP 155 [Transcript, Sept. 2, 2005, at 20:11-13].)

⁶² (CP 173 [Transcript, Sept. 2, 2005, at 38:13-15; ellipses added].)

⁶³ (CP 155-156 [Transcript, Sept. 2, 2005, at 20:14-21:3].)

⁶⁴ (CP 36-39.)

with investigators, the ability to hire expert witnesses under Mr. Anderson's contract with Grant County is limited by what Mr. Anderson himself can afford, and comes directly out of his own pocket.⁶⁵

4. Motion to withdraw guilty plea. In connection with the motion for withdrawal of A.N.J.'s guilty plea, Mr. Anderson initially provided a declaration that confirmed both the minimal effort he expended in defense of the case and his confusion about the law relating to a juvenile's record.⁶⁶

Specifically, he stated:

I do not remember many of the details of [A.N.J.'s] case due to the fact that I have a large case load.

I do remember that [A.N.J.'s] parents gave me names of witnesses to contact. I made an attempt, but was never able to speak with them.

I never independently investigated the claims regarding the alleged victim nor do a background check on the family. I simply reviewed the police reports.

I did not read "word for word" the statement on plea of guilty to [A.N.J.] or have [A.N.J.] do so. I just explained a couple of brief things regarding registering as a sex offender and the fact that [A.N.J.] could not own a firearm nor have contact with the victim

I did not know exactly what the SSODA program requirements were so I did not explain them to [A.N.J.] or his parents.

I do remember some confusion when [A.N.J.'s] parents asked when the charges could be removed from [A.N.J.'s] record. I did not know exactly what the law stated and told them that the laws were changing all the time. I told them I believed it was 18-21 years of age.

I never did research or advise the [family] any further regarding their question. I never specifically answered their question or fully explained it to them.

⁶⁵ (Exhibit 8.)

⁶⁶ (CP 34-35; Exhibit 2.)

[A.N.J.] did not read the Statement on Plea of Guilty. I read some portions of it to him. I told [A.N.J.] that the judge would ask him if he had read it or if I had explained it to him and to say yes

I spent approximately (5) minutes with [A.N.J.] going over his statement just before we were called into court.⁶⁷

However, Mr. Anderson subsequently provided another declaration to the

Prosecutor stating:

“I met with [A.N.J.] on several occasions about this case. [A.N.J.’s] mother and father were present each time I met with [him]. During the course of these meetings, [A.N.J.] began to admit to me that he had committed the conduct that was alleged in the police report. [A.N.J.’s] father ... also stated that [A.N.J.] had engaged in the conduct alleged. Both stated that [A.N.J.] did not plan or premeditate the conduct, but that it was more opportunistic in nature.”⁶⁸

Aside from the misleading impression that “several” meetings occurred, the “beginning” of an “admission” of conduct alleged in the police report is at odds with Mr. Anderson’s later testimony that “I don’t have any specific memory” of discussing the police report with A.N.J. or his parents.⁶⁹ Mr. Anderson did not otherwise elaborate on this purported admission during his testimony.⁷⁰ Nonetheless, on the basis of this ostensible admission, which he

⁶⁷ (CP 34-35; Exhibit 2 [¶¶ 3-6, 8-11 & 13; brackets added].)

⁶⁸ (Exhibit 3 [brackets & ellipses added].)

⁶⁹ (CP 82 [Transcript, Mar. 16, 2006, at 20:22].) This was confirmed by A.N.J.’s father, who testified that Mr. Anderson never reviewed the police report or any other information in the file with ANJ or his parents. (CP 118 [Transcript, Mar. 16, 2006, at 57:2-4].)

⁷⁰ For his part, A.N.J.’s father described the ostensible “admission” in exculpatory terms. (CP 118 [Transcript, Mar. 16, 2006, at 56:4-18; formatting & ellipses in original].)

equated with First Degree Child Molestation, the trial court judge refused to permit withdrawal of A.N.J.'s guilty plea.⁷¹

E. Argument Why Review Should Be Accepted

1. The decisions below are inconsistent with *In re B.J.S.*, 140 Wn. App. 91, 169 P.3d 34 (2007). Conflict among Divisions of the Court of Appeals warrants discretionary review by this Court. RAP 13.4(b)(2). In *B.J.S.*, Division II held that erroneous advice about a deferred disposition “undermines confidence in the outcome” and justifies reversal of a juvenile’s conviction. 140 Wn. 2d at 100-102, 169 P.3d at 38-39. Douglas Anderson’s erroneous advice to A.N.J. and his parents about the consequences of a guilty plea in this case is indistinguishable and presents a direct conflict with *B.J.S.* Confidence in the outcome is undermined to an even greater extent in this case because the erroneous advice induced A.N.J. and his parents to plead guilty whereas the juvenile in *B.J.S.* was convicted following trial. This Court should grant review to reconcile the conflict and to provide A.N.J. with the trial that he never received.

