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COURT OF APPEALS  
DIVISION II

No. 38894-4-II

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STATE OF WASHINGTON

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

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IN RE THE PERSONAL RESTRAINT PETITION OF:

**JEFFREY COATS,**

PETITIONER.

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**REPLY IN SUPPORT OF  
PERSONAL RESTRAINT PETITION**

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A. INTRODUCTION

Jeffrey Coats challenges his 1994 Pierce County convictions for Robbery in the First Degree, Conspiracy to Commit Robbery in the First Degree, and Conspiracy to Commit Murder in the First Degree. When Coats pled guilty and again when he was sentenced (as reflected on the *Judgment and Sentence*), the prosecutor, defense attorney, and trial court told Coats the maximum punishment for Conspiracy to Commit First-Degree Robbery was 20 years. As the State now correctly concedes in its *Response*, the true maximum was 10 years.

Given the clear and unmistakable error on the *Judgment*, the State further implicitly agrees that Coats petition is not time barred. In short, Coats' *Judgment* is facially invalid.

However, the State argues that Coats' remedy should be limited to correction of the error on the *Judgment*, notwithstanding the fact that Coats was misled regarding a direct consequence of his guilty plea.

In support of its argument, the State cites to cases where the defendant sought only correction of the sentencing error or where there was no error in the underlying conviction as proof for its claim that Coats is not entitled to withdraw his plea. Cases where defendant seeks and is given a limited remedy certainly do not stand for the proposition that alternative remedies are legally unavailable. Most importantly, the State ignores

recent Washington Supreme Court caselaw permitting withdrawal of a guilty plea where a facial invalidity made the petition timely.

Finally, the State's argument that Coats must show some additional prejudice beyond the fact that he was misadvised regarding a direct consequence of a guilty plea has been firmly rejected by caselaw, as Coats demonstrates in this *Reply*.

## B. ARGUMENT

### 1. INTRODUCTION

Because the State correctly concedes that Coats' PRP is not time barred, this *Reply* focuses on the issue of remedy.

### 2. COATS IS NOT LIMITED TO CORRECTION OF THE SENTENCING ERROR, WHERE THE FACIAL INVALIDITY REVEALS AN ERROR IN THE GUILTY PLEA.

Facial invalidity constitutes an exception to the time bar. Indeed, the basic concept of facial invalidity is that it serves as an exception to the time bar—a “gateway” permitting the reviewing court to examine the otherwise untimely, underlying error. Sometimes that error is merely a sentencing error. In other cases, the facial invalidity reveals an error in the underlying conviction. In each respective situation, the facial invalidity permits the court to reach what would otherwise be a time barred error. *See In re PRP of McKiernan*, 165 Wn.2d 777, 203 P.3d 375 (2009) (“In order to consider whether the plea agreement was invalid we must first find that the judgment

and sentence itself is facially invalid. Otherwise, review of the plea agreement is barred by RCW 10.73.090.”).

The Supreme Court’s recent decision reversing a facially invalid judgment of conviction, *In re Restraint of Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009), provides further compelling support for Coats’ position. In that case, Bradley’s offender score was miscalculated (at the time of the plea and sentencing) for one of his two crimes of conviction. The miscalculation had no “actual effect” on his sentence because his offender score was correct on the more serious offense and Bradley’s lesser sentence (on the offense with the miscalculated offender score) ran concurrently with the greater sentence.

While the State conceded that Bradley was entitled to some relief, (just as it does here) the State argues (just as it does here), that relief was limited to entry of a new judgment:

However, the State argues that the miscalculation affected only the sentencing range on Bradley’s simple possession charge, which was not a direct consequence of his plea. The State asks that this case be remanded to the trial court so that the trial court may correct the offender score and standard range calculation reflected in the judgment and sentence.

165 Wn.2d at 939.

The Supreme Court rejected the State’s argument and unanimously agreed that Bradley should be permitted to withdraw his plea (the only dissent was over the issue of whether Bradley was entitled to withdraw the

entire plea deal). “Where a plea is entered into involuntarily, a defendant may choose to specifically enforce the agreement or to withdraw the plea.” *Id.* at 941.

Despite the fact that *Bradley* is directly on point, the State does not cite to the opinion.

Instead, the State relies on cases where a defendant sought only correction of the sentencing error, where the error was merely a scrivener’s error on the judgment, or where the reviewing court found no error in the underlying conviction. *See e.g., In re PRP of West*, 154 Wn.2d 204, 110 P.3d 1122 (2005) (West sought correction of judgment to include good time); *In re PRP of Mayer*, 128 Wn. App. 694, 117 P.3d 353 (2005) (citation error did not make plea involuntary).

The State’s heavy reliance on *In re PRP of Stoudmire*, 141 Wn.2d 342, 5 P.3d 1240 (2000) (*See Response*, p. 6-8), is also curious given the subsequent history that the State studiously ignores. *See In re PRP of Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001). Ultimately, the Washington Supreme Court held that Stoudmire had not shown either that his petition was timely or that his plea was invalid. Coats makes both showings.

Because the State concedes the timeliness of the PRP, Coats now moves to the validity of his plea in light of the misadvice regarding the maximum penalty.

