NO. 71748-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ALVIN WALKER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Other than his own bare assertions in a declaration, Walker presented nothing to the trial court to contradict his previous written and oral assertions that his plea was knowing, intelligent, and voluntary. Did the trial court properly exercise its discretion to deny Walker's motion to withdraw his plea?

2. As part of his plea, Walker signed a statement indicating that he was "satisfied" with the representation he received from his attorneys regarding the plea. In the absence of any evidence of an actual conflict of interest that adversely affected his attorneys' performance, has Walker failed to establish ineffective assistance of counsel warranting withdrawal of his plea?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

In May of 2010, Appellant Alvin George Walker was convicted by a jury of Rape in the Second Degree – Domestic Violence, Assault in the Second Degree – Domestic Violence, and Felony Harassment – Domestic Violence. CP 9. He was sentenced to an indeterminate sentence of 159 months to life in prison. CP 13. His convictions were affirmed on direct appeal. CP 22-30. His convictions became final on March 7, 2012. CP 20-21.

On March 5, 2013, Walker filed a timely CrR 7.8 motion alleging ineffective assistance of trial counsel, premised on two grounds – that counsel should have reviewed medical records relating to a shoulder injury that Walker had suffered, and that counsel should have requested a material witness warrant for Phyllis Barquet, a friend of Walker's who would allegedly testify that it was she who had assaulted the victim, and not Walker. CP 31-240.

A hearing on Walker's CrR 7.8 motion was scheduled in the trial court for November 1, 2013. Prior to the hearing, Walker's attorneys asked the State whether it had any interest in "settling" the case. When Walker suggested a resolution that would vacate his rape conviction, the State refused, indicating that any potential plea resolution would include a felony sex offense, assault in the second degree, felony harassment, and a standard range of at least 100 months. Walker countered with a request for an exceptional sentence on charges of third-degree rape and second-degree assault. The State refused. On October 31, 2013, the day before the hearing on CrR 7.8 motion, Walker's attorneys proposed the resolution of third-degree rape and first-degree assault, which would carry a determinate standard-range term of confinement within the range the State indicated might be acceptable. CP 327-28.

That same afternoon, the assigned prosecutor discussed Walker's proposed resolution with the head of the Domestic Violence Unit and the Chief Criminal Deputy, who agreed to Walker's proposal. Toward the end of the day, Walker's attorney called the assigned prosecutor and informed her that Walker would accept the plea. CP 328.

The next day, Walker pled guilty to Assault in the First Degree – Domestic Violence and Rape in the Third Degree – Domestic Violence. CP 294-314, 411; RP 7-21. During the colloquy, Walker answered questions appropriately, stated that he had read and discussed his plea statements with his lawyers, stated that he understood everything in the statements, indicated that he did not need additional time to consider whether to plead, and stated that there had been no threats or promises made to enter the plea. RP 7-21. Walker also signed and stated that he agreed with Appendix A of the plea agreement. RP 11-12.

The Court found that Walker had entered the plea knowingly, intelligently, and voluntarily, and accepted his plea. CP 302-03, 313; RP 18-21. On November 5, the trial court received a letter from Walker, advising that he wanted to withdraw his plea. CP 400, 406. The court appointed new counsel, who filed a motion alleging that Walker should be allowed to withdraw his plea because it was involuntary, and because his

prior attorneys had a conflict of interest that prevented them from providing effective representation. CP 340-400.

The trial court held a hearing on Walker's motion to withdraw his plea. RP 57-106. Walker's previous attorney testified at the hearing. RP 61-94. Walker did not testify at the hearing and was not cross-examined by the State; however, he had previously submitted a self-serving declaration as part of his motion to withdraw his plea. CP 401-03. The trial court denied Walker's motion and entered written findings of fact and conclusions of law. CP 404-10. Walker was sentenced to a total determinate standard-range sentence of 138 months of confinement. CP 414-15. Walker now appeals the trial court's denial of his motion to withdraw his plea. CP 425-47.