2. The decisions below present a significant question of law under the U.S. Constitution. A significant question of law under the U.S. Constitution also justifies discretionary review by this Court. RAP 13.4(b)(3). In this case, Douglas Anderson failed to provide the effective assistance of

⁷¹ (CP 206-212.)

counsel to which A.N.J. was entitled, and the resulting prejudice is undeniable.

First, Mr. Anderson failed to establish a confidential attorney-client relationship with A.N.J. apart from the influence of his parents. Instead, he consistently met with A.N.J. in the presence of his parents in violation of prevailing professional and ethical standards.⁷² The prejudice arising from failure to establish a confidential attorney-client relationship with A.N.J. in this case at the outset is best explained by Professor John A. Strait, who testified without contradiction at the guilty plea withdrawal hearing: “the child was a passive participant and the parents were actually making the decisions to which the child then agreed.”⁷³

Second, Mr. Anderson completely failed to investigate A.N.J.’s case and could not therefore properly advise him about whether a plea should be entered, let alone the consequences of such plea. This violates prevailing professional and ethical standards as well.⁷⁴ Mr. Anderson’s excuse for not investigating the case, one which the trial court judge found persuasive, is that A.N.J. “admitted” the conduct alleged in the police reports. Aside from the fact that no construction of the purported “admission” is consistent with

⁷² See Washington Defender Ass’n (WDA), *Standards for Public Defense Services* (Oct. 1989) (approved by WSBA and incorporated into RCW 10.101.030; Institute of Judicial Administration & American Bar Ass’n (IJA-ABA), *Juvenile Justice Standards: Standards Relating to Counsel for Private Parties*, Standard 3.3(a), reprinted in ABA, Criminal Justice Section, *Juvenile Justice Standards Annotated: A Balanced Approach*, at 78 (Robert E. Shepherd, Jr., ed., 1996) (approved by the WSBA to “serve as guidelines”);

⁷³ Exhibit 13, at 11:16-12:18

First Degree Child Molestation,⁷⁵ and that it was not made by A.N.J. within the context of a confidential attorney-client relationship (but rather by his parents), the excuse is legally insufficient under professional and ethical standards.⁷⁶ The duty to investigate is not in any way vitiated by ostensible “admissions” from the client’s parents. Although prejudice should be presumed under these circumstances,⁷⁷ A.N.J. suffered demonstrable prejudice from Mr. Anderson’s failure to interview the two witnesses he admits knowing about because they were identified by A.N.J.’s parents. These two witnesses would have testified that the alleged victim in this case displayed sexually precocious behavior and was actually abused by another person rather than A.N.J.⁷⁸

Third, Mr. Anderson affirmatively misstated the consequences of the plea. It is undisputed that Mr. Anderson misinformed A.N.J. and his parents about the consequences of the plea agreement. In response to a specific question from A.N.J.’s mother, Mr. Anderson stated that the offense would come off of A.N.J.’s record (presumably subject to being sealed) between ages 18 and 21. He acknowledged his own confusion on

⁷⁴ WDA, *Standards for Public Defense Services*, Standard 6 & Commentary.

⁷⁵ Compare RCW 9A.44.083.

⁷⁶ IJA-ABA, *Juvenile Justice Standards: Standards Relating to Counsel for Private Parties*, Standard 7.1(a), at 84; *id.*, Standard 4.3(a), at 80; National Legal Aid & Defender Ass’n, *Performance Guidelines for Criminal Defense Representation*, Guideline 4.1 (1995).

