Supreme Court No. 101693-0
(COA No. 83759-1-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY SOK,

Appellant.

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

PETITION FOR DISCRETIONARY REVIEW

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A. INTRODUCTION

Mr. Sok remained incarcerated on a $100,000 bail until he had served his sentence and was released. His numerous requests for a reduction in bail fell on deaf ears. Mr. Sok was 21 years old, no criminal history, and this was his first interaction with the legal system. While he was in jail his son's rare form of cancer progressed and his son's health deteriorated. The tumor got bigger. So, Mr. Sok pleaded guilty so he could get out of jail as soon as possible to tend to his son.

The court imposed a no-contact order on Mr. Sok against the alleged victim until February 14, 2032. That date clearly exceeds the actual sentence and the statutory maximum. But the Court of Appeals ruled that the no-contact statute allows the court to impose such a condition.

Even though the court imposed $600 in LFOs, the clerk ordered Mr. Sok to pay $700. Mr. Sok challenged the Snohomish County clerks request to exact from him an additional $100. The State acknowledged that practice occurred but the Legislature did away with it. The Court of acknowledge the repeal but denied relief.

The Court should accept review to correct all these legal errors.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Timothy Sok asks this Court to accept review of the Court of Appeals's unpublished decision issued on January 30, 2023. RAP 13.3, 13.4(a).

D. STATEMENT OF THE CASE

The State accused Mr. Sok of pointing a gun at his ex-girlfriend. CP 63-64, 2; 2/10/22 RP at 11. Mr. Sok was 21 years old. He had no criminal history. He lost his job because of these charges. The superior court set

bail at $100,000. 1/6/22 RP at 4. Mr. Sok remained remained incarceration from December 9, 2021 until he had served his sentence and was released on February 14, 2022.

Mr. Sok asked the trial court to reduce bail to $5,000. 1/6/22 RP at 4. Mr. Sok explained he had no income, he lived far away from the alleged victim and would abide by all restrictions on contact, and his son had been diagnosed with a rare form of cancer—Langerhans cell histiocytosis. 1/6/22 RP at 4; 2/10/22 RP at 9. The Court reduced bail from $100,000 to $50,000 and said, "I think that that is sufficient." 1/6/22 RP at 5. Mr. Sok could not afford to post bond on the $50,000 bail.

Again on Thursday, February 10, 2022, Mr. Sok returned to beg the court to impose $5,000 bail as the least restrictive measure. 2/10/22 RP at 6. Mr. Sok

informed the court he received word that his son's cancerous tumor was growing. 2/10/22 RP at 8. The worsening cancer put a lot of financial and psychological strain on Savanah Reid, the child's mother now caring for their ailing son alone. 2/10/22 RP at 9-10. Ms. Reid had to transport their son five days a week to receive cancer infusion treatments. 2/10/22 RP at 9-10. Mr. Sok could not help Ms. Reid or his son from jail.

Mr. Sok also told the court that the prosecution was offering a plea bargain where he would essentially be released with credit-for-time-served next Monday—February 14, 2022. 2/10/22 RP at 5. The time served sentence the prosecution was seeking showed he posed no significant threat to the community. 2/10/22 RP at 5.

The trial court did not reduce bail and did not release Mr. Sok on own recognizance. 2/10/22 RP at 17. It reduced bail from $50,000 to $25,000. 2/10/22 RP at 17.

Mr. Sok still could not post bond on the $25,000 bail. His son's cancer was worsening. He had no income since his arrest. Defending the charges left him without money to pay outstanding medical and other bills to care for his son. And if he accepted the plea bargain the State promised to release him immediately.

Therefore, one week after his second request to reduce bail was denied, he pled guilty. On Monday, February 14, 2022, Mr. Sok pled guilty to a single count of second degree assault on an intimate partner so he could be released as soon as possible and get back

to caring for his son. 2/14/22 RP at 1, 6, 9. Mr. Sok was incarcerated 60 days before pleading guilty.