2. SUBSTANTIVE FACTS

The facts of the case were appropriately summarized in the unpublished opinion of this Court, affirming Walker's convictions on direct appeal:

> Alvin Walker and Bridget Mitchell dated for less than a year. As their relationship progressed, Walker became possessive and abused Mitchell both verbally and physically. Mitchell told Walker she wanted to end the relationship. Walker did not take the news very well.
>
> The next day, Walker asked Mitchell to meet him at a mutual friend's house. When Mitchell arrived, nobody was

there. She left to purchase drugs, returned about an hour later, and entered the house. Walker showed up shortly thereafter, banging and kicking the door, asking to be let in. As soon as Mitchell opened the door, Walker grabbed her by the neck, demanding to know where she had been. He grabbed two knives, and put them to her neck while holding her on the kitchen floor, called her "bitch," and stated he was going to kill her. After about thirty minutes of the abuse, he let Mitchell get up. As she was headed to the living room, Walker picked her up and threw her against the wall. He then picked her up again, and threw her on the couch. Walker smoked crack on the couch, after which he started choking Mitchell.

Mitchell told Walker she needed to use the bathroom. Walker followed her in the bathroom, and again started choking her while she was on the toilet. Walker eventually stopped, and went into the bedroom. Mitchell did not recall how she arrived in the bedroom, but sometime thereafter, Walker threw her onto the bed face down and began "socking" her on the back of her head. Walker pulled Mitchell's pants down, accusing her of having sex with someone else, and inserted his fingers into her vagina. Walker eventually stopped and went into the bathroom. At that point, Mitchell escaped by jumping off a balcony. She fled to another apartment in the complex, and the resident of that apartment called 911.

State v. Walker, No. 65646-5-I (Div. I, 2011).

C. ARGUMENT

1. THE TRIAL COURT CORRECTLY DENIED WALKER'S MOTION TO WITHDRAW HIS PLEA BECAUSE THERE WAS NO MANIFEST INJUSTICE.

Walker claims that the trial court erred in failing to grant his motion to withdraw his guilty plea. But his plea was entered knowingly,

intelligently, and voluntarily, after he was made aware of the consequences. Further, Walker has failed to show that a manifest injustice has occurred. His claim should be rejected.

A motion to withdraw a plea of guilty prior to sentencing is governed by CrR 4.2(f). That rule states, in pertinent part, that "[t]he court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." A manifest injustice is one which is obvious, directly observable, and not obscure. State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). Four indicia of manifest injustice have been recognized by the Washington State Supreme Court: 1) the defendant was denied effective assistance of counsel; 2) the plea was not ratified by the defendant; 3) the plea was involuntary; 4) the plea agreement was not kept by the prosecution. Id. at 597. A defendant has the burden of establishing a manifest injustice "in light of all the surrounding facts of his case." State v. Dixon, 38 Wn. App. 74, 76, 683 P.2d 1144 (1984); see also State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984) (describing the burden defendant must satisfy in order to establish a manifest injustice).

Proving a manifest injustice is a demanding standard, made so because of the many safeguards taken when a defendant enters a guilty plea. State v. Hystad, 36 Wn. App. 42, 45, 671 P.2d 793 (1983). A trial

court's denial of a defendant's motion to withdraw his plea will be overturned only in the case of an abuse of discretion. State v. Robinson, 172 Wn.2d 783, 791, 263 P.3d 1233 (2011).

a. Walker's Plea Was Not Involuntary.

Walker claims that he was coerced into entering his guilty plea. However, he affirmed in court and in writing that his plea was made knowingly, intelligently, and voluntarily, and the trial court found it to be so. The fact that Walker came to regret his choice does not retroactively make that choice involuntary.

An involuntary plea creates a manifest injustice supporting its withdrawal. Taylor, 83 Wn.2d at 597. "Whether a plea is knowingly, intelligently, and voluntarily made is determined from a totality of the circumstances." State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). When a defendant admits to reading, understanding, and signing a guilty plea statement, the plea is presumed voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Indeed, when the court engages the defendant in a colloquy on the record and satisfies itself that the plea is voluntary, the presumption of voluntariness is "well nigh irrefutable." State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982) (citations omitted). See also In re Pers. Restraint of Keene, 95 Wn.2d 203, 206-07,

622 P.2d 360 (1980) (court justified in relying on defendant's acknowledgement that he had read plea statement prepared by his attorney and that it was true).