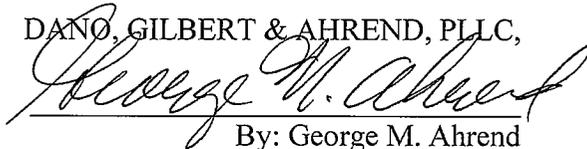
⁷⁷ See *in re Stenson*, 142 Wn. 2d 710, 722, 16 P.3d 1, 9 (2001).

the subject, and the need to perform further research. At one point, he testified that he never performed the necessary research,⁷⁹ and at another point he testified that he performed the research but forgot to share it with A.N.J.'s family.⁸⁰ In either case, the misinformation was never corrected before A.N.J. pled guilty. Prejudice is demonstrated by the client's reliance on the misinformation. The fact that the question was asked in the first place, is evidence that the answer was relied upon by A.N.J. and his parents. Moreover, the fact that they sought to withdraw the guilty plea immediately upon learning of the misinformation confirms that it was relied upon. Of course, A.N.J.'s parents also testified that they were acting in reliance on the misinformation, and this testimony was never rebutted.

For these and the other reasons evidenced in the record, A.N.J. respectfully asks the Court to accept discretionary review and permit him to withdraw his guilty plea and remand the case for trial.

Submitted this 17th day of March 2008.

DANO, GILBERT & AHREND, PLLC,



By: George M. Ahrend
WSBA #25160
Attorney for Appellant

⁷⁸ ANJ has assigned error to the trial court's exclusion of these witnesses because it is essentially impossible to establish prejudice under *Strickland* without being able to introduce evidence ignored by the ineffective counsel.

⁷⁹ (CP 35; Exhibit 2 [¶ 10].)

⁸⁰ (CP 179 [Transcript, Sept. 2, 2005, at 44; "honestly, it may have just slipped my mind"].)

CERTIFICATE OF MAILING

I declare under penalty of perjury under the laws of the State of Washington, that on this day I deposited in the U.S. Mail, postage prepaid, a copy of the document of which this certificate is attached, directed to:

Carole Highland
Grant County Deputy Prosecutor
PO Box 37
Ephrata, WA 98823

Alexander Jones
8193 Harrington Ln. NE
Moses Lake, WA 98837

Signed at Moses Lake, Washington, this 17th day of March 2008.

A handwritten signature in cursive script, reading "Amy L. Paynter". The signature is written in black ink and is positioned below the text of the certificate.

APPENDIX

Court of Appeal Unpublished Opinion - Pages 1-17

Analysis of Time Spent by Douglas Anderson - Page 18

FILED

JAN 08 2008

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 25470-4-III
)	
Respondent,)	Division Three
)	
v.)	
)	
A.N.J.,)	UNPUBLISHED OPINION
)	
Appellant.)	

SWEENEY, C.J.—The decision whether to allow a criminal defendant to withdraw a guilty plea is addressed to the discretion of the trial judge. Here, the trial judge refused to allow a juvenile defendant to withdraw his plea of guilty to the crime of first degree child molestation. The judge's conclusions that the defendant was not ineffectively represented, adequately understood the proceedings before pleading guilty, and, in fact, committed the crime are supported by this record. We then affirm the court's decision that denied the defendant's motion to withdraw.

FACTS

The State charged 12-year-old A.N.J. with first degree child molestation on July 2, 2004.

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A.N.J. appeared in court on July 19, 2004. The trial court told him that he was being charged with the class A felony of first degree child molestation. The trial court then asked him if he understood what he was charged with, and he replied that he did. A.N.J. told the trial court that he had gone over his rights with a representative of the juvenile department and that he understood them.

A.N.J. pleaded guilty on September 21, 2004. He checked a box next to the language in his statement on plea of guilty that said: "Instead of making a statement, I agree that the judge may review the police reports and/or statement of probable cause supplied by the prosecution to establish a factual basis for the plea." Clerk's Papers (CP) at 10. The trial court reviewed A.N.J.'s statement and the police reports at the request of A.N.J.'s lawyer.

The trial court then asked A.N.J. whether his attorney had read the statement of plea of guilty to him and he replied that he had. Report of Proceedings (RP) (Sept. 21, 2004) at 2. The trial court asked if he understood what was read to him, and he replied "Yes." *Id.* at 3. The trial court asked him if he had any questions, and he replied "No." *Id.* The trial court accepted the plea and found that it was knowingly, intelligently, and voluntarily made.