On the same day, the court sentenced him to three months in jail and awarded him three months credit for time served. 2/14/22 RP at 8. The court also imposed a 12-month term of supervision along with a 10-year no-contact order with his ex-girlfriend. 2/14/22 RP at 8, 12. The court released him to serve the term of supervision. The judgment and sentence states the no-contact order expires on February 14, 2032. CP 30-31.

The court impose $600—a victim penalty assessment of $500 and DNA fee of $100. 2/14/22 RP at 8; CP 30. The court clerk sent Mr. Sok an invoice letter requiring him to pay $700 in LFOs. Supp. CP ___ , sub no. 30.

E. ARGUMENT

1. The Court must accept review because the totality of the circumstance rendered Mr. Sok's plea involuntary.

a. *The totality of exorbitant bail, a son's terminal illness, financial pressures, and inexperience with the legal system overbore the will of a 21-year old youth.*

Due process requires that a defendant's guilty plea must be knowing, intelligent, and voluntary. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). There is a strong public interest in the enforcement of plea agreements when they are voluntarily and intelligently made. *State v. Walsh*, 143 Wash.2d 1, 6, 17 P.3d 591 (2001). Between the parties, plea agreements are regarded and interpreted as contracts, and the parties are bound by the terms of a valid plea agreement. *In re Pers. Restraint of Breedlove*, 138 Wash.2d 298, 309, 979 P.2d 417 (1999). The court can allow a defendant to withdraw his guilty plea

"whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 4.2(f). An involuntary plea can amount to manifest injustice. *Mendoza*, 157 Wn.2d at 587, 141 P.3d 49;*State v. Codiga*, 162 Wn.2d 912, 922–23, 175 P.3d 1082 (2008).

A guilty plea that is the product of, or is induced by coercive threat, fear, persuasion, promise, or deception is involuntary in violation of due process. *State v. Schmitt*, 196 Wn. App. 739, 744, 385 P.3d 202, 204 (2016); *Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966). A defendant's denial of improper influence in open court does not preclude him from claiming coercion at a later time. *State v. Frederick*, 100 Wn.2d 550, 557, 674 P.2d 136 (1983).

Family coercion may render a plea involuntary. *Frederick*, 100 Wn.2d at 557 (citing *United States v. Cammisano*, 599 F.2d 851, 856-57 (8th Cir. 1979)).

In *Cammisano*, the defendant claimed he entered a guilty plea because his brother, the co-defendant, told him he was hurting him by not pleading guilty and the defendant "didn't want to hurt his brother and he didn't want to start a war between their families." 599 F.2d at 853. This factor helped to establish defendant pled guilty under undue coercion, creating "fair and just" reasons to allow him to withdraw his plea of guilty before sentencing. *Id.* at 856-57.

Mr. Sok argued that the State used his desire to leave jail to tend to his son's rare form of cancer and his inability to pay exhorbitant bail to induce him to plead guilty. The State offered him immediate release if he pleaded guilty to felony second degree assault, a strike offense, in return for no jail time, and only credit for time served and a short supervised release and a no-contact order. Mr. Sok felt coerced into pleading

guilty by the pressures of poverty, exorbitant bail, time already served in jail, the promise of no additional jail time, and the desire to promptly reunite with his son whose cancer was worsening.

Mr. Sok repeatedly informed the court that the exorbitant bail ($100,000, then $50,000) was unduly coercive. He asked the court to impose the least restrictive measure and reduce bail to $5,000. 2/10/22 RP at 6. Although the trial court reduced bail from $100,000, to $50,000, and later to $25,000, it was still exorbitant.

The State was aware of Mr. Sok's personal circumstances. Yet it did not agree to release him after he served the sentence that the prosecution believed was appropriate punishment for this offense. It then offered Mr. Sok a deal he could not refuse, immediate released with credit-for-time-served and certain

conditions in exchange for pleading guilty to his first strike offense. 2/10/22 RP at 5.

When he requested the bail reduction, Mr. Sok told the court the prosecution was only seeking a sentence he would serve in full by the following Monday. The prosecution's sentencing recommendation contradicted its previous assertion that Mr. Sok posed a continuing threat to the community. See 2/10/22 RP at 5. Mr. Sok reminded the court he was indigent and could not afford the high bail imposed. CP 3-5. His son had been stricken with a rare form of cancer requiring intensive daily treatment and he needed to post bail quickly so he could leave jail and assist Ms. Reid with the care for his son. 2/10/22 RP at 5.

