

THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRIAN BUCKMAN,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR LEWIS COUNTY

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PETITIONER'S SUPPLEMENTAL BRIEF

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A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED.

A guilty plea does not satisfy due process when the accused person does not understand critical sentencing consequences. Mr. Buckman pled guilty based on a fundamental misunderstanding that his presumptive sentence was a term of years followed by lifetime parole if released. When incorrect information about onerous sentencing terms palpably affected Mr. Buckman's guilty plea, does the invalidity of his plea sufficiently prejudice him and entitle him to withdraw it?

Alternatively, the prosecution asks for an evidentiary hearing. When all parties agree Mr. Buckman pled guilty based on a misunderstanding of critical sentencing consequences, is an evidentiary hearing necessary?

B. ARGUMENT.

**Mr. Buckman is entitled to withdraw his plea when it is undisputed that he decided to plead guilty based on patently incorrect information about the mandatory standard range sentence he faced if convicted.**

*1. A plea is invalid when it is premised on a grossly incorrect understanding of the mandatory sentence the court must impose.*

Due process requires a guilty plea may be accepted only if the accused person understands the plea's consequences and enters the plea

knowingly and voluntarily. *State v. A.N.J.*, 168 Wn.2d 91, 117, 225 P.3d 956 (2010); *Boykin v. Alabama*, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); U.S. Const. amend. 14.

The court must ensure the accused person understands the plea's consequences to satisfy due process. *State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011); *Boykin*, 395 U.S. at 243-44 (court accepting a guilty plea must "canvas[ ] the matter with the accused to make sure he has a full understanding" of plea and "its consequence").

There is no presumption of reliability for trial court proceedings where due process protections have broken down. *In re Pers. Restraint of Crace*, 174 Wn.2d 835, 844, 280 P.3d 1102 (2012). A person who pleads guilty "must understand" the direct and mandatory sentencing consequences "for a guilty plea to be valid." *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); *see also In re Pers. Restraint of Quinn*, 154 Wn. App. 816, 835-36, 226 P.3d 208 (2010) ("A guilty plea is not knowingly made when it is based on misinformation regarding sentencing consequences.").

In addition, when a person "enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in

criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985) (internal citation omitted); U.S. Const. amends. 6, 14. Defense counsel must accurately inform the accused of the sentencing consequences of the charges. *Padilla v. Kentucky*, 559 U.S. 356, 373, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010). Counsel’s failure to research the operative sentencing laws and accurately explain the consequences of pleading guilty undermines a guilty plea if counsel’s incorrect advice reasonably affected the outcome. *Lafler v. Cooper*, 566 U.S. 156, 163, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012).

2. *The court, prosecution, and defense counsel incorrectly told Mr. Buckman he faced a life sentence if convicted.*

Mr. Buckman moved to withdraw his plea when he realized he was illegally sentenced under RCW 9.94A.507, an indeterminate and lifetime sentencing scheme, because he was 17 years old at the time of the offense. CP 96.<sup>1</sup> The trial court ruled the statute authorized this sentence and denied the motion. 10/31/14RP 12; 11/18/14RP 15-16; CP 127. However, the judge recognized there was no factual dispute Mr.

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<sup>1</sup> RCW 9.94A.507(2) provides, “An offender convicted of rape of a child in the first or second degree ... who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.”

Buckman was told he faced an indeterminate sentence when he pled guilty. 11/18/14RP 16.

The Court of Appeals held Mr. Buckman's sentence was not statutorily authorized. *State v. Buckman*, 195 Wn. App. 224, 231-32, 381 P.3d 79 (2016), *rev. granted*, 187 Wn.2d 1008 (2017). But incongruously, it also found the judge informed Mr. Buckman of the correct sentence despite imposing the wrong sentence. *Id.* at 230. Focusing on the in-court plea hearing, the Court of Appeals noted the judge told Mr. Buckman the standard range term was 86 to 114 months, and did not mention release from prison required parole board approval and lifetime community custody. *Id.* at 229-30.

The Court of Appeals overlooked the many sources misstating the sentence Mr. Buckman would receive. In large print, his Statement on Plea of Guilty said the sentence included community custody for "life." CP 5. In fact, the court could only impose 36 months of community custody under RCW 9.94A.701(1)(a). The plea statement said the judge would impose a minimum term, with a parole board determining release, and this was not crossed out as were other inapplicable items on the form. CP 6. A written statement on plea of

guilty constitutes prima facie evidence of the plea's terms. *State v. Smith*, 134 Wn.2d 849, 852-53, 953 P.2d 810 (1988).

The prosecution likewise believed Mr. Buckman faced an indeterminate sentence under RCW 9.94A.507. It asked the court to impose a 100-month minimum and life as the maximum. 3/7/12RP 8. The probation report similarly noted Mr. Buckman's sentence would be an indeterminate sentence with a "Life Max." CP 17; CP 19 (recommending "Minimum Term: 86 months Maximum Term: Life"). The judgment and sentence stated the standard range sentence was "Min. of 81-114 and max. of life." CP 26; CP 69.

The Statement on Plea of Guilty, together with the prosecution's sentencing arguments, the probation recommendation, the judgment and sentence, and Mr. Buckman's declaration filed with his motion to withdraw his guilty plea uniformly show Mr. Buckman pled guilty based on a misunderstanding of the type and length of sentence he faced. There was "no dispute" on this point in the trial court. 11/18/14RP 16. Contrary to the Court of Appeals decision, Mr. Buckman received and meaningfully relied on inaccurate information about the consequences of conviction when he pled guilty.

