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No. 86001-7

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF

DAN STOCKWELL,

PETITIONER.

FILED
SUPREME COURT
STATE OF WASHINGTON
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AMICUS BRIEF OF
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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 ORIGINAL

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A. INTRODUCTION

This Court has repeatedly reaffirmed that misinformation about a direct consequence of a guilty plea renders the plea involuntary regardless of the materiality of that misinformation to a defendant's decision to plead guilty. This Court has also repeatedly made it clear that materiality remains irrelevant when a guilty plea is collaterally attacked.

The State now asks this Court to do what it has repeatedly refused to do—make the materiality of any guilty plea misinformation the key inquiry in a PRP challenging a guilty plea. The State fails to explain why this Court should require such an inquiry in a PRP when materiality is irrelevant in every other context. The State also fails to provide this Court with any reason why this Court's prior precedent has proved unworkable and should be overruled.

Instead, the State follows the lead of the lower court which treated this Court's precedent as the non-binding result of what the lower court appears to characterize as this Court's slipshod decision making. While the lower court acknowledged that this Court held in *Pers. Restraint of Isadore*, 151 Wash.2d 294, 301, 88 P.3d 390 (2004), "even if Isadore were required to meet the standard personal restraint petition requirements, he has done so in this petition," and subsequently applied that rule in *Pers. Restraint of Bradley*, 165 Wash.2d 934, 205 P.3d 123 (2009), the lower court nevertheless concluded "both courts appear to have applied the direct appeal test when determining whether a petitioner may withdraw a plea rendered involuntary by misinformation," and added neither

Isadore nor *Bradley* discussed a defendant's heightened PRP burden of establishing actual prejudice. *In re Pers. Restraint of Stockwell*, 161 Wash.App. 329, 336-37, 254 P.3d 899 (2011). To the contrary, this Court made it clear that it considered and applied the relevant harm standard for PRPs when this Court granted relief. The lower court may disagree with this Court, but it is bound to follow this Court's precedent.

This Court should reject the State's arguments, reverse the lower court, and reaffirm past precedent.

A criminal defendant is always "actually" prejudiced by an involuntary plea. This Court should reverse the Court of Appeals and hold that a post-conviction petitioner is entitled to relief upon the showing of an involuntary guilty plea. There is no reason, in law or logic, to require a "materiality" hearing in a PRP where the four corners of the guilty plea reveal misinformation about a direct consequence of the guilty plea. This Court should not replace certainty with subjectivity.

B. FACTS

WACDL relies on the facts set forth in the pleadings filed by both parties.

C. ARGUMENT

1. AN INVALID GUILTY PLEA CONSTITUTES A MANIFEST INJUSTICE.

The Constitution requires that a plea of guilty be knowing, intelligent and voluntary. *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 2257, 49 L.Ed.2d 108 (1976). A plea is voluntary in the constitutional sense if the accused

understands the nature and extent of the constitutional protections waived by pleading guilty. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wash.2d 258, 266, 36 P.3d 1005 (2001).

A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences. *State v. Miller*, 110 Wash.2d 528, 531, 756 P.2d 122 (1988). A defendant need not be informed of all possible consequences of his plea, but he must be informed of all direct consequences. *State v. Ross*, 129 Wash.2d 279, 284, 916 P.2d 405 (1996) (citing *State v. Barton*, 93 Wash.2d 301, 305, 609 P.2d 1353 (1980)). The failure to inform the defendant of a direct consequence renders the plea invalid. *State v. Barton*, 93 Wash.2d at 305.

Failure to inform a defendant of sentencing consequences upon plea of guilty is also governed by court rule. Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a “manifest injustice.” An involuntary plea produces a manifest injustice. *Ross*, 129 Wash.2d at 284 (citing *State v. Saas*, 118 Wash.2d 37, 42, 820 P.2d 505 (1991)); *State v. Walsh*, 143 Wash.2d 1, 8, 17 P.3d 591 (2001) (mutual mistake regarding sentencing consequences renders guilty plea invalid).