The cancer worsened, Mr. Sok could not assist financially with his son's care as he lost his job after his arrest. Mr. Sok pleaded guilty to a single count of

second degree assault on an intimate partner so he could leave jail soon. 2/14/22 RP at 1, 6, 9. Because Mr. Sok was incarcerated pre-trial for 90 days before he pled guilty, he was release after his was sentenced.

Mr. Sok argued that the totality of these pressures combined to compel him to enter a plea that was not a product of his free and voluntary choice. The undue coercion rendered his plea involuntary and entitled him an opportunity to withdraw it.

b. *The Court of Appeals glossed over each factor in isolation and incorrectly determined they did not render the plea involuntary.*

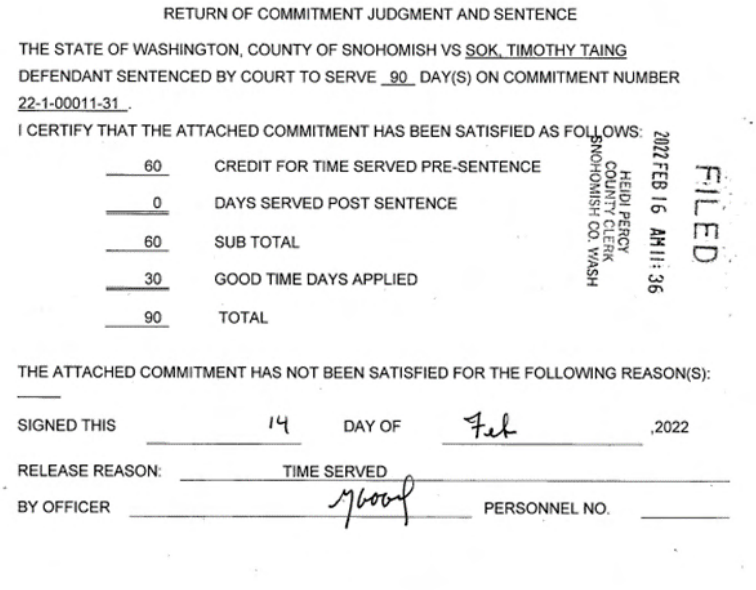
The Court of Appeals did not analyze the totality of these circumstance and how all the relevant circumstances overbore the will of a 21-year-old father—eager to get out of jail to tend to his terminally ill son—to plead guilty. Slip. Op. at 5-6.

The Court of Appeals incorrectly focused on discounting each factors in isolation and neglected to consider whether and how the pressures from all relevant factors combined to compel a 21-year old father, inexperienced with the legal system to enter a plea that was not a product of his free and voluntary choice. Slip. Op. at 5-6. Considering all the relevant circumstances, Mr. Sok should be allowed to withdraw his plea. Mr. Sok's guilty plea was not sufficiently voluntary or knowing to satisfy due process. *See Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

2. The Court must accept review because the plain language of RCW 10.99.050(2)(d) does not allow a no-contact order longer than the statutory maximum for the crime of conviction.

The maximum permissible length for which a court may impose a permissible prohibition is the statutory maximum for the offense of conviction. *State v. Armendariz*, 160 Wn.2d 106, 118-20, 156 P.3d 201 (2007).

Mr. Sok argued that the superior court issued a no contact order that exceeded the statutory maximum of second degree assault by 60 days. The statutory maximum sentence for second degree assault is ten years. See CP 25. The court sentenced Mr. Sok to 90 days, with 60 days credit for time served pre-sentence and 30 days good time days applied. On February 14, 2022, at sentencing, the state released Mr. Sok following 60 days of pre-sentence incarceration:



RETURN OF COMMITMENT JUDGMENT AND SENTENCE

THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH VS SOK, TIMOTHY TAING

DEFENDANT SENTENCED BY COURT TO SERVE 90 DAY(S) ON COMMITMENT NUMBER 22-1-00011-31 .

