Supreme Court No. 97607-4
(COA No. 77781-5-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES EDWARD ELLIOTT,

Appellant.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(3) and RAP 13.4(b)(4), James Elliott, petitioner here and appellant below, asks this Court to accept review of a Court of Appeals decision affirming the voluntariness of his guilty plea. A copy of the Court of Appeals' opinion, issued on August 5, 2019, is attached to this petition.

B. ISSUES PRESENTED FOR REVIEW

1. The Fourteenth Amendment requires a guilty plea to be entered knowingly, intelligently and voluntarily. A guilty plea is not knowing, intelligent, and voluntary when the court misadvises the defendant regarding the maximum term. Was Mr. Elliott's guilty plea invalid because the court advised him that he could be sentenced to an impossible statutory maximum term? RAP 13.4(b)(3).

2. Multiple Washington statutes ban individuals with felony convictions from certain occupations. Additionally, multiple statutes impose hurdles on individuals with felony convictions that prevent them from obtaining jobs in numerous occupational fields. Consistent with the mandate that defendants knowingly, intelligent, and voluntarily enter a guilty plea, should this Court hold that courts must advise defendants of

the employment consequences that will follow upon a guilty plea? RAP 13.4(b)(3); RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

James Elliott pleaded guilty to one count of residential burglary, domestic violence, and one count of malicious mischief in the third degree, domestic violence. 11/3/17RP 8, 10, 20. During the plea colloquy, the court informed Mr. Elliott that the maximum sentence he could receive for the burglary charge was 10 years and a $20,000 fine. *Id*. at 13. It also informed Mr. Elliott that he may be subject to certain consequences as a result of his guilty plea, but it did not inform Mr. Elliott regarding any potential employment consequences. *Id*. at 11-18.

D. ARGUMENT

Mr. Elliott was entitled to withdraw his plea because he was misinformed of the consequences of his plea.

1. Due process required a guilty plea to be made knowingly, intelligently and voluntarily.

The Due Process Clause of the Fourteenth Amendment requires that a defendant enter a guilty plea knowingly, intelligently, and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Bradley*, 165 Wn.2d 934, 939, 205 P.3d 123 (2009); U.S. Const. amend. XIV. "A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences." *In re*

Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). The court must inform the defendant about the direct consequences of his guilty plea. "A direct consequence is one that has a 'definite, immediate and largely automatic effect on the range of the defendant's punishment.'" *Bradley*, 165 Wn.2d at 939 (quoting *Ros*s, 129 Wn.2d at 284).

The length of a sentence is a direct consequence of a guilty plea. *State v. Mendoza*, 157 Wn.2d 582, 590, 141 P.3d 49 (2006). Thus, a plea is involuntary if a defendant is misinformed of the potential length of sentence even if the resulting sentence is less onerous than represented in the plea. *Id*. at 591.

Moreover, a defendant is not required to show the misinformation was material to his decision to plead guilty. "[A] guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea . . . . Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea [regardless of any showing of materiality]." *Mendoza*, 157 Wn.2d at 590-91; *accord Bradley*, 165 Wn.2d at 939.

2. The court misinformed Mr. Elliott regarding the possible maximum sentence the court could impose.

In *Blakely v. Washington*, the Supreme Court recognized the maximum sentence a court could impose was "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." 542 U.S. 296, 301-02, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Importantly, the maximum sentence that may be imposed in a particular case is not the statutory maximum. *See id.* The maximum sentence is the maximum permissible sentence the court could impose as a consequence of the guilty plea. *Id*.

