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SUPREME COURT  
STATE OF WASHINGTON  
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No. 98162-1  
COA No. 52904-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

IILYA N. WATKINS,

Appellant.

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

The Honorable Chris Lanese, Judge  
Cause No. 17-1-01733-34

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ANSWER TO PETITION FOR REVIEW

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Joseph J.A. Jackson  
Attorney for Respondent

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the decision of the Court of Appeals conflicts with a published decision of the Court of Appeals.

2. Whether the decision of the Court of Appeals conflicts with a decision of this Court.

B. STATEMENT OF THE CASE.

The petitioner, Illya N. Watkins, was charged with residential burglary domestic/domestic violence and felony violation of a no contact order/domestic violence, in Thurston County cause number 17-1-01733-34. CP 3. The charges were later amended to burglary in the first degree/domestic violence or, in the alternative, residential burglary/domestic violence, felony violation of a no contact order/domestic violence, and assault in the second degree/domestic violence or, in the alternative, assault in the fourth degree/domestic violence. CP 4-5. Based on his prior criminal history, the State notified Watkins of its intent to seek sentencing as a persistent offender. CP 71.

Watkins eventually accepted a plea agreement, in which the State agreed to recommend a drug offender sentencing alternative on a plea to a single count of felony violation of a no contact order. CP 27-32. The State also agreed to dismiss counts 1 and 3, and

dismiss other charges in Thurston County cause number 18-1-01225-34. RP 3, CP 30.

In his statement of defendant on plea of guilty, Watkins acknowledged, "[e]ach crime with which I am charged carries a maximum sentence, a fine, and a Standard Sentencing Range as follows" and listed below for count 2 was an indication that his offender score was seven, and his standard range was 51-60 months. CP 28. The statement further indicated "[t]he prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is complete and accurate." CP 28. A prosecutor's statement of criminal history was filed along with the statement of defendant on plea of guilty, which included Watkins' and his counsel's signatures. CP 72-74.

Above Watkins' signature on the statement of criminal history, was the acknowledgement,

The defendant and the defendant's attorney hereby stipulate that the above is a correct statement of the defendant's criminal history relevant to the determination of the defendant's offender score in the above-entitled cause.

CP 73. During his plea hearing, the trial court inquired of Watkins, “Do you understand what an offender score is” to which Watkins responded, “yes.” RP 6. The court continued,

Based on your offender score, the standard range for the crime you’re intending to plead guilty to is as follows . . . so as to Count 2, the count you’re intending to plead guilty to, actual confinement of 51 to 60 months, community custody of 12 months, and a maximum term and fine of five years and \$10,000. Do you understand that?

RP 6-7. Watkins responded, “yes.” RP 7.

During the State’s sentencing recommendation, the prosecutor stated,

[a]s the Court can tell from the defendant’s criminal history, had he been convicted in the 1733 case, he was facing a third strike that carried with it the possibility – or that carried with it the possibility, if convicted, of life imprisonment. This recommendation for a prison-based DOSA is a joint recommendation by the parties.

RP 10. Watkins counsel did not disagree, stating, “we appreciate the State’s willingness to make this recommendation.” RP 19. The trial court adopted the “jointly recommended sentence.” RP 24.

Watkins appealed arguing that the trial court erred in including three out of state felony convictions in his offender score and arguing that his trial counsel was ineffective for failing to object to the inclusion of those convictions in his offender score.

Unpublished Opinion, No. 52904-1-II, at 1. Division II of the Court of Appeals affirmed, holding that the sentencing court did not err because Watkins stipulated to the inclusion of the convictions and waived any objection to comparability on appeal, and found that Watkins failed to demonstrate deficient performance of counsel. Id. Watkins now seeks review of this Court.

C. ARGUMENT.

A petition for review will be accepted by this Court only if the petitioner demonstrates that review is appropriate under the criteria set forth in RAP 13.4(b). Under that rule, a petition for review will be accepted by this Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). For the reasons below, Watkins has not demonstrated that review is appropriate.