I CERTIFY THAT THE ATTACHED COMMITMENT HAS BEEN SATISFIED AS FOLLOWS:

FILED
2022 FEB 16 AM 11:36
HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH

60	CREDIT FOR TIME SERVED PRE-SENTENCE
0	DAYS SERVED POST SENTENCE
60	SUB TOTAL
30	GOOD TIME DAYS APPLIED
90	TOTAL

THE ATTACHED COMMITMENT HAS NOT BEEN SATISFIED FOR THE FOLLOWING REASON(S):

SIGNED THIS 14 DAY OF Feb ,2022

RELEASE REASON: TIME SERVED

BY OFFICER _____ PERSONNEL NO. _____

Supp. CP ___ , sub no. 29.

Mr. Sok remained incarcerated since December 9, 2021, the day he was arrested. He was only released on February 14, 2022 after pleading guilty and was sentenced to time already served. A lawful 10-year no-contact order could only run from when his confinement begun on December 9, 2021. CP 30. By the plain language of RCW 10.99.050(2)(d) the no-contact condition could not exceed December 9, 2031. CP 30. But the court ordered Mr. Sok to have no

contact with the alleged victim until February 14, 2032. CP 30.

Mr. Sok argued extending the no-contact condition until February 14, 2032 exceeded both the actual sentence imposed and the statutory maximum by about 60 days.

The Court of Appeals misconstrued, glossed over the substance of the argument and then rejected it. Slip. Op. at 7-8. The ruling concluded that the sentencing court had authority to impose a no-contact order for 10 years, beginning on the date of sentencing, February 14, 2032 even though it exceeded both the actual sentence and statutory maximum by 60 days. Slip. Op at 6-8. The Court of Appeals applied its reasoning in the unpublished decision *State v. Smalley*,

No. 84638-8-I, slip op. (Wash. Ct. App. Jan. 17, 2023).[1] And purported to construe the plain language "not to exceed the adult maximum sentence" in RCW 10.99.050(2)(d).

The ruling holds that the trial court did not err in imposing the no-contact order that began on the day of the sentencing. Slip. Op. at 8.

The ruling misses the point. It fails to address the crux of Mr. Sok's argument that February 14, 2032 exceeds both the actual sentence imposed and the the statutory maximum for the crime of conviction.

Generally, courts attempt to give effect to the plain terms of a statute. *Tommy P. v. Board of Cy. Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982); *see also, State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586

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[1] https://www.courts.wa.gov/opinions/pdf/846388.pdf

(2002) (every statutory term is intended to have some material effect). If the language of a statute is unambiguous, it alone controls. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).

RCW 10.99.050(2)(d) states:

> An order issued pursuant to this section in conjunction with a felony sentence or juvenile disposition remains in effect for a fixed period of time determined by the court, which may not exceed the adult maximum sentence established in RCW 9A.20.021.

The plain meaning of "not to exceed the adult maximum sentence" is unambiguous. Put differently, if February 14, 2032 exceeds both the actual sentence imposed and the statutory maximum, then Mr. Sok has established that superior court lacked authority to impose such a condition.

Review is appropriate because the Court of Appeals ruling following its unpublished decision in

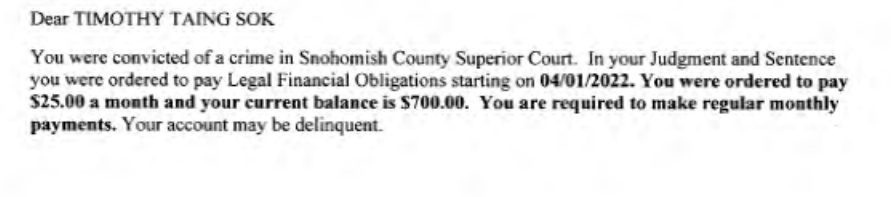
Smalley misinterprets the plain meaning of the words "not to exceed the adult minimum sentence" in RCW 10.99.050(2)(d). This Court should accept review to correctly interpret this statute because the proper duration of no-contact conditions is a matter of substantial public interest. RAP 13.4(b)(4).