3. *Mr. Buckman's attorney misadvised him of the mandatory sentence he faced.*

In addition to the court's due process obligation to ensure a plea is knowingly, intelligently and voluntarily entered, a defense attorney may render a plea involuntary by providing inaccurate information about sentencing consequences when there is a reasonable probability this information affected the outcome. *Hill*, 474 U.S. at 56, 59; *see In re Young-Cheng Tsai*, 183 Wn.2d 91, 101, 351 P.3d 138 (2015) (attorney failed to investigate immigration consequences of conviction); *State v. Aho*, 137 Wn.2d 736, 745-46, 975 P.3d 512 (1999) (attorney failed to investigate due process violation when defendant charged with acts occurring before statute enacted).

The record consistently shows the court and counsel incorrectly stated Mr. Buckman's presumptive sentence. He is not charged with understanding sentencing laws. *Robinson*, 172 Wn.2d at 790 (defendant does not "assum[e] the risk of a legal mistake" in sentencing). He is not expected to know his age at the incident controls the punishment.

4. *Mr. Buckman is entitled to withdraw his guilty plea.*

Mr. Buckman timely filed a CrR 7.8 motion when he learned his sentence was unauthorized. CP 80-81, 85; CP 125 (prosecution

concedes timeliness). The court's CrR 7.8 decision is reviewed for abuse of discretion. *State v. Smith*, 159 Wn. App. 694, 699, 247 P. 3d 775 (2011). It abuses its discretion when it "applies the law incorrectly," as it did when it erroneously construed RCW 9.94A.507. *State v. Orozco*, 144 Wn. App. 17, 20, 186 P.3d 1078 (2008).

In briefing, the parties cited CrR 4.2(f), which allows a defendant to withdraw a guilty plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice." 195 Wn. App. at 229. However, CrR 7.8 separately requires "a reason justifying relief," raising considerations of actual and substantial prejudice when a person seeks post-judgment plea withdrawal. *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 602, 316 P.3d 1007 (2014).

Actual prejudice occurs when the error had practical effects, including undermining the procedure allowing a knowing, intelligent, and voluntary plea decision. *Stockwell*, 179 Wn.2d at 604 (Gordon McCloud, J., concurring).

In *Stockwell*, the defendant moved to withdraw a plea he entered 20 years earlier, claiming the judgment and sentence erroneously said his statutory maximum was 20 years, when it should have said life. 179 Wn.2d at 591. But *Stockwell* had received an exceptional sentence

below the standard range, completed it, and was discharged from all sentencing obligations. *Id.* This Court found the sentencing form's error had no practical effect because the imposed sentence was statutorily authorized, was completed long ago, and there was a legitimate expectation of finality. *Id.* at 603.

Another case rejecting a belated effort to withdraw a guilty plea is *In re Pers. Restraint of Yates*, 180 Wn.2d 33, 35, 321 P.3d 1195 (2014), where Yates pled guilty for an agreed sentence of 408 years. He later moved to withdraw his plea because two of the 14 consecutively imposed counts should have been imposed as 20-year minimums subject to parole, rather than 20-year flat sentences. *Id.* at 36. This error had no practical effect on the life sentence he was serving. *Id.* at 40.

Unlike *Stockwell*, Mr. Buckman did not receive a statutorily authorized sentence. Unlike *Yates*, he pled to a single count and this incorrect information directly affects the sentence he is serving. Unlike both cases, there is no expectation of finality because he is presently entitled to significantly reduced sentence.

The prosecution contends Mr. Buckman will receive the benefit of a lower sentence, so he is not prejudiced. CP 126. However, prejudice arises when a person makes a decision to plead guilty based

on incorrect information about the controlling sentencing consequences that will be imposed. *See, e.g., Boykin*, 395 U.S. at 242.

Mr. Buckman was 17 at the time of the incident and saw his only mitigating option as to plead guilty and seek a treatment-based sentence. CP 88, 90. Had he understood he only faced three years of community custody and a determinate sentence, he would not have felt as compelled to quickly waive his trial rights, or may have sought an exceptional sentence based on his youth and immaturity. *State v. Ramos*, 187 Wn.2d 420, 444, 387 P.3d 650 (2017) (recognizing child's diminished culpability); *State v. O'Dell*, 183 Wn.2d 680, 691-92, 358 P.3d 359 (2015) (youthfulness may be basis for exceptional sentence).

If the sentencing stakes were not as severe as he thought, he may have opted to challenge the prosecution's evidence at trial. He was accused of consensual but age-inappropriate sexual intercourse. CP 1, 15. He would not be guilty if the complainant told him she was 14 years old. *O'Dell*, 183 Wn.2d at 688 (describing affirmative defense). KBS was four or five months shy of her 14<sup>th</sup> birthday when the incident occurred and her mother described her as very mature for her age. 3/7/12RP 13. He would not be guilty if KBS was 14 and wrong about the charging date; KBS never cooperated with the prosecution and

revealed the incident more than one year later. CP 16. No potential defenses were explored during the plea colloquy. 1/24/12RP 2-4.

The court, prosecution, and defense counsel's erroneous explanations that Mr. Buckman faced a life sentence undermine the validity of his guilty plea waiver, led to the imposition of an onerous and incorrect sentence, and constitute actual and substantial prejudice. He should be entitled to withdraw his plea.

There is no need to set an evidentiary hearing as the prosecution suggests in its supplemental brief, when there is no dispute about the incorrect information governing the mandatory sentencing terms that guided all parties during the plea and sentencing proceedings.

D. CONCLUSION.

Mr. Buckman respectfully requests this Court remand his case and order that he may have the opportunity to withdraw his plea.

DATED this 8th day of May 2017.

Respectfully submitted,



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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 93545-9
v.	)	
	)	
BRIAN BUCKMAN,	)	
	)	
Petitioner.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8<sup>TH</sup> DAY OF MAY, 2017, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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