While a defendant who denies improper influence in open court is not precluded from later claiming coercion, his denial is "highly persuasive" evidence that his plea was voluntary. Osborne, 102 Wn.2d at 97 (citing State v. Frederick, 100 Wn.2d 550, 557, 674 P.2d 136 (1983)). A defendant who later seeks to retract his admission of voluntariness will bear a heavy burden in trying to convince a court that his admission in open court was coerced. Frederick, 100 Wn.2d at 557. This showing is especially difficult to make where there are apparent reasons for pleading guilty, such as a generous plea bargain. Id. at 558. A guilty plea is valid even though the defendant proclaimed his innocence but pleaded guilty to avoid a potentially harsher punishment. State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981). The defendant's high burden of proof requires more evidence than "a mere allegation by the defendant." Osborne, 102 Wn.2d at 97.

Here, Walker signed and initialed two documents entitled "Statement of Defendant on Plea of Guilty," one to a felony sex offense, and the other to a felony non-sex offense. CP 294-314. The forms

outlined the charges, the standard range on each offense, and a variety of other consequences of entering the plea. The statements also read:

> 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.

CP 301-02, 312.

In open court, Walker acknowledged that he had read through the plea statements with his lawyer and that he understood everything contained in them. RP 8, 18-19. He acknowledged his signature on the forms, stated that he had no questions regarding the forms, and answered "guilty" when asked how he pled. RP 15-16. When the prosecutor asked Walker whether "anyone [had] made any threats to you or any promises to you to get you to plead guilty today," Walker answered "no." RP 14.

Walker's attorney also signed the plea statements and indicated in open court that she had reviewed them with Walker, and that it was her belief that Walker was entering the pleas knowingly, intelligently, and voluntarily:

> It has been a difficult road, but we are, you know, confident that these forms and this agreement is being entered into with – knowledge of the consequences.

RP 17-18. The trial court inquired of Walker, and confirmed with him that he had read through the statements, discussed them with his attorney,

that he understood them, and that he had no further questions. RP 18-20. The court stated:

> I do think that Mr. Walker has knowingly, voluntarily and intelligently made these pleas. I have absolutely no doubt, given the history of this case, that counsel has taken the time to go through and explain everything to Mr. Walker. It is no doubt a big decision to – what to do at this point, and it sounds like you all have discussed that so I am going to accept these pleas.

RP 20-21. Accordingly, Walker's in-court denial of coercion was highly persuasive evidence that his plea was voluntary.

Despite this record and despite the presumption of voluntariness, Walker claims that his plea was coerced. He cites to the limited amount of time he was given to make a decision, as well as his bare, self-serving assertions that his attorneys "overstated" the risk of life imprisonment if he did not plead and told him that he would not get a "fair break" on his CrR 7.8 motion. But Walker failed to meet his heavy burden of proving coercion, and the trial court properly exercised its discretion to deny his motion to withdraw his plea.

Walker's attorney testified that she had two face-to-face visits with Walker the afternoon before the plea hearing, the first lasting approximately two hours, and the second for an "hour or less." RP 67. During the visits, she discussed at length with Walker the State's offer as well as her opinion on the strength of his CrR 7.8 motion. RP 68. Her

colleague, David Allen, was present for the second meeting with Walker. RP 66-67. During both meetings, the attorneys discussed the differences between the indeterminate sentence that Walker was currently serving, versus the determinate sentence he would receive pursuant to the plea offer. RP 68, 85. Because of the significant advantage to Walker of pleading to a crime that carried only a determinate sentence, this was not surprisingly, "a large part of the conversation." RP 68, 85-86.

Walker's attorney also met with him the morning of the plea hearing for approximately two additional hours. RP 69. During this meeting, she reviewed the plea statements with Walker and answered all of his questions. RP 69-70. She believed that he understood the documents and all of the consequences of pleading guilty. RP 70. She never considered requesting additional time for Walker to further consider the offer. RP 71. She believed he was entering the plea knowingly, intelligently, and voluntarily. Id.