3. The Court must accept review because Snohomish County Clerk's Office requires each defendant to pay an additional $100 fee annually even after the Legislature repealed the statutory basis for it.

Before its repeal in 2021, RCW 36.18.016(29) allowed the county clerks to impose an annual fee of up to $100 for the "collection of an adult offender's unpaid legal financial obligations." After June 2022, clerks lost authority to collect $100 annually from defendants. Slip. Op. at 10.

On appeal, Mr. Sok argued the judgment and sentence did not require him to pay an additional $100

fee and yet the Snohomish County clerk's invoice letter was requesting he pay it. Br. of Appellant at 23 citing Supp. CP ___, sub no. 30.



Dear TIMOTHY TAING SOK

You were convicted of a crime in Snohomish County Superior Court. In your Judgment and Sentence you were ordered to pay Legal Financial Obligations starting on **04/01/2022. You were ordered to pay $25.00 a month and your current balance is $700.00. You are required to make regular monthly payments.** Your account may be delinquent.

Id.

Mr. Sok also asked the Court to take judicial notice under ER201(b) of Snohomish County's practice of requiring a defendant to pay an additional $100. Br. of Appellant at 23. The State responded by acknowledging Snohomish County clerks tack on this fee and said "one clear explanation" was the "former RCW 36.18.016(29)(2021)" because Mr. Sok has unpaid legal financial obligations. Response at 18.

Despite that acknowledgment, the Court of Appeals refused to entertain Mr. Sok's argument and

reasoned that the Snohomish County Invoice letter was not in the record. Slip. Op. at 10.

Because Snohomish County lost authority to exact an annual fee of $100 from each defendant, the Court should accept review because the illegal deprivation of $100 from each defendant is a matter of substantial public interest. RAP 13.4(b)(4).

E. CONCLUSION

The Court of Appeals gave short shrift to his argument that his will was overborne to plea guilty and did not analyze the totality of those pressures on a 21-year old youth inexperienced with the legal system. The ruling misconstrues the plain language of the no-contact statute. It also incorrectly ignores Mr. Sok's claim that Snohomish County is illegally collecting $100 from each defendant. Mr. Sok asks this Court to accept review under RAP 13.4(b)(3)-(4).

This brief contains 2,811 words and complies with RAP 18.17(b).

DATED this 1st day of February 2023.

Respectfully submitted,

MOSES OKEYO (WSBA 57597)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX

January 30, State v. Sok unpublished decision

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. TIMOTHY TAING SOK, Respondent.	No. 83759-1-I DIVISION ONE UNPUBLISHED OPINION

COBURN, J. — Timothy Sok pleaded guilty to assault in the second degree with a deadly weapon against an intimate partner. He now claims his plea was involuntary as a result of family and financial pressures of being held in custody pending trial. He also claims the trial court erred by imposing a no-contact order for longer than the statutory maximum permitted, and by imposing a victim penalty assessment against constitutional protections against excessive fines. We affirm. We decline to address his additional claim related to actions by the county clerk that are outside of the record.

FACTS

On December 9, 2021, Sok met up with his former girlfriend, K.V., in the parking lot of an Everett craft store to exchange belongings. At this meeting, Sok attempted to rekindle the relationship, but K.V. declined. Sok then pointed a

handgun at K.V.'s abdomen, with the gun's laser sight visible on her body. Sok then chambered a round while pointing the gun at K.V. and stated "oh you really don't think I'll shoot you?" Sok then left the scene without harming K.V.

K.V. met with an Everett police officer a few days later to report the incident. K.V. reported that she and Sok had dated for a few months, ending their relationship in November 2021. K.V. reported that after the two broke up, Sok called her "up to 40 times a day" and left voicemails threatening to "shoot up" her home, harm her new boyfriend, and harm himself. K.V. also reported numerous other incidents of Sok's concerning behavior during their relationship, including threatening to harm himself and others with weapons, controlling K.V.'s activities, telling K.V. that if Sok could not have her "no one can," instances of violence toward humans and animals, and forcing K.V. to have sex. K.V. reported to police that Sok had access to at least three firearms, including the handgun used against her, a rifle, and a pistol. Police identified Sok as a member of the "Tiny Rascals Gang."