A.N.J. hired a different lawyer and moved to withdraw his guilty plea on December 2, 2004. He claimed that his plea was not voluntary, knowing, and intelligent, and that the plea reflected a manifest injustice because he received ineffective assistance

of counsel. The court held a hearing and heard testimony from those involved with the plea, including Douglas Anderson, the lawyer who originally represented A.N.J., A.N.J.'s parents, and an expert. The court entered findings to the effect that A.N.J. had accepted the State's version of the facts; that those facts supported the charge of first degree child molestation; and that his only factual dispute was over who initiated the sexual contact. The court then concluded that A.N.J. had not shown ineffective assistance of counsel or the manifest injustice necessary to withdraw his plea. And the court denied his motion to withdraw the plea.

DISCUSSION

A.N.J. challenges a number of the court's findings of fact as unsupported by the evidence. We review those challenged findings for substantial evidence. *State v. Moore*, 73 Wn. App. 805, 810, 871 P.2d 1086 (1994). And he challenges the court's conclusions of law that his plea was not a manifest injustice and that he was not ineffectively represented by Mr. Anderson. We review those conclusions de novo. *State v. Horrace*, 144 Wn.2d 386, 392; 28 P.3d 753 (2001).

FINDINGS OF FACT

A.N.J. assigns error to a number of the trial court's findings. Specifically, he assigns error to the findings that: (1) A.N.J. accepted the State's version of the facts; (2) A.N.J. initiated the contact with the alleged victim; (3) A.N.J. possessed the requisite

intent; and (4) A.N.J. voluntarily, knowingly, and competently pleaded guilty. The specific findings in full are:

The respondent had accepted the State's version of the alleged facts, not only as to what had occurred, but also that the respondent had initiated the contact and possessed the requisite intent.

CP at 215 (Finding of Fact 10).

Respondent's plea was voluntary, knowingly and competently made.

CP at 216 (Finding of Fact 16).

A.N.J. told the trial court that he understood the charges against him on his first appearance in court. RP (July 19, 2004) at 2. He filed a statement on plea of guilty. The statement reaffirmed that he understood the charges against him and would enter a plea of guilty. RP (Sept. 21, 2004) at 2-5; CP at 3. He did not enter an *Alford*¹ plea. As part of his plea, he chose to submit the police reports/statement of probable cause as the factual basis rather than making his own statement. His lawyer, Mr. Anderson, testified that A.N.J. admitted the conduct that the State accused him of. CP at 183-84.

We are not in the business of assessing the credibility of the witnesses, weighing evidence, or resolving differing accounts of the circumstances in question; that is for the trial judge. *State v. Romero*, 113 Wn. App. 779, 798, 54 P.3d 1255 (2002) (quoting *State*

¹ *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (an *Alford* plea is a plea in which the defendant enters a plea of guilty for purposes of settling the criminal proceeding at hand, but does not admit guilt).

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v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)). Conflicting evidence is not enough to overturn the court's findings. *In re Disability Proceeding Against Diamondstone*, 153 Wn.2d 430, 438, 105 P.3d 1, cert. denied, 546 U.S. 845 (2005). And that is all A.N.J. has offered here on appeal.

A.N.J. argues that his plea statement was not voluntary. He suggests an obligation by the court to determine voluntariness, independently of the agreement or A.N.J.'s testimony at the plea hearing. To the extent that he does, we disagree. There is a strong presumption that the plea is voluntary when a defendant completes a plea statement and admits to reading, understanding, and signing it (as A.N.J. did at the hearing). *State v. S.M.*, 100 Wn. App. 401, 413-14, 996 P.2d 1111 (2000) (citing *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998)). The court's findings here are supported by this record. The police report and the information both indicate (1) that A.N.J. touched the victim's groin area over and under the victim's clothing; (2) that the victim was less than 12 years old and unmarried when the event occurred; and (3) that A.N.J. is at least 36 months older than the victim: CP at 1, 21, 23.

INEFFECTIVE ASSISTANCE OF COUNSEL

A.N.J. next contends that he was ineffectively represented by Mr. Anderson. Specifically, he argues that Mr. Anderson failed to establish a confidential attorney-client relationship with A.N.J. apart from his parents. He argues that Mr. Anderson failed to investigate A.N.J.'s case. Also, he argues that Mr. Anderson failed to consult an expert

witness. And, finally, he argues that Mr. Anderson affirmatively misstated the collateral consequences of his plea: that the offense would come off of his record.