A defendant who is convicted based on an involuntary guilty plea is “actually” prejudiced. An involuntary guilty plea constitutes a “manifest injustice.” *Isadore*, 151 Wash.2d at 298. This Court has previously held that “manifest” means that a showing of actual prejudice is made. *State v.*

McFarland, 127 Wash.2d 322, 333-34, 899 P.2d 1251 (1995); *State v. Scott*, 110 Wash.2d 682, 688, 757 P.2d 492 (1988). *See also Hews v. Evans*, 99 Wash.2d 80, 88, 660 P.2d 263 (1980) (“An invalid plea of guilty constitutes actual prejudice.”) (emphasis supplied).

2. THE MATERIALITY OF MISINFORMATION IS LEGALLY IRRELEVANT.

This Court has repeatedly held that materiality is not part of the analytical framework when evaluating a guilty plea that includes misinformation about a direct consequence of the plea. *State v. Ross, supra*; *State v. Walsh*, 143 Wash.2d 1, 17 P.3d 591 (2001); *State v. Mendoza*, 157 Wash.2d 582, 141 P.3d 49 (2006). In *Mendoza*, this Court “adhere[d] to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing 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 *Pers. Restraint of Isadore, supra*, this Court made it clear that the same test applies in the context of a collateral attack. (“Moreover, the materiality test requested by the State conflicts with this court's jurisprudence. This court has repeatedly stated that a defendant must be informed of all direct consequences of a guilty plea, and that failure to inform the defendant of a direct consequence renders the plea invalid.”). *See also In re Pers. Restraint of Bradley*, 165 Wash.2d

934, 205 P.3d 123 (2009) (“This court does not require a defendant to show that the misinformation was material to the plea.”).

This Court has repeatedly been asked by the State to require a showing that the misinformation about a direct consequence was material to the decision to plead guilty in order to justify withdrawal of that plea. This Court has repeatedly rejected these arguments.

In *Mendoza*, this Court rejected the State’s attempt to include a materiality component by holding:

We have already held the length of the sentence is a direct consequence of pleading guilty. We have also declined to adopt an analysis that focuses on the materiality of the sentencing consequence to the defendant's subjective decision to plead guilty. In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing 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.

157 Wn.2d at 590-91.

This Court created a limited exception in *Mendoza* for those cases where the contemporaneous record clearly establishes the lack of materiality of the misinformation:

When a guilty plea is based on misinformation, including a miscalculated offender score that resulted in an incorrect higher standard range, the defendant may move to withdraw the plea based on involuntariness. However, if the defendant was clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant

does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea.

Id. at 592. It is important to emphasize that this Court did not require a defendant to show materiality if he sought to withdraw his guilty plea before sentencing. Instead, a defendant's decision not to timely seek withdrawal of the plea after being given correct information and an opportunity to withdraw the plea before sentencing conclusively establishes that the misinformation was immaterial.

Two years later, the State once again asked this Court to require a showing of materiality in *State v. Weyrich*, 163 Wash.2d 554, 182 P.3d 965 (2008). This Court's rejection of that argument was clear: "The State's argument that the error did not actually affect Weyrich's decision to plead guilty requires the sort of subjective hindsight inquiry into Weyrich's decision of which *Mendoza* and *Isadore* disapprove." *Id.* at 557. This Court adhered to prior precedent. "The defendant need not establish a causal link between the misinformation and his decision to plead guilty." *Id.*

The State now asks this Court to do what it has refused to do for nearly a decade: require a showing of materiality. The State attempts to avoid the standard required to overrule past precedent by suggesting that this Court has never directly confronted the PRP requirement of actual prejudice in the context of an invalid guilty plea.

The only way to make this argument is to read several sentences out of *Isadore*, including:

... even if Isadore were required to meet the standard personal restraint petition requirements, he has done so in this petition. He alleges he was deprived of his constitutional right to due process because his guilty plea was not knowing, voluntary and intelligent. (*Id.* at 300);

We decline to adopt an analysis that requires the appellate court to inquire into the materiality of mandatory community placement in the defendant's subjective decision to plead guilty. This hindsight task is one that appellate courts should not undertake. A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision. If the test is limited to an assertion of materiality by the defendant, it is of no consequence as any defendant could make that after-the-fact claim. (*Id.* at 302).