During his plea colloquy, the court informed Mr. Elliott that the maximum sentence it could impose for his felony crime was ten years and a $20,000 fine. RP 13. But Mr. Elliott's standard range was 3-9 months. CP 50 The court has authority to impose a sentence above the standard range *only* under the strict parameters of RCW 9.94A.535 and RCW 9.94A.537, in addition to the requirements of the state and federal constitutional guarantees of trial by jury and due process of law. Under RCW 9.94A.537(1), the State is required to give notice it will seek a possible exceptional sentence before the entry of a guilty plea. When the State does not seek an exceptional sentence, the court is only permitted to impose an exceptional sentence if the increased sentence is based on the

enumerated factors in RCW 9.94A.535(2). No aggravating facts are present or alleged here.

Mr. Elliott only faced a standard range sentence of 3-9 months for the charged felony offense. CP 53. Consequently, the "maximum term" the court advised him of (ten years) for his felony crime was erroneous. The court should have informed Mr. Elliott that the maximum was the top-end of the standard range (9 months). Instead, the court misadvised Mr. Elliott regarding the maximum punishment he faced as a consequence of his guilty plea. *State v. Knotek*, 136 Wn. App. 412, 149 P.3d 676 (2006), *review denied*, 161 Wn.2d 1013(2007).[1]

Knotek is directly on point. There, the court reiterated that before pleading guilty, a defendant needs to understand the "direct consequences of her guilty plea, not the maximum potential sentence if she [or another defendant] went to trial. . . ." *Id*. at 424 n.8 (citing *Ross*, 129 Wn.2d at 284). The *Knotek* court further agreed that *Blakely* "reduced the maximum terms of confinement to which the court could sentence Knotek . . . [to] the top end of the standard range[] . . . ." *Id*. at 425. The top of the standard range was the "effective maximum" for the defendant's plea. *Id*. Thus, where a defendant is told the maximum sentence for a crime is five

[1] This issue can be decided for the first time on appeal because it is a manifest error affecting a constitutional right. *Knotek*, 136 Wn. App. at 422-23; *State v. Kennar*, 135 Wn. App. 68, 71, 143 P.3d 326 (2006).

years when in fact the effective maximum sentence is the top of the standard range, the defendant is misadvised of the consequences of the plea.[2]

Though Mr. Elliott's guilty plea included a table that supplied the "total standard range" sentence and the "maximum term and fine," this did not inform him that the standard range sentence for his felony crime was the only effective maximum sentence the court could impose. CP 50. "Where a plea agreement is based on misinformation generally the defendant may choose . . . withdrawal of the guilty plea." *State v. Walsh*, 143 Wn.2d 1, 9, 17 P.3d 591 (2001) (citing *State v. Miller*, 110 Wn.2d 528, 532, 756 P.2d 122 (1988)). A guilty plea is not voluntary and thus cannot be valid where it is made without an accurate understanding of the consequences. *Id.* As *Mendoza* made clear, it does not matter whether the misadvisement was material to Mr. Elliott's decision to plead guilty. 157 Wn.2d at 590-91.

[2] *Knotek* concluded the appellant waived the right to challenge her guilty plea because the defendant was subsequently advised that no exceptional sentence was available and at the time of sentencing she "clearly understood that *Blakely* had eliminated the possibility of exceptional life sentences and, thus, had substantially lowered the maximum sentences that the trial court could impose." 136 Wn. App. at 426. In this case, no discussion of *Blakely* ever occurred.

Because Mr. Elliott was misinformed of the actual maximum sentence that could be imposed, he did not knowingly, intelligently, and voluntarily waive his right to a jury trial.

3. Additionally, the court neglected to inform Mr. Elliott regarding the employment consequences that would follow from his guilty plea.

Mr. Elliott also did not knowingly, intelligently, and voluntarily plead guilty because the court neglected to inform him of the employment consequences that would follow from his guilty plea. Again, "a guilty plea is not knowingly made when it is based on misinformation of sentencing consequences." *Isadore*, 151 Wn.2d at 298. In *Brady*, the United States Supreme Court declared that a defendant can only knowingly enter a guilty plea if he has "sufficient awareness of the relevant circumstances and likely consequences." 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). The Court further noted that a defendant must be aware of the "direct" consequences to his plea. *Id*. at 755.