We review a claim of ineffective assistance of counsel de novo. *State v. Shaver*, 116 Wn. App. 375, 382, 65 P.3d 688 (2003). We begin with a strong presumption that defense counsel's performance was effective. *Id.* A defendant bears the burden to overcome that presumption. *State v. McFarland*, 127 Wn.2d 322, 335, 337, 899 P.2d 1251 (1995).

A defendant must first show that "defense counsel's representation was deficient." *Id.* at 334-35; *State v. Stenson*, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). In other words, "it fell below an objective standard of reasonableness based on consideration of all the circumstances." *McFarland*, 127 Wn.2d at 334-35; *Stenson*, 132 Wn.2d at 705-06. This must be shown based upon the trial record. *McFarland*, 127 Wn.2d at 335. The defendant must then show that he or she was prejudiced by the deficient representation. *Id.* at 334-35; *Stenson*, 132 Wn.2d at 705-06. The threshold is that, "but for" the errors, the outcome would have been different. *Stenson*, 132 Wn.2d at 705-06; *State v. Varga*, 151 Wn.2d 179, 198-99, 86 P.3d 139 (2004).

Guilty pleas add another refinement to these rules. A defendant must show that his counsel failed to "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) (alteration in original) (quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d 901 (1981)). He

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also must show that, but for counsel's failure to adequately advise him, he would not have pleaded guilty. *State v. McCollum*, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997).

A.N.J. cites four specific instances of his lawyer's ineffectiveness. We take each in order.

Failure to Establish a Confidential Attorney-Client Relationship

A.N.J. complains that Mr. Anderson never conducted a meeting with him outside the presence of his parents. He cites no legal authority that would impose such a categorical obligation on a lawyer, and we find none. He relies instead on the testimony of a law professor. The professor opined that the Rules of Professional Conduct require a lawyer to establish a confidential relationship with his client (here, with an accused juvenile, outside the presence of his parents). First, that is not the law and we need not accept it as law. And, second, the trial judge obviously rejected the "expert testimony" and that was well within his prerogative. CP at 213-17.

But even were we to assume that such a failure amounted to ineffective assistance of counsel, there is no showing of prejudice. A.N.J. makes no claim that, but for Mr. Anderson's failure to establish a confidential attorney-client relationship with him, he would not have pleaded guilty. He offers no explanation why his parents' presence in this case negatively impacted his actual decision to plead guilty. Was he coerced by his parents? Was he afraid to speak in front of his parents? Is he innocent? He makes no showing on any of these questions.

A.N.J. does not suggest that he would have refused to plead guilty had Mr. Anderson met with him alone. In fact, there is no testimony from A.N.J. at any point nor is there any assertion of specific facts on appeal. Indeed, his main complaint appears to be that Mr. Anderson did not adequately inform him of the possible collateral consequences of his plea. That is not grounds for setting aside the plea. *In re Pers. Restraint of Yim*, 139 Wn.2d 581, 588, 989 P.2d 512 (1999). A.N.J. has not then met his burden to overcome the presumption that his attorney's assistance was effective.

Failure to Investigate A.N.J.'s Case

A.N.J. suggested two possible witnesses to Mr. Anderson. A.N.J. argues that the failure to interview the two witnesses prejudiced his case. The witnesses would have been able to testify that the alleged victim in this case displayed sexually precocious behavior and had also been abused by another person. A.N.J. cites to standards promulgated by the Washington Defender Association and the Washington State Bar Association. Appellant's Br. at 25-26.

Mr. Anderson telephoned both witnesses but did not get in touch with them on the first attempt. He did not try calling again. Mr. Anderson did not continue to investigate because his client admitted to the conduct the State alleged. And his client then said he wanted to accept the plea offer. Mr. Anderson approved of the plea because it increased the likelihood that his client could get a lesser charge and eventually have the registration

requirement (as a sex offender) removed. Also, Mr. Anderson could see from the police report that going to trial would likely result in additional charges for A.N.J.

Again, we find no authority that would require a lawyer to continue an investigation after a client admits guilt nor would there be any prejudice even assuming some obligation. Moreover, the only person in this process who has ever known about the existence of the witnesses or the substance of their potential testimony has been A.N.J. himself. So no one was more familiar than A.N.J. with what they had to offer. And he, nonetheless, decided to plead guilty.