Although Walker was understandably "unhappy" about having to make a decision at all, there was no evidence apart from Walker's bare assertions that his attorneys misrepresented or overstated the risk of life

imprisonment or other possible outcomes.[1] RP 69, 85, 71, 91. Indeed, the trial court found:

> The inherent difficulty of defendant's choice to plead guilty does not render a plea involuntary. Defense counsel explicitly outlining the situation he was facing, explaining [the] difference between determinate and indeterminate sentence is not equivalent to any type of coercion. Although defendant was faced with a difficult choice, he was not coerced in any way. In fact court finds defense counsel's efforts to fully explain to Mr. Walker the situation he was facing was evidence of their effectiveness.

CP 409. Walker does not assign error to this finding, and as such, it is a verity on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 813 (1994).

Walker's bare allegations are insufficient alone to overcome the presumption of voluntariness. Osborne, 102 Wn.2d at 97. This is especially true given the obvious advantage to Walker in entering the plea – by accepting the State's offer, he avoided any possibility of a life sentence, and shaved almost two years off of the minimum sentence he had originally received. CP 13, 414-15. Walker failed to meet his heavy

[1] In arguing that his plea was coerced because his attorneys overstated the likelihood of a life sentence or misrepresented possible outcomes, Walker appears to argue that their advice regarding the strength of his CrR 7.8 motion was erroneous. But Walker does not allege ineffective assistance with respect to their advice to plead rather than litigate the CrR 7.8 motion. Indeed, counsel's advice appears sound, as Walker's claim that his trial counsel was ineffective for not reviewing his medical records was not particularly compelling. Although Walker's shoulder injury was documented in the file, he presented no evidence in his CrR 7.8 motion that any medical professional could or would have opined that he lacked the ability to hold a knife to the victim's neck or digitally rape her in June of 2008. CP 226-28.

burden to prove coercion, and the trial court's denial of his motion to withdraw his plea was a proper exercise of discretion.

Walker further alleges that his plea was not entered into knowingly and intelligently because there is an "absence of evidence that [he] understood 'Appendix A' to the plea agreement." Brf. of Appellant at 20. However, that is not the reviewing standard, and the trial court's denial of his motion was proper because Walker presented no evidence that he *did not* understand it. As part of his plea, Walker agreed that he would not appeal his convictions or the imposition of a standard-range sentence. CP 304, 314. The original Appendix A that Walker's attorney reviewed with him the morning of his plea specifically stated that although Walker was waiving his right to appeal his convictions, he was not waiving his right to claim ineffective assistance of counsel.[2] RP 70, 80-81. The prosecutor asked Walker's lawyer to strike the language regarding ineffective assistance of counsel, and although Walker's lawyer agreed, she did not think that striking the language made any practical difference, as Walker could not legally waive an ineffective assistance claim on her advice. RP 70-71, 82. After the language was stricken, Walker's lawyer went over the form with him again and had him sign it. RP 82-83.

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[2] The sworn testimony of Walker's lawyer flatly contradicts Walker's "declaration," in which he alleges that his lawyer told him "it meant that I agreed that I wouldn't be able to claim that she and Mr. Allen had been ineffective counsel." CP 402; RP 70.

Walker's lawyer testified that during this discussion she *would* have advised him that striking the language made no practical difference, and that she *would not* have advised him that he could waive an ineffective assistance of counsel claim. RP 71, 81-84.

Walker alleges that the trial court's factual finding regarding his lawyer's explanation of Appendix A is not supported by substantial evidence because Walker's lawyer testified that she "would" have explained its significance, not that she actually did explain it. Walker is wrong. Walker's lawyer was clear in her testimony that she reviewed Appendix A with Walker a second time and had him sign it, after the noted language was stricken. RP 82-83. She was also clear that she would not have advised Walker that he could waive an ineffective assistance of counsel claim on her advice, as she did not believe that he could. RP 71, 84. From this testimony, the trial court was entitled to infer that she properly advised Walker. The finding is supported by substantial evidence.

Although Walker claims that there is no evidence that he understood Appendix A to the plea agreement, his plea is presumed voluntary, and he bears the burden of proving otherwise. The bare assertions in his declaration aside, Walker has provided nothing to contradict his attorney's testimony that he was properly advised of the

consequences of his plea. He has not undermined the presumption that his plea was voluntary. Appendix A was read to him in court, and he affirmatively stated that he was in agreement with it. RP 11-12. He affirmatively told the court that he had read *all* of the plea documents and discussed them with his attorney, that he understood them, that he had no further questions, and that he did not want to speak to his lawyer further. RP 18-19.