Police located and arrested Sok on December 16, 2021. Officers located a "ghost gun" in Sok's vehicle. Sok admitted to officers that he had built the gun from scratch. A subsequent search of Sok's home located two guns in his closet matching the description given by K.V. Sok was charged with one count of assault in the second degree against an intimate partner under RCW 9A.36.021.

Following Sok's arrest, the court imposed a bail of $100,000. At arraignment on January 6, 2022, Sok moved to reduce the bail amount to $5,000 citing his lack of criminal history and his young son's cancer diagnosis. The

State argued that because of his violent offense and domestic violence allegations, access to weapons, and gang membership, Sok presented a risk to the community and to the victim if bail were reduced. The trial court found that Sok presented a risk to the community, but reduced bail to $50,000. Sok moved to reduce bail again on the same bases approximately one month later, resulting in a reduction to $25,000. At this hearing, the defense explained to the court that the State had offered a plea agreement with a sentencing recommendation that would allow Sok to be released from jail the following week.

A few days later, Sok pleaded guilty as charged. The plea hearing and sentencing were conducted on the same day.

In the written plea agreement signed by Sok, he acknowledged

> 8. I make this plea freely and voluntarily.
>
> 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
>
> 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

At the plea hearing on February 14, 2022, the trial court engaged in a plea colloquy with Sok, in which he acknowledged that he understood the terms of the agreement and the rights he was waiving by choosing not to go to trial. Sok's attorney noted at the beginning of the hearing that Sok had "legitimate legal issues" to assert at trial, but decided to forgo that right because he was in custody pending trial and was concerned about his son's illness. With all of this information, the trial court found "the plea has been knowingly, voluntarily, and intelligently made and is supported by an adequate fact basis." The trial court

additionally found that domestic violence was "pled [sic] and proven."

The trial court sentenced Sok to three months of confinement with credit for time served, to be followed by 12 months of community supervision. The trial court also ordered that Sok have no contact with K.V. for 10 years, the statutory maximum period under RCW 9A.36.021, with the end date listed as February 14, 2032. This order terminated a pretrial no-contact order put in place on January 6, 2021. The trial court followed Sok's request to impose only the mandatory $500 victim assessment fee and a $100 biological sample fee for DNA collection.

Sok now appeals.

DISCUSSION

Guilty Plea

Sok first argues that this court should find his guilty plea involuntary and allow him to withdraw his plea. Sok argues that he "felt coerced into pleading guilty by the pressures of poverty, exorbitant bail, time already served in jail, the promise of no additional jail time, and the desire to promptly reunite" with his ill son.

A defendant may withdraw a guilty plea if doing so is necessary to correct a "manifest injustice." State v. Watson, 63 Wn. App. 854, 856, 822 P.2d 327 (1992). A manifest injustice occurs when: (1) the defendant did not receive effective assistance of counsel before entering the plea, (2) the plea was not ratified by the defendant, (3) the plea was involuntary, or (4) the prosecution fails to honor the plea agreement. State v. Watson, 63 Wn. App. at 857 (citing State v. Taylor, 83 Wn.2d 594, 521 P.2d 699 (1974)). A manifest injustice is one that is

obvious, directly observable, overt, and not obscure. State v. Turley, 149 Wn.2d 395, 69 P.3d 338 (2003).

Sok claims only that his plea must be reversed because it was involuntary. We determine the voluntariness of a plea by reviewing the relevant circumstances surrounding its acceptance. State v. Williams, 117 Wn. App. 390, 398, 71 P.3d 686 (2003). Where a defendant completes a written plea statement and admits to reading, understanding, and signing it, a strong presumption arises that the plea was voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2 810 (1998). Where the trial court has also inquired into the voluntariness of the plea on the record, "'the presumption of voluntariness is well nigh irrefutable.'" State v. Davis, 125 Wn. App. 59, 68, 104 P.3d 11 (2004) (quoting State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982)).

