Supreme Court No. 101309-4
Court of Appeals No. 82737-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

HARRY LEE JONES JR.,

Petitioner.

PETITION FOR REVIEW

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A. INTRODUCTION

During the plea negotiation process, Harry Jones's attorney failed to provide him with well-informed advice about whether or not to plead guilty. She did not investigate the State's factual allegations with diligence or interview any witnesses. She did not make sure Mr. Jones was able to review all of the discovery. And instead of investigating the viability of a possible defense, she convinced Mr. Jones he would only lose at trial and should therefore plead guilty. Counsel's failure to actually and substantially assist Mr. Jones in deciding whether to plead guilty amounted to ineffective assistance of counsel. The trial court abused its discretion in denying his motion to withdraw his guilty plea. The Court of Appeals affirmed. This Court should grant review and reverse the Court of Appeals.

B. IDENTITY OF PETITIONER/DECISION BELOW

Harry Lee Jones, Jr. requests this Court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State v. Jones, No. 82737-5-I, filed on August 22,

2022. A copy of the Court of Appeals' opinion is attached as an appendix.

C. ISSUE PRESENTED FOR REVIEW

A defendant receives ineffective assistance of counsel during the plea bargaining process if his attorney fails to conduct an adequate investigation, fails to interview witnesses, and fails to provide the defendant with well-informed advice about possible defenses at trial. Here, counsel failed to conduct an adequate investigation of the State's factual allegations, failed to interview any witnesses, and failed to provide Mr. Jones with well-informed advice about at least one possible defense. He received ineffective assistance of counsel entitling him to withdraw his guilty plea.

D. STATEMENT OF THE CASE

According to the affidavit of probable cause, CP 223-24, the following incident allegedly occurred one morning in May 2018. Harry Jones and two other individuals confronted Edgar Salazar in the parking lot of a motel in Everett. Mr. Jones, who

was armed with a firearm, forced Mr. Salazar into his motel room at gunpoint. Mr. Jones beat Mr. Salazar on the head with the butt of the gun and demanded money from him. Mr. Salazar turned over several hundred dollars in cash to Mr. Jones. When Mr. Salazar lunged at Mr. Jones in an attempt to get the gun away from him, Mr. Jones shot him in the leg. Mr. Jones shot Mr. Salazar a total of 12 times before he and his two companions fled the motel room. Mr. Salazar was taken to the hospital and survived his gunshot wounds.

The police apprehended Mr. Jones later that day. CP 224. He told the police he had not intended to rob Mr. Salazar but shot him in self-defense when Mr. Salazar lunged for his gun. CP 224.

Mr. Jones was booked into jail, where he provided a urine sample. CP 74. Test results showed he had methamphetamine and opiates in his system. CP 74.

Everett Police Detective Steve Brenneman interrogated Mr. Jones. CP 135. Detective Brenneman noticed that Mr.

Jones was “acting kind of strange” and was “kinda in and out.” CP 144. He asked Mr. Jones, “What are you high on?” CP 144. Mr. Jones acknowledged he was under the influence of heroin, which was “still in [his] system.” CP 144-45.

The State charged Mr. Jones with one count of first degree assault and one count of first degree robbery, both with firearm enhancement allegations. CP 228-29. Attorney Jennifer Bartlett was appointed to represent Mr. Jones. CP 53.

Mr. Jones soon became dissatisfied with Ms. Bartlett’s representation and believed she was not working hard enough to prepare a defense. CP 53. He wrote to the Snohomish County Public Defender’s Office requesting a new attorney but they refused to provide one. 3/10/21RP 28-29.

Mr. Jones believed Ms. Bartlett’s representation was deficient in several respects. First, she interviewed no witnesses. CP 53. Further, she did not discuss or explain any possible defenses he might have. CP 53. And she did not make

sure that Mr. Jones was able to review the audio and video portions of the discovery. CP 42, 53, 57.

After months of feeling his attorney was not preparing a defense and would not advocate for him strenuously at trial, Mr. Jones decided to plead guilty. CP 54. Ms. Bartlett's deficient performance induced Mr. Jones's guilty plea. CP 57. Her failure to interview witnesses "[took] away his belief that a trial would do him any good." CP 56. Her failure to assist him in reviewing all of the discovery "add[ed] to his belief that no one was fighting for him and he might as well give in and take the deal." CP 57.