Following *Brady*, this Court (as well as numerous other jurisdictions)[3] distinguished between "direct" and "collateral" consequences to determine whether a court is required to inform a defendant regarding a particular consequence. *See State v. A.N.J.*, 168

[3] *See* Brian M. Murray, *Beyond the Right to Counsel: Increasing Notice of Collateral Consequences*, 49 U. Rich. L. Rev. 1139, 1160 (2015).

Wn.2d 91, 113-14, 225 P.3d 956 (2010). This Court defines "direct" consequences as consequences that definitively, immediately, and automatically affect the defendant's range of punishment. *Id*. at 114. And this Court has characterized "collateral" consequences as simply those consequences that fail to fall within the ambit of "direct" consequences. *See, e.g., In re Reise*, 146 Wn. App. 772, 787, 192 P.3d 949 (2008). Previously, a court only needed to inform a defendant regarding a "direct" consequence that follows from his plea. *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006).

In keeping with *Brady's* directive that defendants plead guilty with "sufficient awareness of the relevant circumstances and likely consequences," it appears the "direct" versus "collateral" consequence distinction is dwindling; accordingly, this Court should find that courts must inform a defendant of the employment consequences that will follow upon a plea of guilty for multiple reasons. *Brady*, 397 U.S. at 749.

This distinction is declining for several reasons. First, the "direct" versus "collateral" distinction is arbitrary, vague, and unworkable. Second, it appears that courts are embracing the notion that it is the magnitude of the consequence, not the consequence's classification as "direct" or "collateral," that should inform a court's decision to inform a defendant regarding the consequences that will follow upon a guilty plea. Because a

person's ability to earn a living is central to his ability to function in society, this Court should hold that courts must advise defendants of the employment consequences that will follow upon a plea of guilt.

The lack of nationwide uniformity regarding the distinction between "direct" and "collateral" consequences shows that these terms lack a definite meaning, resulting in uneven justice. For example, in California, courts must inform defendants pleading guilty to sex crimes that the plea will require him to register as a sex offender because California courts classify sex offender registration as a "direct" consequence, while in New York, courts are not under the same obligation because New York classifies sex offender registration as a mere "collateral" consequence. *Compare People v. McClellan*, 862 P.2d 739, 745 (Cal. 1993) *with People v. Gravino*, 928 N.E.2d 1048, 1056 (N.Y. 2010). Our Supreme Court has yet to decide whether lifelong registration as a sex offender is a "direct" or "collateral" consequence, though the court noted "while the registration obligation does not affect the immediate sentence, its impact is *significant, certain, and known* before a guilty plea is entered." *A.N.J.*, 168 Wn.2d at 968 (emphasis added).

The law is evolving to embrace the concept that it is the magnitude of the consequence, not the consequence's classification as "direct" or "collateral," that should inform the obligation to inform a defendant

regarding the consequences that will follow upon a plea of guilt. In other words, consistent with principles of Due Process, what should matter is whether the consequence is "significant, certain, and known." *See id*.

For example, the United States Supreme Court ignored the difference between "direct" and "collateral" consequences and instead focused on the consequence's significance to determine whether counsel rendered effective representation in *Padilla v. Kentucky*, 559 U.S. 356, 130, S. Ct. 1473, 176 L. Ed. 2d 284 (2010). Many jurisdictions (including Washington) have concluded that deportation is merely a "collateral" consequence to a guilty plea;[4] however, the Court rejected this distinction to define the scope of constitutionally adequate representation and found that because deportation is a particularly severe penalty, counsel must advise noncitizen clients regarding the possibility of deportation upon a plea of guilty. *Padilla*, 559 U.S. at 365-66.