Once a plea has been accepted and these safeguards properly employed, a defendant carries a "demanding" burden when seeking to withdraw a guilty plea. State v. DeClue, 157 Wn. App. 787, 792, 239 P.3d 377 (2010). That burden is especially onerous where there are other reasons for pleading guilty, such as a generous plea bargain. State v. Frederick, 100 Wn.2d 550, 558, 674 P.2d 136 (1983), overruled on other grounds by Thompson v. Dep't of Licensing, 138 Wn.2d 783, 982 P.2d 601 (1999).

As described above, the trial court engaged in a colloquy with Sok to ensure that he understood the rights he was waiving by entering into the plea agreement. Sok's attorney also explained to the court that he had also ensured that Sok read and understood the terms of the plea agreement.

Sok first states that the amount of bail and the fact that he was in custody were coercive and should render his plea involuntary. However, a plea of guilty is not involuntary where the decision is a calculated move by the defendant to avoid what he considers to be a worse fate. State v. Ridgley, 28 Wn. App. 351, 358, 623 P.2d 717 (1981) (upholding a plea agreement as voluntary even where defendant told the court he was not guilty but he believed a jury would find him guilty based on the evidence).

Sok next argues that his son's cancer diagnosis and treatment coerced him into entering a guilty plea to ensure his quick release from jail. However, the fact that a family member is ill is not inherently coercive. The Washington State Supreme Court has previously held that a guilty plea was voluntary even where a defendant asserted that he was "coerced to plead guilty by his wife's threat to commit suicide if the case went to trial." State v. Osborne, 102 Wn.2d 87, 684 P.2d 683 (1984).

In the instant case, the State offered Sok a plea deal that, if followed by the court, would allow him to be released from jail immediately. While Sok has shown that he chose to accept the plea to avoid being away from his son, that choice does not establish that he entered the plea involuntarily.

No Contact Order

Sok next challenges the imposition of a no-contact order for a period of 10 years. The no-contact order imposed on February 14, 2022 is listed in the judgment and sentence as ending on February 14, 2032. Sok argues that because his term of confinement was credited for time served prior to pleading

guilty and being sentenced, the same should apply to the no-contact order. Sok argues that he was in custody beginning on December 9, 2021,[1] therefore the no-contact order is only permitted to extend to December 9, 2031.

Where, as here, a "condition of the sentence restricts the defendant's ability to have contact with the victim . . . an order issued pursuant to this section in conjunction with a felony sentence or juvenile disposition remains in effect for a fixed period of time determined by the court, which may not exceed the adult maximum sentence established in RCW 9A.20.021." RCW 10.99.050(1), (2)(d). This sentence is based on Sok's conviction for a Class B felony, punishable by 10 years' confinement. RCW 9A.20.021(b). As a result, the trial court was authorized to impose the no-contact order for 10 years, beginning on the date of sentencing, February 14, 2022. See State v. Armendariz, 160 Wn.2d 106, 108, 156 P.3d 201 (2007).

Sok makes an argument identical to that recently addressed and rejected by this court. See State v. Smalley, No. 84638-8-I, slip op. (Wash. Ct. App. Jan. 17, 2023), https://www.courts.wa.gov/opinions/pdf/846388.pdf. In Smalley, this Court held that the trial court was not required to factor any credit the defendant received for time served into the calculation of the length of the no-contact order. Smalley, slip op. at 5. We explained that while RCW 10.99.050(2)(d) does limit a no-contact order alongside a felony sentence to "not exceed the adult maximum sentence," prohibiting contact with the victim may be enforced after completion of

[1] The date of confinement listed in appellant's brief appears to be an error. Although the assault occurred on December 9, 2021, the record reflects that Sok was not arrested and placed in custody until December 16, 2021.

the defendant's sentence. RCW 9.94A.637(6).

This court has also previously noted that a trial court "may impose a no-contact order for the maximum term of a conviction, even extending beyond community custody." State v. Navarro, 188 Wn. App. 550, 556, 354 P.3d 22 (2015) (citing Armendariz, 160 Wn.2d at 112).

Moreover, the statute requiring courts to account for time served in calculating a sentence on its face only applies to *confinement*. RCW 9.94A.505(6) ("The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.")