Mr. Jones pled guilty at a hearing before Judge Linda Krese. CP 93-117. In exchange for his guilty plea, the State dropped the firearm enhancement allegation for the first degree robbery charge. CP 93, 118-19.

But soon after pleading guilty, Mr. Jones realized he had been wrong to allow his attorney's deficient performance convince him it was hopeless to fight the charges against him.

CP 80. He filed a motion for substitute counsel. CP 82. The court entered an order permitting Ms. Bartlett to withdraw and appointing Ann Mahony as substitute counsel. CP 82-83; 10/01/19RP 3.

Ms. Mahony filed a motion to withdraw the guilty plea based on ineffective assistance of counsel. CP 52-81. A hearing was held before Judge Edirin Okoloko.

At the hearing, Mr. Jones testified that Ms. Bartlett never interviewed any witnesses. 3/10/21RP 19. Further, she never discussed with him whether there were any possible defense witnesses she should contact, or how she would cross-examine the State's witnesses at trial. 3/10/21RP 19-20, 31. Ms. Bartlett told Mr. Jones she would not interview the State's witnesses unless they went to trial. 3/10/21RP 19, 28. But they never went to trial because "[s]he said that pretty much that I'm going to lose in trial, and . . . she [couldn't] help me." 3/10/21RP 19. Mr. Jones wanted Ms. Bartlett to interview the witnesses *before* he

decided whether or not to plead guilty, so that he would "know all the grounds and know what I'm up against." 3/10/21RP 30.

Mr. Jones also testified that Ms. Bartlett failed to assist him in reviewing crucial portions of the discovery. Due to deficiencies in the jail equipment, Mr. Jones was unable to see portions of the videos. 3/10/21RP 17. He was also unable to hear the audio of his own and his co-defendants' custodial statements to the police. 3/10/21RP 18-19. Mr. Jones told Ms. Bartlett about these problems but she never remedied them. 3/10/21RP 19, 25.

Ms. Bartlett spent little time discussing possible defenses with Mr. Jones. 3/10/21RP 19. He asked her once about self-defense but she immediately dissuaded him, saying it was not a viable defense. 3/10/21RP 20. He asked her about a possible defense of voluntary intoxication but she said it would not work and spent no more time exploring the issue. 3/10/21RP 20, 26.

Unsatisfied with Ms. Bartlett's lack of diligence, Mr. Jones submitted a kite to the jail medical staff requesting the

results of his urinalysis conducted when he was booked into jail. CP 74-75; 3/10/21RP 20-21. The jail staff responded he had tested positive for both methamphetamine and opiates. CP 74-75; 3/10/21RP 21. Mr. Jones showed these results to Ms. Bartlett but she did nothing about them. 3/10/21RP 21.

Finally, Mr. Jones asked Ms. Bartlett to move to suppress physical evidence and his custodial statement. 3/10/21RP 26. Although Ms. Bartlett filed a CrR 3.5 brief and a hearing was scheduled, the hearing was ultimately cancelled because Ms. Bartlett talked him out of it. 3/10/21RP 26. She told him that most likely the court would not suppress the evidence, so it was "pretty much pointless" to pursue a motion to suppress. 3/10/21RP 27.

Mr. Jones decided to plead guilty only because he was convinced, based on his attorney's failure to investigate or pursue a defense, that he was "not going to win the trial" and this was the best he was going to get. 3/10/21RP 22.

Ms. Bartlett also testified at the hearing. She acknowledged she never interviewed any of the witnesses. 3/10/21RP 38-39. She also acknowledged Mr. Jones had trouble reviewing the audio and video portions of the discovery on the jail equipment. 3/10/21RP 35-36. She did not dispute Mr. Jones's claim that she never helped him to review the audio recordings of his or his co-defendants' custodial statements. Finally, she acknowledged she had advised Mr. Jones that a CrR 3.5 motion to suppress his custodial statements would likely not succeed. 3/10/21RP 39. She agreed with Mr. Jones that she had advised him to accept the State's plea offer because they were unlikely to win at trial. 3/10/21RP 41-42.

The court denied Mr. Jones's motion to withdraw his guilty plea. 3/10/21RP 66. The Court of Appeals affirmed.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Mr. Jones must be permitted to withdraw his guilty plea because he received ineffective assistance of counsel.