In an apparent recognition that the severity of the consequence renders it subject to notice, our courts recognize that defendants have the right to learn about numerous consequence that could be classified as "collateral" via the standardized forms that appear in Criminal Rule 4.2 (CrR 4.2). These forms inform defendants regarding numerous "collateral"

[4] *See State v. Martinez-Lazo*, 100 Wn. App. 869, 999 P.2d 1275 (2000).

consequences that can flow from their plea of guilt, including the inability to own a firearm,[5] possible deportation, the requirement to register as a sex offender for certain sex crimes, and the likely suspension of government assistance while the defendant is incarcerated. CrR 4.2. The superior courts must presume that these consequences, though arguably "collateral," are significant enough to cause a defendant some pause and may cause him to reconsider pleading guilty since they decided to place these consequences on this form.

Because the ability to earn a living is undoubtedly significant, and because the entering of a guilty plea subjects a defendant to numerous employment bans and barriers, this Court should hold that courts must advise defendants of the employment barriers that can follow upon a guilty plea. Indeed, "the ability to work is at the heart of citizenship and being a member of the community."[6] Perhaps this is why Substantive Due Process entails the freedom to "engage in any of the common occupations of life," and governmental threats to strip someone of their livelihood have been deemed unlawful. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 2d 1042 (1923); *see also Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 2d 574 (1967) ("the threat of disbarment and the

[5] *See In re Pers. Rest. of Ness*, 70 Wn. App 817, 823-24, 855 P.2d 1191, *review denied* 123 Wn.2d 1009 (1994).

[6] Murray, *supra* note 3, at 1149.

loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish [his Fifth Amendment] privilege");*Gardner v. Broderick,* 392 U.S. 273, 88 S. Ct. 1913, 20 L. Ed. 2d (1082) (1968) ("the mandate of the great privilege against self-incrimination does not tolerate the attempt, regardless of its ultimate effectiveness, to coerce a waiver of the immunity it confers on penalty of the loss of employment").

Several Washington statutes ban people from working in certain professions for life upon a felony conviction. *See, e.g.* RCW 19.146.210 (ineligible for mortgage broker license); RCW 19.146.310 (ineligible for loan originator license); RCW 19.225.050 (ineligible for employment as an athlete agent); RCW 35.21.333 (ineligible for employment as a police chief or marshal); RCW 71.09.300 (ineligible for employment at a secure community transition facility housing for sex offenders); RCW 9.941.110 (ineligible for employment with a licensed firearm dealer).

Moreover, a felony conviction presents numerous hurdles for countless jobs, and it may take years for an individual to obtain the authority to seek licensing for numerous professions, including becoming a veterinarian, teacher, or cosmetologist. *See Collateral Consequences*,

Columbia Legal Serv.;[7] Northwest Justice Project, *Certificate of Restoration of Opportunity (CROP)* (July 2018).[8]

Even without these hurdles, the mere existence of a criminal record significantly limits a person's employment options; for many, these limitations exist for the rest of their lives. *See* Harry J. Holzer et. al., *Employment Barriers Facing Ex-Offenders: Understanding the Nexus Between Prisoner Reentry & Work* (May 2003).[9]

Accordingly, courts should advise defendants of the very real challenges to employment they will face—including outright bans in certain jobs and significant hurdles in obtaining numerous other jobs—so that a defendant can truly knowingly, intelligently, and voluntarily enter a guilty plea. Such advisements are consistent with due process, as the employment consequences to pleading guilty to a felony crime are "significant, certain, and known." *A.N.J.*, 168 Wn.2d at 968. Though it is unnecessary for the court to name each employment ban, the court should

[7] http://www.columbialegal.org/sites/default/files/CROP_Collateral-Consequences-List.pdf (last visited Sept. 20, 2018). A person can eventually receive a Certification of Restoration of Opportunities (CROP) after a certain number of years to obtain jobs in certain occupational fields, but many felony crimes are excluded from CROP. *See Certificate of Restoration of Opportunities Act*, Columbia Legal Serv., http://www.columbialegal.org/CROP (last visited Sep.t 20, 2018).