Because this Court had already decided this issue in *Isadore*, it did not need to re-examine it in *Bradley*. However, the State did ask this Court for a remand hearing in *Bradley* to address whether the multiple guilty pleas were part of a package deal. Just as this Court refused to authorize hearings on the question of materiality, this Court held “such a hearing would also be at odds with our reasoning in *Isadore*, in which we cautioned courts against engaging in a hindsight inquiry into the motivations of parties to a plea agreement outside the four corners of the agreement.” “Here, we need not and should not require a reference hearing; the documentary record itself evidences an intent to create a package deal.” 165 Wn.2d at 643, n.2.

3. THIS COURT SHOULD NOT OVERRULE ISADORE.

The standard for overruling precedent is strict: the earlier decision must be both incorrect and harmful. *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wash.2d

264, 278, 208 P.3d 1092 (2009) (quoting *State v. Devin*, 158 Wash.2d 157, 168, 142 P.3d 599 (2006)). Courts do not “lightly set aside precedent.” *State v. Kier*, 164 Wash.2d 798, 804-05, 194 P.3d 212 (2008). The law must be reasonably certain, consistent, and predictable so as to allow citizens to guide their conduct in society, see *In re Matter of Mercer*, 108 Wash.2d 714, 720-21, 741 P.2d 559 (1987), to allow judges to make decisions with a measure of confidence, not to mention giving post-conviction petitioners clear direction as to what they do and do not have to prove in order to obtain relief.

The doctrine of *stare decisis* provides this necessary clarity and stability in the law, gives litigants clear standards for determining their rights, and “prevent[s] the law from becoming ‘subject to incautious action or the whims of current holders of judicial office.’ ” *Lunsford*, 166 Wash.2d at 278 (quoting *In re Rights to Waters of Stranger Creek*, 77 Wash.2d 649, 653, 466 P.2d 508 (1970)). This Court has held that it will overrule precedent only when such precedent is both incorrect and harmful. *Lunsford*, 166 Wash.2d at 278; *1000 Friends of Washington v. McFarland*, 159 Wash.2d 165, 176, 149 P.3d 616 (2006) (“Before [a case] may be overruled, it must be shown to be both incorrect and harmful.”); *Devin*, 158 Wash.2d at 168; *State v. Clark*, 143 Wash.2d 731, 778, 24 P.3d 1006 (2001); *Walmart, Inc. v. Progressive Campaigns, Inc.*, 139 Wash.2d 623, 634, 989 P.2d 524 (1999); *State v. Berlin*, 133 Wash.2d 541, 547, 947 P.2d 700 (1997).

The State does not attempt to shoulder this burden, nor could it. By focusing on the four corners of the guilty plea statement this Court's rule forces the parties and the Court to insure that guilty pleas are informed by complete and accurate information. Eliminating that rule, even just for PRPs, compromises these values. Moreover, by shifting the focus to materiality, rather than accuracy and completeness, this Court invites hearings that it has repeatedly noted depend entirely on distorting hindsight. It makes little sense to replace a rule based on historical facts that can be reliably determine simply by examining a guilty plea statement with a rule that not only invites, but requires retrospective determinations based on testimony about highly subjective motivations.

An involuntary plea justifies relief in a PRP. The "materiality" inquiry is not required in order to satisfy the harm standard for collateral attacks on a plea. It is, instead, a different kind of prejudice. This Court has consistently refused to require proof of materiality. This Court should not overrule that precedent.

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D. CONCLUSION

There is no reason to overrule *Isadore*. There is no reason to replace the rule of *Mendoza* by requiring what this Court has repeatedly rejected--subjective hindsight inquires--in every PRP.

This Court should reverse the decision of the lower court and grant Mr. Stockwell's petition.

DATED this 7th day of January, 2013.

Respectfully Submitted:

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From: suzanne-elliott@msn.com [<mailto:suzanne-elliott@msn.com>] **On Behalf Of** Suzanne Elliott
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Dear Clerk: Attached please find a Motion to File an Amicus Brief, an Amicus Brief and a Certificate of Service in the above-referenced case.

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