Further, there is no suggestion by A.N.J. that had Mr. Anderson investigated the witnesses he would not have pleaded guilty. There is no evidence or suggestion, now or ever, that he pleaded guilty (even though he believed himself innocent) because he had insufficient witness testimony at his disposal. He did not enter an *Alford* plea. He admitted guilt. The suggestion that Mr. Anderson's failure to investigate prejudiced A.N.J. is speculative and therefore cannot overcome the presumption that defense counsel's performance was effective.

A.N.J. next urges that Mr. Anderson had a conflict of interest. Mr. Anderson's public defense contract requires him to pay out of his own pocket for investigators and expert witnesses. A.N.J. contends that this creates an inherent conflict of interest according to the Washington State Bar Association. He then cites to *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 722, 16 P.3d 1 (2001), for his conclusion that "[t]his is

precisely the sort of conflict—arising from the attorney’s own ‘financial interest’—that established a presumption of prejudice in ineffective assistance of counsel cases.”

Appellant’s Br. at 27. Of course, public defenders should have access to meaningful investigative resources without compromising the modest fees they are paid for this difficult work. And any system that puts the defender in a position of paying himself or hiring an investigator is wrong.

But Mr. Anderson testified here that he does not always have to pay for expert witnesses but may get the cost approved by the court. CP at 80. And again A.N.J. admitted his responsibility knowing the substance of what these witnesses would offer. Finally, none of the “irreconcilable differences” that concerned the court in *Stenson* are present here. *Stenson*, 142 Wn.2d at 722.

Failure to Consult an Expert Witness about the Reliability of Child Victim Witness Interviews

We are not sure why A.N.J. believes Mr. Anderson should have gone about the process of preparing and consulting with witnesses in order to properly respond to child-victim witness interviews. After all there was no trial here. Further, the standards on which he relies simply state that such expert services “should be available to lawyers and to their clients at all stages of juvenile . . . proceedings.” Appellant’s Br. at 28 (alteration in original) (quoting IJA & ABA, JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES std. 2.1(c) (1980), reprinted in ABA,

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CRIMINAL JUSTICE SECTION, JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH (Robert E. Shepherd, Jr., ed. 1996)). We do not read that standard as a mandate that Mr. Anderson make use of those services prior to accepting a guilty plea offer.

And even if there was such a requirement, there is no prejudice here. A.N.J. admitted responsibility and pleaded guilty. We will not assume that he would not have done so had an expert told him how to respond to child-victim testimony. Such speculation does not prove prejudice or overcome the presumption of effective assistance of counsel.

Affirmative Misstatements about the Effect of a Guilty Plea

A.N.J. next argues that on authority of *State v. Stowe*² the trial judge should have allowed him to withdraw his guilty plea because Mr. Anderson misinformed him about the consequences of the plea.

Stowe states that, even though defense counsel does not have an obligation to inform his client of all possible collateral consequences of a guilty plea, counsel may fall below the objective standard of reasonableness if he misinforms a defendant as to the collateral consequences of a guilty plea. *Stowe*, 71 Wn. App. at 187. A defendant must,

² *State v. Stowe*, 71 Wn. App. 182, 858 P.2d 267 (1993).

however, still prove the prejudice prong in order to prevail on a claim of ineffective assistance of counsel. *Id.* at 188. And A.N.J. has not done that.

First, the record does not support A.N.J.'s representation of the facts. A.N.J.'s father testified that "[m]y wife asked him when this would come off his records, and Mr. Anderson's reply was, 'I'm not sure. The laws change all the time. I'll have to check into it and get back to you.'" CP at 122. A.N.J.'s mother testified that when asked when the charge would come off A.N.J.'s record, Mr. Anderson told her that "the laws change all the time, I'll have to look into it. It's either 18 or 21." *Id.* at 198.

Mr. Anderson testified that he advised A.N.J. and his family that sex offenses are not sealed, but that there is, with juveniles, the possibility that the registration requirement could be removed, but that was usually up to the discretion of the court and beyond that, he was unfamiliar with the law with respect to that issue. *Id.* at 164, 179.

First, A.N.J. never testified. So there is no evidence as to what A.N.J. personally heard or understood or what he relied upon when making his guilty plea. Second, it is unclear what issue A.N.J. is concerned about—sealing or registration. Third, the relevant testimony of all three witnesses supports that Mr. Anderson said he did not know the answer and would do some research. Any thought he may have ventured was made in that context.