1. The decision of the Court of Appeals does not conflict with Division III's decision in *State v. Richmond*.

Watkins argues that the Court of Appeals' decision conflicts with the published opinion of Division III in *State v. Richmond*, 3 Wn. App.2d 423, 415 P.3d 1208 (2018), *review denied*, 191 Wn.2d 2009, 424 P.3d 1223 (2018). In *Richmond*, Division III of this Court held that the defendant had not affirmatively acknowledged that his Idaho conviction was comparable to Washington law at sentencing following trial. *Id.*, at 436-437. Following trial, defense counsel acknowledged the existence of the Idaho conviction and ultimately accepted the offender score calculation, but specifically disputed the legal comparability of the conviction. *Id.* at 437. Distinguishable from *Richmond*, Watkins affirmatively acknowledged that his California and Ohio convictions were properly included in his offender score by executing his statement of defendant on plea of guilty, acknowledging the correct standard range was based on an offender score of seven, signing the acknowledgment on the prosecutor's statement on criminal history, which had a score sheet attached identifying the offender score as seven, and affirmatively acknowledging to the trial court that he understood his offender



score and acknowledging that his standard range was 51-60 months.

Unlike the defendant in Richmond, Watkins negotiated for an agreed recommendation. When the defendant “affirmatively acknowledged at sentencing that his prior out-of-state convictions were properly included in his offender score, we hold the sentencing court did not violate the SRA nor deny him due process.” State v. Ross, 152 Wn.2d 220, 230, 233, 95 P.3d 1225 (2004). The decision of the Court of Appeals was not inconsistent with Richmond and was consistent with this Court’s holding in Ross. Additionally, Watkins’ stipulation to inclusion of the out-of state convictions in his offender score was not an agreement to an illegal sentence as Watkins now argues. Petition, at 11. No comparability analysis was required regarding the California and Ohio felony convictions because he stipulated to their comparability and has, thus, waived any challenge on that basis. State v. Collins, 144 Wn. App. 547, 555, 182 P.3d 1016 (2008), *review denied*, 165 Wn.2d 1032, 203 P.3d 381 (2009) (the right to argue that an offender score was miscalculated can be waived). There is no basis upon which this Court should accept review.

2. The decision of the Court of Appeals is not inconsistent with this Court's decision in *State v. Estes*.

Watkins argues that the Court of Appeals' holding that he failed to demonstrate deficient performance conflicts with this Court's holding in *State v. Estes*, 188 Wn.2d 450, 463, 395 P.3d 1045 (2017). In *Estes*, defense counsel failed to advise the defendant that he faced potential sentencing as a persistent offender. *Id.* at 460. In that case, the record demonstrated that defense counsel was not aware of the possibility until after the verdict. *Id.* at 460.

In this case, defense counsel was aware of the possibility of sentencing as a persistent offender and negotiated a non-strike plea with a recommendation for a prison based DOSA. Watkins' argument that his defense counsel should have realized that the state's proof was deficient is speculative at best. As noted by Division II of the Court of Appeals, "had Watkins' attorney raised such an objection when negotiating with the prosecutor, the plea agreement could have fallen apart" and he could have been in a position where he would have been sentenced as a persistent offender. *Unpublished Opinion* at 8.

Unlike the attorney in Estes, Watkins' attorney was aware of the possibility that the State could prove the existence of two prior strike offenses and negotiated a resolution that avoided that possibility. This was not deficient performance. There is no basis upon which this Court should accept review.

D. CONCLUSION.

Watkins has not demonstrated a basis upon which this Court should accept review pursuant to RAP 13.4(b). The State respectfully requests that this Court deny Watkins' petition for review.

Respectfully submitted this 5th day of March, 2020.

  
\_\_\_\_\_  
Joseph J.A. Jackson, WSBA# 37306  
Attorney for Respondent

**DECLARATION OF SERVICE**

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Supreme Court using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: March 5, 2020

Signature: 

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

**March 05, 2020 - 3:48 PM**

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