The trial court did not err in imposing a no-contact order that began on the day of sentencing.

Excessive Fines

Sok next asserts that the imposition of the mandatory victim penalty assessment violated the excessive fines clause under both the United States and Washington State constitutions as a result of his indigent status.

The excessive fines clause of the United States Constitution provides "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The Washington State constitution provides that "excessive bail should not be required, excessive fines imposed, nor cruel punishment inflicted." WASH. CONST. art. XIV.

RCW 7.68.035(1)(a) provides

> "When any person is found guilty in any superior court of having committed a crime . . . there shall be imposed by the court

> upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor."

The Eighth Amendment only limits the government's power to impose fines as "'punishment for some offense.'" City of Seattle v. Long, 198 Wn.2d 136, 159, 493 P.2d 94 (2021) (internal quotation marks omitted) (quoting Austin v. United States, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993)). In order to evaluate whether a fine is "excessive," it must first be found to be at least "partially punitive." Id. at 163 (citing Timbs v. Indiana, _ U.S. _, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019)). This court has previously held that the crime victim penalty assessment is not punitive in nature. State v. Mathers, 193 Wn. App. 913, 920, 376 P.3d 1163 (2016).

More recently, this court considered and rejected the same excessive fines argument raised by Sok. State v. Tatum, 23 Wn. App. 2d 123, 130, 514 P.3d 763 (2022) (citing State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992)). The Curry court held that "the victim penalty assessment is neither unconstitutional on its face nor as applied to indigent defendants." Curry, 118 Wn.2d at 169. We noted that though the Washington Supreme Court's reasoning was vague, its "concern was the constitutionality of the statute in light of indigent defendants' potential inability to pay." Tatum, 23 Wn. App. 2d at 130 (citing Curry, 118 Wn.2d at 917). As we explained in Tatum, "we are bound in the face of this holding from our state Supreme Court to conclude that the VPA is constitutional as applied." Id. at 130 (citing State v. Gore, 101 Wn.2d 481, 487,

681 P.2d 227 (1984) (Supreme Court's decision on issue of state law binds all lower courts until that court reconsiders)).

Accordingly, we hold that the crime victim penalty does not constitute a penalty for the purposes of the excessive fines clause.

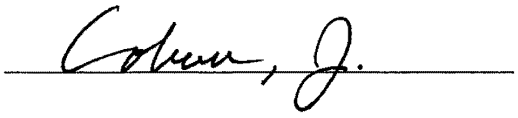
Legal Financial Obligations

Sok, relying on a copy of a letter from the Snohomish County Clerk's Office, which is not in the record, contends that the clerk's office improperly added $100 in calculating his legal financial obligations after sentencing, bringing the total to $700, rather than the $600 imposed by the court.[2]

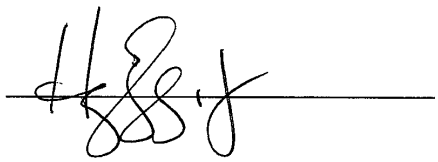
We may not consider facts outside the record on direct review. State v. Robinson, 171 Wn.2d 292, 314, 253 P.3d 84 (2011) (citing State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)). The proper mechanism for raising claims of error resting on facts outside the record is a personal restraint petition. Id. at 314-15. We decline to review this issue.

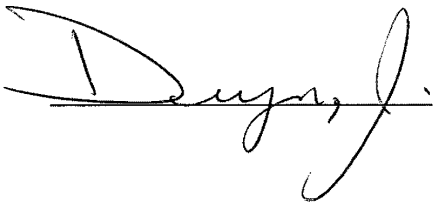
CONCLUSION

We affirm.



WE CONCUR:





[2] Under former RCW 36.18.016(29) (2021), court clerks were permitted "to impose an annual fee of up to one hundred dollars" for the collection of an adult offender's unpaid legal financial obligations. This provision was amended in June 2022, approximately four months after Sok's sentence, permitting the imposition of only $20 for this purpose. RCW 36.18.016(29).

DECLARATION OF FILING AND MAILING OR DELIVERY

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. 83759-1-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: February 2, 2023

WASHINGTON APPELLATE PROJECT

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