There is no evidence in the record as to what A.N.J. understood or relied on in making his plea. His parents claim that they relied on Mr. Anderson's statements. But

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they both admit that Mr. Anderson told them that he did not know the answer and would have to look into it.

And moreover, the impetus for withdrawing this plea was not misinformation, but A.N.J.'s concern when he later discovered his school's policies on sex offenders. CP at 216. A.N.J. does not assign error to that finding. *Dumas v. Gagner*, 137 Wn.2d 268, 280, 971 P.2d 17 (1999) (citing *Riley v. Rhay*, 76 Wn.2d 32, 33, 454 P.2d 820 (1969)).

A.N.J. was not ineffectively represented nor is there any showing of prejudice.

TRIAL COURT'S OBLIGATION TO INQUIRE ABOUT A.N.J.'S SUBJECTIVE UNDERSTANDING OF FIRST DEGREE CHILD MOLESTATION AND SEXUAL CONTACT

A.N.J. next argues that under CrR 4.2(d)³ the trial court had to ask about A.N.J.'s subjective understanding of the crime before accepting his guilty plea. And the judge failed to do this.

We review the sentencing judge's decision on a motion to withdraw a guilty plea under CrR 7.8 for an abuse of discretion. CrR 4.2(f); *State v. Olivera-Avila*, 89 Wn. App. 313, 317, 949 P.2d 824 (1997); *State v. Padilla*, 84 Wn. App. 523, 525, 928 P.2d 1141 (1997). The court abuses its discretion only when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

³ CrR 4.2(d) provides that before the court accepts a plea of guilty, it must first determine that it is made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea.

The withdrawal of a juvenile's plea is governed by CrR 4.2. JuCR 7.6(b); *In re Welfare of Bryan*, 24 Wn. App. 426, 429, 601 P.2d 969 (1979); *S.M.*, 100 Wn. App. at 408. "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." CrR 4.2(f). A "manifest injustice" is "an injustice that is obvious, directly observable, overt, not obscure." *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

The judge must determine whether the conduct admitted by the defendant constitutes the offense charged in the indictment or information. *S.M.*, 100 Wn. App. at 414. Failure to comply with this requirement results in the guilty plea being set aside. *Id.* at 413 (quoting *Wood v. Morris*, 87 Wn.2d 501, 511, 554 P.2d 1032 (1976)). The rule protects a person who may be pleading with an understanding of the charge, but without appreciating whether or not his actions support the charge. *S.M.*, 100 Wn. App. at 414. The record must show sufficient evidence at the time of the plea for a jury to conclude that a defendant is guilty. *Id.* "Where, however, the court relies only on the written statement of the defendant on the guilty plea form, it must insure the facts admitted amount to the violation charged. Anything less endangers the finality of the plea." *Id.* (quoting *In re Pers. Restraint of Taylor*, 31 Wn. App. 254, 259, 640 P.2d 737 (1982)).

In *S.M.*, the defendant was charged with three counts of first degree rape of a child. *S.M.*, 100 Wn. App. at 403. A plea to first degree rape of a child requires that the defendant admit to penetrating the victim. RCW 9A.44.073(1); *S.M.*, 100 Wn. App. at

415. S.M. signed a statement of juvenile on plea of guilty, which stated: ““In Cowlitz County in the Spring of 1994, I had sexual contact with my Brother who is age 10 in 1994. It happened three times.”” *S.M.*, 100 Wn. App. at 403. At the hearing for entry of the guilty plea, the trial court asked S.M. if he knew what sexual intercourse meant, to which he replied that he did. *Id.* at 404. The court did not clarify S.M.’s plea any further. *Id.* The Court of Appeals concluded that the record did not show that S.M. understood the law in relation to the facts because the plea statement did not provide the necessary factual basis for the charge, and the trial court did not sufficiently clarify that S.M. admitted to conduct that would constitute the charge. *Id.* at 414-15.

A.N.J. argues that even though the trial court in this case may have found that the statement on guilty plea constituted a factual basis for the charge, *S.M.* requires more. Specifically, he urges that the court must engage the defendant in a colloquy calculated to probe his subjective understanding of the law in relation to the facts.