[8] https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/45193CB1-61E7-4DE0-876B-C06952A3C811/2952en_new_crop-faq.pdf.

[9] https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF (describing the lifelong barriers individuals with felony records experience in obtaining employment).

at least make the defendant aware that his guilty plea could preclude him from ever obtaining jobs in certain fields. It should also inform a defendant that his conviction will make it increasingly difficult to obtain employment, and may prolong the defendant's ability to enter into certain occupational fields.

> This fifteen second burden is clearly worth the benefit it achieves in assuring that defendants are aware of the consequences of their plea. It borders on cruelty not to make someone aware of such disastrous consequences when it can be done so easily. It diminishes the justice of our judicial system.

State v. Heitzman, 527 A.2d 439, 442 (N.J. 1987) (Wilentz, C.J., dissenting).

This Court should accept review. RAP 13.4(b)(3); RAP 13.4(b)(4).

E. CONCLUSION

Based on the foregoing, Mr. Elliott respectfully requests that this Court grant review.

DATED this 29th day of August, 2019.

Respectfully submitted,

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FILED
8/5/2019
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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. JAMES EDWARD ELLIOTT, Appellant.	No. 77781-5-I DIVISION ONE UNPUBLISHED OPINION FILED: August 5, 2019

APPELWICK, C.J. — James Elliott contends that his guilty plea was not entered knowingly, voluntarily, and intelligently. He argues that the trial court misinformed him of the applicable maximum sentence and neglected to inform him of the employment consequences that would follow from his guilty plea. We conclude that Elliot was properly advised at sentencing and that Elliott knowingly, intelligently, and voluntarily entered the plea. We affirm.

FACTS

In March 2017, the State charged James Elliott with first degree burglary - domestic violence. On November 3, 2017, Elliott pleaded guilty to amended charges of residential burglary - domestic violence (count one) and third degree malicious mischief - domestic violence (count two). During the plea colloquy, the State informed Elliott that the maximum sentence he could receive for the burglary charge was 10 years and a $20,000 fine. The trial court adopted the agreed

recommendation of the parties and imposed a standard range sentence totaling eight months in jail, which Elliott had already served. Elliott appeals.

DISCUSSION

Elliott contends that, because the court misinformed him of the consequences of his plea, he is entitled to withdraw the plea. He argues that the trial court misinformed him of the possible maximum sentence that the court could impose. And, he argues that the trial court did not inform him of the employment consequences that would follow his guilty plea.

I. Due Process

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. State v. Robinson, 172 Wn.2d 783, 794, 263 P.3d 1233 (2011). A defendant does not knowingly plead guilty when he bases that plea on misinformation regarding sentencing consequences. Id. at 790. The court shall allow a defendant to withdraw his plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. Id. at 790-91; CrR 4.2(f). And, a defendant may withdraw his guilty plea when he was not informed of a "direct consequence" of the plea. State v. Mendoza, 157 Wn.2d 582, 588, 141 P.3d 49 (2006).

A sentencing consequence is direct when "'the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.'" Id. (quoting State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996)). A defendant must be informed of the statutory maximum for a charged

crime, as this is a direct consequence of his guilty plea. State v. Weyrich, 163 Wn.2d 554, 557, 182 P.3d 965 (2008). The defendant need not establish a causal link between the misinformation and his decision to plead guilty. Id.

The State bears the burden of proving the validity of a guilty plea. Ross, 129 Wn.2d at 287. Knowledge of the direct consequences of a guilty plea may be satisfied from the record of the plea hearing or clear and convincing extrinsic evidence. Id. An allegation that a guilty plea was not knowingly made because it was based on misinformation of sentencing consequences is a constitutional error that a defendant can raise for the first time on appeal. State v. Kennar, 135 Wn. App. 68, 72-73, 143 P.3d 326 (2006); State v. Knotek, 136 Wn. App. 412, 422-23, 149 P.3d 676 (2006).