Mr. Jones's attorney provided deficient representation by failing to adequately assist him in making an informed decision whether to plead guilty. Counsel did not sufficiently investigate the State's allegations or interview the key witnesses, did not pursue or determine the viability of two potential defenses, and did not make sure Mr. Jones was able to review all of the discovery. Counsel's deficient performance prejudiced Mr. Jones because he would not have pled guilty had she been more diligent and prepared for a possible trial. Mr. Jones must be permitted to withdraw his guilty plea based on ineffective assistance of counsel.

a. A defendant must be allowed to withdraw his guilty plea if he receives ineffective assistance of counsel during the plea bargaining process.

The federal and state constitutions guarantee a criminal defendant the right to counsel. U.S. Const. amend. VI; Const.

art. 1, § 22. The right to the assistance of counsel is "fundamental to, and implicit in, any meaningful modern concept of ordered liberty." State v. A.N.J., 168 Wn.2d 91, 96, 225 P.3d 956 (2010).

The constitutional right to counsel includes the right to the effective assistance of counsel during the plea bargaining process. Hill v. Lockhart, 474 U.S. 52, 59, 106 S .Ct. 366, 88 L. Ed. 2d 203 (1985).

The constitutional right to counsel during plea bargaining is fundamentally the right to an attorney's assistance in evaluating whether to accept a plea offer. A.N.J., 168 Wn.2d at 109-11. Counsel must "'actually and substantially [assist] his client in deciding whether to plead guilty.'" State v. James, 48 Wn. App. 353, 362, 739 P.2d 1161 (1987) (quoting State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (alteration in Osborne). Counsel must not only communicate actual plea offers to her client, but must also discuss the strengths and weaknesses of the defendant's case so that he "know[s] what to

expect and can make an informed judgment whether or not to plead guilty." James, 48 Wn. App. at 362.

To demonstrate ineffective assistance of counsel, the defendant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's poor performance prejudiced him. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

If a defendant receives ineffective assistance of counsel during plea bargaining, that constitutes a "manifest injustice" warranting withdrawal of the guilty plea. A.N.J., 168 Wn.2d at 119; CrR 4.2(f).

b. Mr. Jones's attorney performed deficiently by failing to adequately assist him in reaching an informed decision whether to plead guilty.

A defense attorney's failure to conduct an adequate factual investigation before advising a client to plead guilty may amount to objectively deficient performance. A.N.J., 168 Wn.2d at 111-12. That is because "a defendant's counsel

cannot properly evaluate the merits of a plea offer without evaluating the State's evidence." Id. at 109.

In addition to conducting a thorough factual investigation, counsel must also research the law and determine what matters of defense are available. State v. Byrd, 30 Wn. App. 794, 799, 638 P.2d 601 (1981).

The degree and extent of investigation required by defense counsel during plea bargaining varies from case to case, but at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial. A.N.J., 168 Wn.2d at 111-12. Where a factual investigation is necessary to enable counsel to provide meaningful and well-informed advice to her client, the failure to perform an investigation cannot be deemed a reasonable tactic. State v. Jury, 19 Wn. App. 256, 263, 265 n.1, 576 P.2d 1302 (1978).

The constitutional right to the effective assistance of counsel during plea negotiations includes the right to have

counsel attempt to contact and interview key witnesses. E.g., Thomas v. Lockhart, 738 F.2d 304 (8th Cir. 1984); Hawkman v. Parratt, 661 F.2d 1161 (8th Cir. 1981).

In Thomas, defense was ineffective where he did not adequately investigate the facts prior to Thomas's guilty plea. Thomas, 738 F.2d 304. For example, Thomas provided counsel with the names of three alibi witnesses but the attorney made no attempt to contact any of them. Id. at 307. Where the attorney's investigation of the case consisted only of reviewing the investigative file of the prosecuting attorney, his investigation fell short of what a reasonably competent attorney would have done. Id. at 308.

In Hawkman, prior to Hawkman's guilty plea, counsel did not contact or interview any of the three independent eyewitnesses to the crime. Hawkman, 661 F.2d at 1168. A reasonably competent attorney would ordinarily conduct an in-depth investigation of the case which includes an independent

interviewing of witnesses. Id. at 1169. Because counsel did not do so, Hawkman received ineffective assistance of counsel. Id.

Mr. Jones received ineffective assistance of counsel for at least three reasons. First, his attorney failed to interview any witnesses. Second, she failed to pursue and investigate at least two possible, viable defenses. Third, she failed to make sure that Mr. Jones was able to review all of the discovery.