It is clear that Walker struggled with the decision to plead guilty.[3] Nonetheless, his decision to plead despite his reservations is not surprising, given that he had already been convicted of more serious charges following a trial, given that his CrR 7.8 motion was not likely to succeed, and given the offer to avoid an indeterminate sentence. Walker's change of heart after the plea was entered does not render it involuntary. And as the trial court expressly noted, the fact that Walker "manifested his regret shortly after the plea," does not prove that it was involuntary, especially when such regret was not based on any new information. See CP 409. The trial court did not abuse its discretion when it denied Walker's motion to withdraw the plea.

[3] Although Walker argues that he had "very little time" to make a decision, before accepting the plea, the trial court specifically asked Walker if he would like more time to discuss the case with his attorneys, and he stated that he did not. CP 406; RP 19-20.

b. Walker's Attorneys Did Not Have A Conflict Of Interest.

Walker also alleges that a manifest injustice occurred because his attorneys had an actual conflict of interest that prevented them from providing effective assistance of counsel with respect to the plea.

Although the trial court expressly rejected Walker's claim that he received ineffective assistance due to a conflict of interest, this Court reviews an ineffective assistance of counsel claim *de novo*. State v. White, 80 Wn. App. 406, 410, 907 P.2d 310 (1995). Walker has failed to meet his burden to prove a manifest injustice based on ineffective assistance of counsel.

A defendant who claims that counsel had a conflict of interest must show two things: 1) that counsel actively represented conflicting interests; and 2) that counsel had an actual conflict that adversely affected his or her performance. State v. Tjeerdsma, 104 Wn. App. 878, 882, 17 P.3d 678 (2001). An actual conflict occurs "if, during the course of the representation, the parties' interests diverge with respect to a 'material factual or legal issue, or a course of action.'" Id. at 883 (quoting State v. Robinson, 79 Wn. App. 386, 394, 902 P.2d 652 (1995), quoting Sullivan v. Cuyler, 723 F.2d 1077, 1086 (3rd Cir. 1983)). Counsel's performance is adversely affected if the conflict "hampered [the] defense." Tjeerdsma,

104 Wn. App. at 883 (quoting Robinson, 79 Wn. App. at 395, quoting State v. Lingo, 32 Wn. App. 638, 646, 649 P.2d 130 (1982)). Put another way, the conflict "must cause some lapse in representation contrary to the defendant's interests[.]" Robinson, 79 Wn. App. at 395 (quoting Sullivan, 723 F.2d at 1086). A possible conflict, as opposed to an actual conflict, will not suffice to meet this standard. State v. Dhaliwal, 150 Wn.2d 559, 573, 79 P.3d 432 (2003); see also State v. Davis, 141 Wn.2d 798, 861, 10 P.3d 977 (2000) (a "mere possibility of a conflict" is not sufficient to call the defendant's conviction into question).

Walker alleges that the statement on Appendix A that he was "satisfied" with his attorneys' representation created an actual conflict of interest warranting withdrawal of his plea. He alleges that his attorneys' ethical obligations created such conflict. However, he has failed to demonstrate the existence of an actual conflict, or if one existed, that it caused a lapse in representation contrary to his interests.

A conflict of interest arises when there is a significant risk that the representation of a client will be materially limited by a personal interest of the lawyer. RPC 1.7(a)(2). Additionally, a lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently advised in making such an agreement. RPC 1.8(h)(1). However, the

Rules of Professional Conduct do not embody the constitutional standard for effective assistance of counsel on appeal; rather, they are "mere guides for determining what is reasonable." In re Pers. Restraint of Gomez, 180 Wn.2d 337, 349, 325 P.3d 142 (2014) (citing White, 80 Wn. App. at 412-13). Thus, even if an attorney commits a technical violation of RPC 1.7, there must be some indication that he is actively representing conflicting interests before an actual conflict exists. White, 80 Wn. App. at 412. Moreover, a defendant must point to specific instances suggesting that his lawyer's performance was adversely affected. State v. Graham, 78 Wn. App. 44, 55, 896 P.2d 704 (1995).