II. Maximum Sentence

Elliott contends first that the trial court misinformed him of the maximum term for his burglary charge.

The United States Supreme Court has held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, besides the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); In re Pers. Restraint of Beito, 167 Wn.2d 497, 504, 220 P.3d 489 (2009). The "'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely v. Washington, 542 U.S. 296, 303, 124 S. Ct.

2531, 159 L. Ed. 2d 403 (2004) (emphasis omitted) (quoting Apprendi, 530 U.S. at 483).

Residential burglary is a class B felony. RCW 9A.52.025. The maximum penalty for a class B felony is 10 years in prison and a $20,000 fine. RCW 9A.20.021(1)(b).

Elliott argues that the standard range he faced was 3 to 9 months, and that, when the State does not seek an exceptional sentence, the court has authority to impose a sentence above the standard range only under the parameters of RCW 9.94A.535. Citing Knotek, Elliott contends that no aggravating facts are present or alleged here, and therefore the "maximum term" of 10 years of which the court advised him was erroneous.

In Knotek, the defendant pleaded guilty before Blakely and was sentenced after Blakely. 136 Wn. App. at 420-21. Blakely eliminated the possibility of exceptional life sentences that the trial court had discussed with Knotek before accepting her plea. Id. at 425. On appeal, Knotek argued that she was misinformed about the maximum terms of confinement for the homicide charges to which she pleaded guilty when the trial court told her that she faced the possibility of an exceptional sentence above the standard sentencing range. Id. at 424. Rejecting her argument, the court held,

> The record clearly shows that, regardless of Knotek's currently claimed understanding of the sentencing consequences when she entered her pre-Blakely plea, before the trial court sentenced her post-Blakely, she clearly understood that Blakely had eliminated the possibility of exceptional life sentences and, thus, had

> substantially lowered the maximum sentences that the trial court could impose.

Id. at 425-26.

The State contends that Elliott's argument "directly conflicts with our [S]upreme [C]ourt's categorical edict in Weyrich." In Weyrich, the defendant entered a guilty plea to three counts of first degree theft and an unlawful check issuance charge. 163 Wn.2d at 556. Two separate statements of defendant on plea of guilty advised Weyrich that the maximum sentence for each crime, respectively, was 5 years. Id. His judgment and sentence also stated that the maximum sentence was 5 years for each crime. Id. In fact, the maximum sentence for unlawful check issuance is 5 years, but the maximum sentence for theft in the first degree is 10 years. Id.; RCW 9A.20.021(1)(b); RCW 9A.56.030(2). Despite the error, Weyrich was sentenced on both crimes within the correct standard range. Id. Prior to sentencing, Weyrich moved to withdraw his pleas, which he argued were not knowingly, voluntarily, and intelligently made. Id. The trial court denied the motion and this court affirmed. Id. The State Supreme Court reversed, holding that, because Weyrich was misinformed that the statutory maximum sentence for the first degree thefts was 5 years, he should have been allowed to withdraw his pleas. Id. at 557.

This court addressed essentially an identical argument to Elliott's in Kennar. Kennar contended that his plea was not made knowingly, voluntarily, and intelligently, because the trial court "misinformed him of the applicable maximum sentence for the offense with which he was charged." 135 Wn. App. at 71. Kennar

asserted that the applicable maximum sentence was the top end of the standard range, not the statutory maximum sentence declared by the legislature. Id. He argued that the trial court should have informed him of only the applicable standard sentence range. Id. at 74.

This court disagreed. Id. at 76. We stated,

> First, the guilty plea form approved by the Supreme Court and contained in CrR 4.2(g) requires that both the applicable standard sentence range and the statutory maximum sentence established by the legislature be set forth. This is a clear indication that the drafters of CrR 4.2 did not believe these to be one and the same.