Mr. Jones's attorney acknowledged at the plea withdrawal hearing that she did not interview any witnesses. 3/10/21RP 38-39. She told Mr. Jones she would interview the witnesses only if the case went to trial. 3/10/21RP 19, 28. But they never went to trial because she persuaded Mr. Jones he would only lose. 3/10/21RP 19. Mr. Jones wanted Ms. Bartlett to interview the witnesses *before* he decided whether or not to plead guilty, so that he would "know all the grounds and know what I'm up against." 3/10/21RP 30. Ms. Bartlett's failure to interview the witnesses prevented her from thoroughly evaluating the strength of the State's evidence. That, in turn,

prevented her from properly evaluating the merits of the plea offer or advising Mr. Jones whether he should accept it. See A.N.J., 168 Wn.2d at 109-12.

Ms. Bartlett also failed to conduct a thorough and open-minded investigation of possible defenses. Mr. Jones said Ms. Bartlett spent little time discussing possible defenses with him. 3/10/21RP 19. He asked her once about self-defense but she immediately dissuaded him, saying it was not a viable defense. 3/10/21RP 20. He also asked her about a possible defense of voluntary intoxication but she said it would not work and spent no more time exploring the issue. 3/10/21RP 20-21, 26. Finally, he asked her to move to suppress physical evidence and his custodial statement. 3/10/21RP 26. Mr. Jones ultimately decided to plead guilty rather than go through with the CrR 3.5 hearing because Ms. Bartlett had told him the motion was unlikely to succeed and was "pretty much pointless." 3/10/21RP 26-27.

Contrary to Ms. Bartlett's advice, the evidence suggested voluntary intoxication might have been a viable defense. Where the crime requires proof of intent, there is substantial evidence of intoxication, and the defendant presents evidence that his intoxication affected his ability to form the requisite intent, he is entitled to a jury instruction on voluntary intoxication. State v. Walters, 162 Wn. App. 74, 81-82, 255 P.3d 835 (2011); RCW 9A.16.090. Both of the charged crimes in this case—first degree assault and first degree robbery—required proof of intent. CP 118-19; RCW 9A.36.011(1)(a); RCW 9A.56.200. There was also substantial evidence of intoxication. Mr. Jones tested positive for methamphetamine and opiates shortly after the incident when he was booked into jail. CP 74-75; 3/10/21RP 21. He was so impaired that the detective who interrogated him noticed he was under the influence and was "acting kind of strange." CP 144. Ms. Bartlett should have investigated and determined whether Mr. Jones's intoxication affected his ability to form the requisite intent. She should have

discussed this possible defense with him so that he could make a fully informed decision whether or not to proceed to trial.

Finally, Ms. Bartlett did not make sure Mr. Jones was able to review critical portions of the discovery. CP 42, 53, 57. Due to deficiencies in the jail equipment, Mr. Jones was never able to hear the audio recordings of his and his co-defendants' custodial statements. 3/10/21RP 18-19. Mr. Jones told Ms. Bartlett about these problems but she never remedied them. 3/10/21RP 19, 25. Ms. Bartlett's conduct was deficient because Mr. Jones could not make a fully informed decision whether to plead guilty without an adequate understanding of the evidence against him. A.N.J., 168 Wn.2d at 109-12. He and his two co-defendants were critical witnesses and their statements to the police were key pieces of evidence. Ms. Bartlett should have made sure Mr. Jones was able to listen to their statements.

In sum, Ms. Bartlett provided deficient performance by failing to conduct a full, thorough investigation of the State's evidence, and by failing to provide Mr. Jones with well-

informed advice about his chances of prevailing at trial before advising him to plead guilty. A.N.J., 168 Wn.2d at 109-12; Byrd, 30 Wn. App. at 799.

c. Counsel's deficient performance prejudiced Mr. Jones, requiring that he be allowed to withdraw his guilty plea.

When a challenge to a guilty plea is based on a claim of ineffective assistance of counsel, the prejudice prong is analyzed in terms of whether counsel's performance affected the outcome of the plea process. State v. Garcia, 57 Wn. App. 927, 791 P.2d 244 (1990); Hill, 474 U.S. at 59. The question is whether there is a reasonable probability that, but for counsel's deficient performance, the defendant would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 59.