### 3. COATS' PLEA WAS INVOLUNTARY

There is now a robust body of law holding that the constitutional validity of a guilty plea turns entirely on whether the defendant was informed of “all” the “direct” consequences of his plea. *See e.g., Bradley, supra; State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). *Bradley* made it plain:

“Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent.” *In re Pers. Restraint of Isadore*, 151 Wash.2d 294, 297, 88 P.3d 390 (2004) (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). If a defendant is not apprised of a direct consequence of his plea, the plea is considered involuntary. *State v. Ross*, 129 Wash.2d 279, 284, 916 P.2d 405 (1996). A direct consequence is one that has a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” *Id.* The length of a sentence is a direct consequence of a guilty plea. *State v. Mendoza*, 157 Wash.2d 582, 590, 141 P.3d 49 (2006); *State v. Moon*, 108 Wash.App. 59, 63, 29 P.3d 734 (2001). Therefore, misinformation about the length of a sentence renders a plea involuntary, even where the correct sentence may be less than the erroneous sentence included in the plea. *Mendoza*, 157 Wash.2d at 591, 141 P.3d 49. This court does not require a defendant to show that the misinformation was material to the plea. *Isadore*, 151 Wash.2d at 302, 88 P.3d 390.

*Id.* at 939.

Misinformation about the statutory maximum for the class of crime constitutes a direct consequence of a guilty plea, as the Supreme Court held recently and unanimously in *State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008). In that case, *Weyrich* was misinformed that the statutory

maximum for the theft crimes was 5 years, rather than the correct 10 years. This Court held that a “defendant must be informed of the statutory maximum for a charged crime, as this is a direct consequence of his guilty plea, “adhering “to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence [of] the plea....” *Id.* at 557. *State v. Knotek*, 136 Wn. App. 412, 149 P.3d 676 (2006) (maximum sentence is among the direct consequences of a plea).

In *Mendoza*, the Supreme Court made it clear that no additional showing of prejudice was required. “Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on a direct consequence of the plea, regardless of whether the actual sentence range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.” *Id.* at 591.

In this case, Coats was told that the maximum for the conspiracy to commit robbery charge was 20 years—an error that was never corrected.

Thus, caselaw makes it abundantly clear that Coats’ guilty plea was involuntary.

4. COATS' GUILTY PLEAS WERE PART OF AN INDIVISIBLE PACKAGE DEAL

Because Coats' guilty pleas were part of one package deal, a point uncontested by the State, he is entitled to withdraw all of those guilty pleas.

In *Bradley*, the Supreme Court explained that withdrawal of multiple guilty pleas was permitted and even required in certain cases:

This remedy is available to a defendant only where, as part of a 'package deal,' the defendant was correctly informed of the consequences of one charge, but not of another charge. *State v. Turley*, 149 Wash.2d 395, 399-401, 69 P.3d 338 (2003). A plea bargain is a 'package deal,' if the agreements as to the individual charges are indivisible from one another. *See id.* at 400, 69 P.3d 338. This court looks to objective manifestations of intent in determining whether a plea agreement was meant to be indivisible. *Id.* Where "pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding," the pleas are indivisible from one another.

*Id.* at 941-42.

Because Coats' guilty pleas were indivisible, he should be permitted to withdraw all of them.

5. THE STATE HAS NOT SHOWN PREJUDICE

In his PRP, Coats indicated his intent to withdraw his guilty plea. Because the State has not met its threshold burden by making a showing of prejudice, this Court should remand with instructions that the trial court permit Coats to withdraw his plea. *See State v. Turley*, 149 Wn.2d 395, 401, 69 P.3d 338 (2003) (State must make "a showing of compelling reasons" that defendant's chosen remedy is unjust in order to remand for a

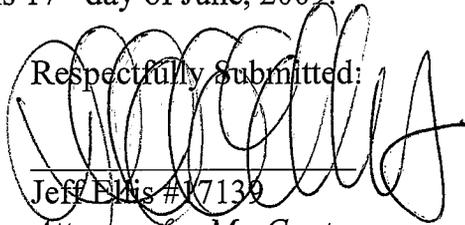
hearing. Otherwise, the appellate court should remand for defendant's chosen remedy).

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate Coats' convictions and remand this case to Pierce County Superior Court to permit him to withdraw his guilty pleas.

DATED this 17<sup>th</sup> day of June, 2009.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Jeff Ellis", written over a horizontal line.

Jeff Ellis #17139

*Attorney for Mr. Coats*

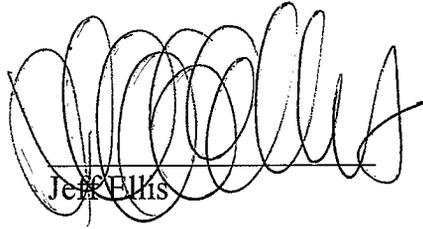
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**CERTIFICATE OF SERVICE**

I, Jeff Ellis, certify that on June 17, 2009, I served the parties listed below with a copy of the *Reply Brief* by mailing it, postage pre-paid to:

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6/17/09 Seattle, WA  
Date and Place



Jeff Ellis

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