First, *S.M.* is distinguishable from this case. The concern in *S.M.* was that a defendant does not simply admit to a particular charge; rather, he must admit to particular conduct that supports the charge. In *S.M.*, the defendant pleaded guilty to rape of a child, which requires penetration, but did not admit to penetration of the victim in his statement on guilty plea. So the statement on guilty plea did not support the plea without further clarification. The trial court did not clarify; therefore, it could not be determined on

review whether the victim knowingly admitted to conduct that amounted to rape of a child.

Here, A.N.J. pleaded guilty to the following elements:

- (1) That on or about April 7, 2004, the respondent had sexual contact with a minor child dob 05-23-98;
- (2) That the minor child dob 05-23-98 was less than twelve years old at the time of the sexual contact and was not married to the respondent;
- (3) That the respondent was at least thirty-six months older than the said minor child; and
- (4) That these acts occurred in Grant County, Washington.

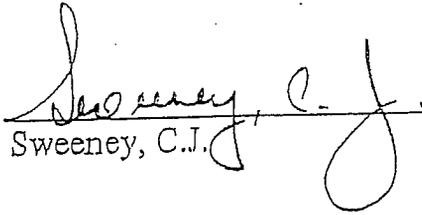
CP at 3-4.

He also chose to permit the judge to review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea. Both the police report and the information describe the specific sexual conduct as the touching of the victim's groin area over and under the victim's clothing. CP at 1, 21-24. The trial court concluded that the statement on plea of guilty constituted a factual basis for the crime charged within the information as required by CrR 4.2(d). *Id.* at 11; *S.M.*, 100 Wn. App. at 414 (the judge must determine whether the conduct admitted to constitutes the offense charged in the information). Unlike *S.M.*, A.N.J.'s statement on plea of guilty admitted conduct sufficient to support the necessary elements of the crime charged. It does not therefore appear that there is any need for the trial court to further clarify the statement.

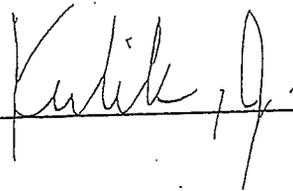
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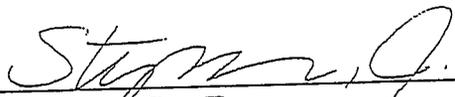
We affirm the decision of the trial judge to deny A.N.J.'s motion to withdraw his plea.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.


Sweeney, C.J.

WE CONCUR:


Kulik, J.


Stephens, J. Pro Tem.

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APPENDIX: ANALYSIS OF TIME SPENT BY DOUGLAS ANDERSON ON A.N.J.'S CASE

Event	Date	Mr. Anderson's estimate	Other evidence of actual time
Preliminary appearance	July 19, 2004	None.	None.
First meeting between Mr. Anderson, ANJ's father and ANJ himself	Between July 19 and August 2, 2004	No estimate. Assumed five (5) minutes.	"Five minutes, maybe." (CP 119 [Transcript, Mar. 16, 2006, at 57:9].)
Arraignment	August 2, 2004	No estimate. Assumed ten (10) minutes.	"Probably 10 minutes." (CP 193 [Transcript, Sept. 2, 2004, at 58:22].) "Very short." (CP 120 [Transcript, Mar. 16, 2006, at 58:2-3].)
Pretrial conference	September 14, 2004	No estimate. Assumed five (5) to ten (10) minutes.	No estimate. Assumed five (5) to ten (10) minutes.
Second meeting between Mr. Anderson, ANJ's parents, and ANJ himself	September 17, 2004	"It was well over a half hour." (CP 177 [Transcript, Sept. 2, 2005, at 42:1].)	"Five or ten minutes, maybe." (CP 194 [Transcript, Sept. 2, 2004, at 59:11].) "It was real short. Ten (10) minutes, maybe twenty (20) at the outside. It was closer to ten (10)." (CP 122 [Transcript, Mar. 16, 2006, at 60:15-16].)
Trial/entry of guilty plea	September 22, 2004	"I only spent about 5 minutes with him right before he came into court on that day." (CP 176 [Transcript, Sept. 2, 2005, at 41:20-21]; accord CP 169 [at 34:12-15].)	"About five minutes maybe." (CP 197 [Transcript, Sept. 2, 2004, at 62:3].)
TOTAL TIME:		Between fifty-five minutes (0:55) and one and one-half hours (1:30).	Between thirty (0:30) and fifty-five (0:55) minutes. (Accord CP 201 [Transcript, Sept. 2, 2005, at 66:17-18; "Maybe 35-40 minutes" total].)

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