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NO. 69638-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

ANTHONY C. LEE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY

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**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	2
LEE'S CLAIM SHOULD BE REJECTED IN ACCORDANCE WITH THIS COURT'S DECISION IN <u>STATE V. KENNAR</u> .....	2
D. <u>CONCLUSION</u> .....	5

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Blakely v. Washington, 542 U.S. 296,  
124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) ..... 3

Washington State:

State v. Kennar, 135 Wn. App. 68,  
143 P.3d 326 (2006), rev. denied,  
161 Wn.2d 1013 (2007) ..... 1, 2, 3, 4, 5

Rules and Regulations

Washington State:

CrR 4.2 ..... 4

**A. ISSUE PRESENTED**

Whether Lee's claim that his guilty plea was not made knowingly, intelligently, and voluntarily should be rejected in accordance with this Court's decision in State v. Kennar, 135 Wn. App. 68, 143 P.3d 326 (2006), rev. denied, 161 Wn.2d 1013 (2007).

**B. STATEMENT OF THE CASE**

The defendant, Anthony Lee, was charged with possession of cocaine and theft in the second degree for conduct that occurred on July 13, 2009. CP 1-7. Lee pled guilty to both counts as charged. CP 8-33. During the plea colloquy, Lee was separately informed of the standard range and the statutory maximum for each crime, as well as the State's recommendation for a standard-range sentence on both counts.<sup>1</sup> RP (2/16/10) 5-10. The guilty plea form contained the same information regarding the standard ranges, statutory maximums, and the State's recommendation. CP 9, 12. The trial court found that Lee was pleading guilty knowingly,

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<sup>1</sup> As part of the plea agreement, Lee reserved the right to challenge the State's calculation of his offender score at sentencing; nonetheless, he understood at the time of the plea that the standard ranges had been calculated based on the State's understanding of his criminal history. RP (2/16/10) 6-7; CP 9.

intelligently, and voluntarily, and accepted the plea. RP (2/16/10) 15.

At sentencing, the State made a standard-range recommendation in accordance with the plea agreement.<sup>2</sup> RP (8/11/10) 10-11. Lee requested a prison-based DOSA sentence. RP (8/11/10) 6-10. The trial court granted Lee's request for a DOSA. CP 34-43; RP (8/11/10) 16-20.

Subsequently, this Court ordered that Lee be resentenced because the trial court had imposed incorrect prison terms on the DOSA sentence. CP 46-49. Lee was resentenced accordingly. CP 50-59. He now appeals. CP 60-70.

**C. ARGUMENT**

**LEE'S CLAIM SHOULD BE REJECTED IN ACCORDANCE WITH THIS COURT'S DECISION IN STATE V. KENRAR.**

Lee's sole claim on appeal is that he should be allowed to withdraw his guilty pleas because he was incorrectly advised of the maximum sentences for the crimes to which he pled guilty. More specifically, Lee contends that because he was advised that the statutory maximum for each crime was five years, rather than the

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<sup>2</sup> The State also agreed with Lee that his offender score was lower than the State had originally calculated. RP (8/11/10) 5-6.

high end of the applicable standard range, he was misadvised of the sentencing consequences of his guilty pleas, and thus, they were not made knowingly, voluntarily, and intelligently. See Brief of Appellant. This Court rejected the same claim in State v. Kennar, 135 Wn. App. 68, 143 P.3d 326 (2006), rev. denied, 161 Wn.2d 1013 (2007). This Court should reject it in this case as well.

In Kennar, as in this case, the defendant was advised of both the statutory maximum and the applicable standard range at the time of his guilty plea. Kennar, 135 Wn. App. at 70. Also as in this case, defendant Kennar asserted for the first time on appeal that his guilty plea was not made knowingly, intelligently, and voluntarily because he had been misadvised of the maximum sentence. More specifically, defendant Kennar argued that the statutory maximum was not actually the maximum sentence under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), because the facts necessary to exceed the standard range had to be found by a jury. Accordingly, defendant Kennar argued that the high end of the standard range was the maximum possible sentence, and thus, he had been misadvised of the consequences of his plea. Kennar, 135 Wn. App. at 71.

This Court rejected this claim, and held that “CrR 4.2 requires the trial court to inform a defendant of both the applicable standard sentencing range and the maximum sentence for the charged offense as determined by the legislature.” Kennar, 135 Wn. App. at 75. Moreover, this Court noted that the parties’ understanding of a defendant’s offender score and standard range may change between the entry of the guilty plea and sentencing.<sup>3</sup> Id. at 75-76. Accordingly, this Court observed that advising the defendant of only the high end of the standard range at the time of the plea could result in misadvising the defendant of the maximum possible sentence. Therefore, advising the defendant of the applicable statutory maximum is a sound practice for this reason as well. Id. at 75-76.

Kennar is directly on point, and Lee has offered no reasons to revisit or overrule it. This Court should reject Lee’s claim in accordance with Kennar.

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<sup>3</sup> That situation occurred in this case.

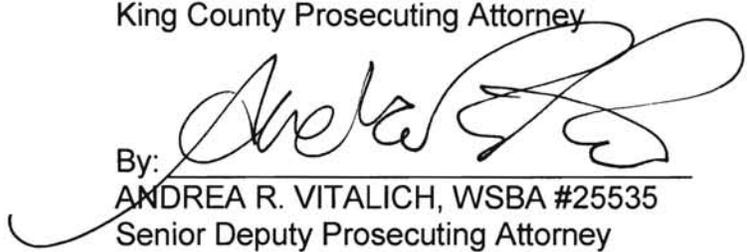
**D. CONCLUSION**

Lee's claim is controlled by this Court's decision in Kennar,  
and therefore, this Court should affirm.

DATED this 13<sup>th</sup> day of June, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. ANTHONY C. LEE, Cause No. 69638-6-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.

U Brame

Name

Done in Seattle, Washington

6/13/13

Date