Here, there is a reasonable probability that Mr. Jones would not have pled guilty and would have insisted on going to trial but for his attorney's deficient performance. Mr. Jones decided to plead guilty only because he felt that, based on his attorney's lackluster performance and failure to provide him

with well-informed advice, she would not advocate for him strenuously at trial. CP 57. Her failure to interview witnesses "[took] away his belief that a trial would do him any good." CP 56. Her failure to assist him in reviewing all of the discovery "add[ed] to his belief that no one was fighting for him and he might as well given in and take the deal." CP 57. He decided not to go to trial because she told him "that pretty much that [he was] going to lose in trial, and . . . she [couldn't] help [him]." 3/10/21RP 19.

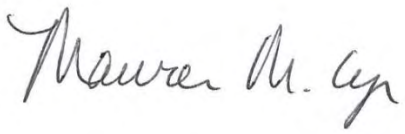
Because Mr. Jones received ineffective assistance of counsel which prejudiced him, he must be permitted to withdraw his guilty plea. A.N.J., 168 Wn.2d at 119.

F. CONCLUSION

For the reasons provided, this Court should grant review and reverse the Court of Appeals.

Respectfully submitted this 20th day of September 2022. I certify this brief complies with RAP 18.17 and contains 3,287

words, excluding those portions of the document exempted from the word count by the rule.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. HARRY LEE JONES JR., Appellant.	DIVISION ONE No. 82737-5-I UNPUBLISHED OPINION

DWYER, J. — Harry Jones entered guilty pleas to assault in the first degree and robbery in the first degree. On appeal, he contends that (1) the charging document was deficient because it did not include all of the essential elements of robbery, (2) his plea was not knowing and voluntary, and (3) the trial court erred by denying his motion to withdraw his plea on the basis of ineffective assistance of counsel. Because he does not show an entitlement to relief, we affirm.

I

On May 16, 2018, Harry Jones and two others confronted Edgar Salazar with a firearm in the parking lot of a motel.[1] Jones demanded money from Salazar, then forced him into his motel room and beat him with the butt of the gun while demanding that Salazar get into the bathtub. Salazar gave Jones several hundred dollars but refused to get into the bathtub. Salazar then unsuccessfully attempted to take possession of the gun. Jones responded by

[1] As this appeal arises from a guilty plea, these facts are as described in the affidavit of probable cause.

shooting Salazar 12 times before leaving the hotel room. Salazar was seriously injured but survived.

Jones was charged with assault in the first degree while armed with a firearm and while on community custody and robbery in the first degree while on community custody. On September 4, 2019, Jones pleaded guilty as charged.

Prior to sentencing, Jones expressed a desire to withdraw his plea, alleging that he had been provided with constitutionally ineffective assistance of counsel. Substitute counsel was appointed. This attorney brought the motion desired by Jones. After a hearing at which Jones's initial counsel testified, the trial court determined that Jones had not been denied effective assistance of counsel and denied the motion to withdraw his plea.

Jones appeals.

II

Jones first contends that the information charging him with robbery in the first degree was constitutionally defective because it failed to include all of the essential elements of robbery. This is so, according to Jones, because the information did not contain the "purpose" element of robbery. As the missing element can be fairly implied from the charging document, we disagree.

An accused has a right under both the state and federal constitutions to be informed of each criminal charge alleged so that the accused may adequately prepare a defense for trial. U.S. CONST. amend. VI; WASH. CONST. art. I, § 22. The State must provide a charging document that sets forth "all essential

elements of the crime, statutory or otherwise, and the particular facts supporting them." State v. Hugdahl, 195 Wn.2d 319, 324, 458 P.3d 760 (2020).

"The standard of review for evaluating the sufficiency of a charging document is determined by the time at which the motion challenging its sufficiency is made." State v. Taylor, 140 Wn.2d 229, 237, 996 P.2d 571 (2000).

When a defendant first challenges the sufficiency of the charging document after guilt is established, we employ the two-part test set forth in State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991): "(1) do the necessary elements appear in any form, or by fair construction can they be found, in the information, and if so (2) can the defendant show he or she was actually prejudiced by the inartful language." State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000) (citing Kjorsvik, 117 Wn.2d at 105-06); City of Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992) (applying this standard to an appeal arising from a guilty plea).[2] Under this rule, "even if there is an apparently missing element, it may be able to be fairly implied from language within the charging document." Kjorsvik, 117 Wn.2d at 104.