Id. at 74. This court stated that "a defendant should be informed of both the applicable standard sentence range and the statutory maximum sentence established by the legislature for the charged offense." Id. (citing State v. Gore, 143 Wn.2d 288, 21 P.3d 262 (2001), overruled on other grounds by State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005), abrogated by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006) (the subsequent history has no effect on the usage of Gore)). We went on to explain,

> It is not until the sentencing hearing that the trial court makes its determination of a defendant's offender score and the applicable standard sentence range. At the time of the plea colloquy, the trial court is merely operating on the basis of the information given to it by the parties—it is not at that time making a determination that this information is correct.

Id. at 75. Rejecting Kennar's argument, this court concluded that the procedure he advocated for would result in defendants "being misadvised of their maximum peril." Id. at 76.

As in Kennar, Elliott signed the statement of defendant on plea of guilty prepared by his attorney and required by CrR 4.2(g), thereby acknowledging that he knew the nature of the crime charged, the maximum sentence, and the consequences of entering the plea, including the court's authority to impose any sentence within the designated standard range. Id. at 70. Elliott was advised in writing that he was not facing an exceptional sentence outside the standard range. During his plea colloquy with the trial court, Elliott stated that he understood that the maximum term for residential burglary is 10 years imprisonment and a $20,000 fine. He also acknowledged that the range he was "facing" was the standard range of 3 to 9 months.

We adhere to our decision in Kennar and find that, when Elliott entered his guilty plea, he was correctly informed of the maximum term and the standard range.

III. Employment Consequences

Elliott argues next that he did not knowingly, intelligently, and voluntarily plead guilty because the trial court neglected to inform him of the employment consequences that would follow from his guilty plea.

A defendant must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea. State v. A.N.J., 168 Wn.2d 91, 113-14, 225 P.3d 956 (2010). While a defendant cannot be positively misinformed about the collateral consequences, those collateral consequences can be undisclosed without rendering the plea involuntary. Id. at 114. The distinction between direct

and collateral consequences of a plea turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment. Id.

Citing Brady v. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970), Elliott contends, "[I]t appears the 'direct' versus 'collateral' consequence distinction is dwindling; accordingly, this [c]ourt should find that courts must inform a defendant of the employment consequences that will follow upon a plea of guilty for multiple reasons." And, he asserts that "[b]ecause a person's ability to earn a living is central to his ability to function in society," this court should hold that courts must advise defendants of the employment consequences that will follow a guilty plea.

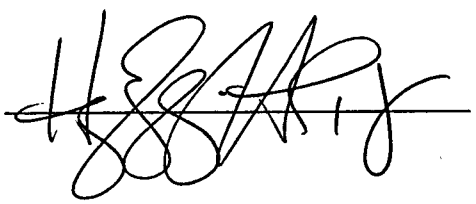
Elliot observes that several Washington statutes ban people with felony convictions from working in certain professions. He also asserts that a felony conviction presents numerous hurdles for countless jobs. The only legal authority Elliott cites for the proposition that courts should inform a defendant of the employment difficulties he or she will face after a guilty plea is the dissent in State v. Heitzman, 107 N.J. 603, 608, 527 A.2d 439 (1987) (Wilentz, C.J., dissenting). We acknowledge that a felony conviction creates difficulties for obtaining employment. However, no authority has held that diminished employment opportunities are a direct consequence of a plea, and we decline to do so here. Thus, the trial court was not required to advise Elliott on those consequences.

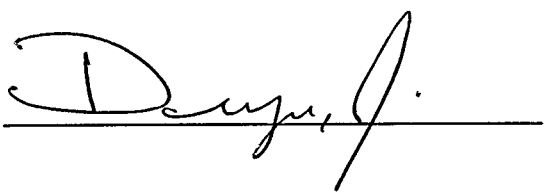
Elliott's plea was knowingly, intelligently, and voluntarily entered.

We affirm.

Applewick, C.J.

WE CONCUR:





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. 77781-5-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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