Walker's statement on Appendix A that he was "satisfied" with his attorneys' representation did not create an actual conflict of interest.[4] As the very existence of this appeal demonstrates, the statement in no way precluded him from later challenging their effectiveness. His lawyers never advised Walker to waive his right to bring such a claim; indeed, they properly recognized that in the absence of independent representation, they could not. RP 71. Walker has failed to establish that his statement expressing his satisfaction created an actual conflict of interest.

[4] Even after Walker moved to withdraw his plea, he continued to express his belief that his attorneys had done "a great job" in negotiating for the vacation of his trial convictions in exchange for the plea. RP 46.

Furthermore, Walker has not demonstrated that an actual conflict adversely impacted his lawyers' performance. Indeed, all objective evidence in the record points to the contrary. Walker had already been convicted by a jury of second-degree rape, second-degree assault, and felony harassment. CP 9. His convictions were affirmed on direct appeal. CP 22-30. His only remaining ability to challenge the convictions came in the form of a collateral attack – an uphill battle for a criminal defendant to win. See In re Pers. Restraint of Hagler, 97 Wn.2d 818, 824, 650 P.2d 1103 (1982) (collateral relief is limited because it "undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders.").

Despite the finality of his convictions, the State agreed to a significant reduction in exchange for not having to litigate Walker's CrR 7.8 motion, and in exchange for Walker's agreement not to further appeal the convictions. The fact that his lawyers were able to negotiate such a favorable outcome for Walker contradicts any assertion that a conflict of interest adversely impacted their performance. Walker has failed to establish a manifest injustice warranting withdrawal of his plea.

2. IF THIS COURT DETERMINES THAT WALKER SHOULD HAVE BEEN ALLOWED TO WITHDRAW HIS PLEA, HIS REMEDY IS REINSTATEMENT OF THE 2010 CONVICTIONS.

Should this Court disagree with the above arguments and conclude that the trial court abused its discretion in denying Walker's motion to withdraw his plea, Walker should be allowed to withdraw his plea and the 2010 judgment and sentence reinstated.

A plea agreement is a contract between the defendant and the State. State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). An indivisible plea, or "package deal," cannot be withdrawn piecemeal, but must be withdrawn in its entirety. E.g., State v. Bisson, 156 Wn.2d 507, 525, 130 P.3d 820 (2006); State v. Ermels, 156 Wn.2d 528, 541, 131 P.3d 299 (2006). This Court looks to objective manifestations of intent when determining whether a plea agreement was meant to be indivisible. State v. Chambers, 176 Wn.2d 573, 580-81, 293 P.3d 1185 (2013) (citing Turley, 149 Wn.2d at 400).

The State's motion and the court's order vacating Walker's jury convictions was an indivisible part of the plea agreement. CP 318; RP 21. Thus, if this Court finds that Walker should have been allowed to withdraw his plea, the court's order vacating his jury convictions – an indivisible part of the plea agreement – must also be withdrawn. Walker

was advised of this fact prior to the hearing on his motion to withdraw the plea, and he acknowledged that he understood that this would be the result if he was allowed to withdraw his plea. RP 30. Indeed, he indicated that is what he wanted. Id. Similarly, Walker would also be free to litigate his CrR 7.8 motion, which was dismissed pursuant to the plea agreement. CP 317.

The trial court's denial of Walker's motion to withdraw his plea was not an abuse of discretion. He has not established that his plea was involuntary or that he received ineffective assistance of counsel based upon a conflict of interest. However, in the event this Court decides to the contrary, Walker should be allowed to withdraw his plea, and the original 2010 judgment and sentence must be reinstated.

D. CONCLUSION

For the above reasons, the State respectfully requests this Court to conclude that Walker failed to meet his heavy burden of proving that his plea was involuntary, or that a conflict of interest denied him effective representation. This Court should affirm the trial court's denial of Walker's motion to withdraw his plea.

Should this Court determine that the trial court abused its discretion when it denied Walker's motion to withdraw his plea, his 2010 judgment and sentence must be reinstated.

DATED this 24th day of June, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the appellant, Susan Wilk, at susan@washapp.org, containing a copy of the Brief of Respondent, in STATE V. ALVIN WALKER, Cause No. 71748-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name

Done in Seattle, Washington

06/24/15

Date

CERTIFICATE OF SERVICE BY
ELECTRONIC MAIL