The essential elements of robbery are set forth by statute:

> A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. *Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.* Such taking constitutes robbery whenever it appears that, although the taking was fully

[2] This standard is appropriate whenever information is challenged after a conviction, regardless of its form. A conviction is an "adjudication of guilt" and includes "a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." RCW 9.94A.030(9).

> completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

RCW 9A.56.190 (emphasis added).

The second sentence of this statute constitutes the element that Jones avers was missing—the defendant's "purpose in using force."[3] Our Supreme Court recently determined that the sentence at issue sets forth an element of robbery and creates an alternate means to commit the offense:

> [T]he second sentence of the statute makes clear that Washington has adopted the modern, transactional view of robbery, under which "a taking can be ongoing or continuing so that the later use of force to retain the property taken renders the actions a robbery." [State v.]Handburgh, 119 Wn.2d [284,] 290[, 830 P.2d 641 (1992)] (discussing Washington's 1975 amendments to the robbery statute). In other words, the second sentence of the robbery statute expands the range of behavior criminalized as robbery from the common law definition, making clear that "robbery" includes common law robbery (taking by force or fear), plus more (retaining by force or fear).
>
> *Thus, the second sentence essentially indicates that robbery is an alternative means crime. There are at least two ways to rob someone—taking by force or fear, or retaining by force or fear—but the State must prove only one of those ways to obtain a conviction.* [State v.]Johnson, 155 Wn.2d 609, 121 P.3d 91 [(2005)]; [State v.]Allen, 159 Wn.2d 1, 147 P.3d 581 [(2006)].

State v. Derri, __ Wn.2d __, 511 P.3d 1267, 1287 (2022) (emphasis added).

In relevant part, the information charging Jones alleged:

> That the defendant, on or about the 16th day of May, 2018 with intent to commit theft, did unlawfully *take* personal property of another, to wit: money and drugs, from the person or in the presence of Edgar Salazar, against such person's will, *by* use or threatened use of *immediate force*, violence *and fear* of injury to Edgar Salazar.

(Emphasis added.)

[3] Br. of Appellant at 18.

While the second sentence of the robbery statute is not repeated verbatim, it can be fairly implied from the charging document. Although the information did not use the statutory language, "[s]uch force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking," it did contain the relevant part of that element: "take . . .by…immediate force . . . and fear." See Derri, 511 P.3d at 1288 (information including the language "take . . . by . . . immediate force . . . and fear" was sufficient to fully inform defendant of the "relevant part of the element").[4]

This language thus fully informed Jones of the nature of the accusations against him, including the purpose of which he was accused of having for using or threatening force—to take personal property of another. Accordingly, Jones cannot demonstrate that he was actually prejudiced by the State's failure to quote the statute verbatim in the charging document.

III

Jones next contends that his plea was not made voluntarily[5] because he was not properly apprised of the charges against him. This is so, according to Jones, because of the absence of the take or retain by force or fear element in the charging document, as discussed in the previous section. As Jones was properly apprised of the charges against him, we disagree.

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[4] Indeed, on the guilty plea form, Jones admitted that he did precisely that which he was alleged to have done: "On May 16, 2018, in Snohomish County, Washington with intent to commit theft, I . . . did unlawfully take personal property of another, to wit: money and drugs from the person or in the presence of Edgar Salazar against such person's will, by use or threatened use of immediate force, violence, or fear of injury to Edgar Salazar."

[5] The substance of Jones's argument appears to be his plea was not made intelligently, not that his plea was made involuntarily.

"'Due process requires that a guilty plea may be accepted only upon a showing the accused understands the nature of the charge and enters the plea intelligently and voluntarily.'" State v. Buckman, 190 Wn.2d 51, 59, 409 P.3d 193 (2018) (quoting State v. A.N.J., 168 Wn.2d 91, 117, 225 P.3d 956 (2010)). A plea is not entered into intelligently if the defendant has not received "'real notice of the true nature of the charge against him.'" State v. Snider, ___ Wn.2d ___, 508 P.3d 1014, 1020 (2022) (internal quotation marks omitted) (quoting Bousley v. United States, 523 U.S. 614, 618, 118 S. Ct. 1604, 140 L.Ed.2d 828 (1998)). However, when a defendant pleads guilty after receiving a charging document that accurately describes the elements of the offense charged, the defendant's plea is presumed to be knowing, voluntary, and intelligent. Snider, 508 P.3d at 1020.

Jones argues that his plea was not intelligent and voluntary because the charging document failed to inform him of the taking or retaining by force or fear element discussed in the previous section. As explained in the previous section, Jones did in fact receive a charging document that accurately described the elements of the charged offense. Accordingly, Jones's assertion that he was not adequately informed of the charges against him is without merit.

IV

Finally, Jones contends that the trial court erred by denying his motion to withdraw his plea of guilty based on ineffective assistance of counsel. Because Jones does not demonstrate that his counsel was deficient, we disagree.

We review a claim of ineffective assistance of counsel de novo. A.N.J., 168 Wn.2d at 109. However, we review the trial court's factual findings at a hearing on a motion to withdraw a plea for substantial evidence. A.N.J., 168 Wn.2d at 106. Substantial evidence is that which is sufficient to persuade a fair-minded, rational person of the truth of the premise. State v. Quijas, 12 Wn. App. 2d 363, 369, 457 P.3d 1241 (2020). Credibility determinations are for the trier of fact and are not subject to review. State v. Cardenas-Flores, 189 Wn.2d 243, 266, 401 P.3d 19 (2017).

In order to establish ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the defense was thereby prejudiced. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The defendant bears the burden to prove ineffective assistance of counsel. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). The failure to "reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty" constitutes deficient performance. A.N.J., 168 Wn.2d at 111-12. Counsel's conduct which can be characterized as a legitimate trial strategy or tactic is not deficient performance. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

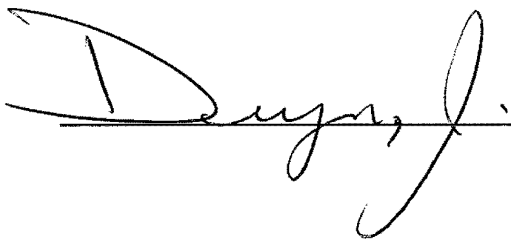
Jones avers that his initial counsel, Jennifer Bartlett, performed deficiently because she failed to interview witnesses, investigate viable defenses, and ensure that Jones was able to review all of the discovery before he entered his guilty plea. However, Bartlett testified that she had scheduled interviews with

witnesses and was in the process of scheduling more when Jones entered his plea of guilty, that she had indeed provided and reviewed all of the discovery with Jones, and that she had considered and discussed defenses with Jones. Furthermore, Bartlett testified that she had an interview scheduled the day after Jones accepted the plea offer, which was cancelled because Jones decided to plead guilty. The trial court determined that Bartlett's testimony was credible on these issues. We do not review such determinations of credibility. Cardenas-Flores, 189 Wn.2d at 266.

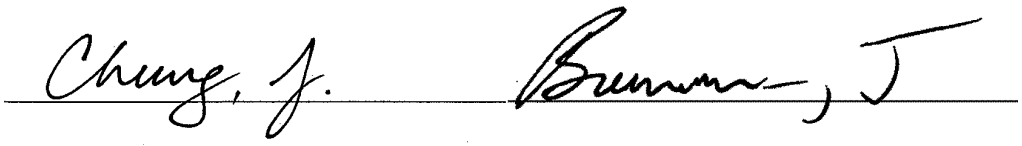
Jones asserts that Bartlett nevertheless performed deficiently because, as no interviews had taken place, Bartlett had not conducted a sufficient investigation prior to advising Jones to plead guilty. However, there are often legitimate strategic reasons to accept a plea offer prior to further or full investigation. See, e.g., State v. Martin, 94 Wn.2d 1, 8-9, 614 P.2d 164 (1980) (under then existing statute, defendant had a right to plead guilty at arraignment, and after doing so, could not be sentenced to death). Here, pleading guilty at the time that Jones did so was a legitimate tactic because the plea offer was time-limited by its terms.

Accordingly, the record does not support the factual allegations underlying Jones's ineffective assistance of counsel claim. Jones fails to demonstrate that Bartlett's performance was deficient. As he cannot demonstrate deficient performance, Jones also cannot show that he was prejudiced by deficient performance. Jones's contention that he was deprived of his right to constitutionally effective assistance of counsel thus fails.

Affirmed.



WE CONCUR:



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 82737-5-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: September 20, 2022

WASHINGTON APPELLATE PROJECT

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