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STATE OF WASHINGTON

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NO. 71454-6-I

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent,
v.
JOSEPH FRANCIS WILLIAMS, Appellant.

BRIEF OF APPELLANT

Submitted by:
Joseph Francis Williams,
Pro Se Appellant
#954443
MCC/WSRU C-314
P.O. Box 777
Monroe, WA 98272-0777

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3. The trial court erred when it concluded that "an offer with an expiration that is not accepted is rejected." 4

4. The trial court erred when citing the "standard operating procedure (practically and culturally in King County)" as if it were authority, or law, or founded in any legal principle, and using this non-legal 'standard' as reason for the court's conclusions or decisions. 4

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,)
Respondent,)
)
)
)
JOSEPH FRANCIS WILLIAMS,)
Appellant.)
)
)

Case #: 71454-6-I

BRIEF OF APPELLANT

I. INTRODUCTION

I timely filed a pro se Motion for Withdrawal of Guilty Plea in the Superior Court of King County on May 28, 2013 (per Mailbox Rule - GR 3.1), which was accepted as 'filed' on May 31, 2013.

On June 13, 2013, the State filed State's Response to Defendant's Motion to Withdraw Guilty Plea (see State's Response - Appendix "A"). I made no Reply to the State's Response, as their Response offered no argument that I felt necessitated an answer.

On August 14, 2013, the State filed State's Response to Defendant's Motion to Withdraw His Guilty Plea (see State's Second Response - Appendix "B"). There is no procedural rule that allows for a Second Response to my Motion, yet it was allowed. This then did necessitate my filing Defendant's Reply to State's Second Response to Defendant's Motion for Withdrawal of Guilty Plea (see

Defendant's Reply - Appendix "C"; as filed by defense counsel Phillip L. Weinberg).

On October 23, 2013, a hearing on my Motion was held. Testimony from prior defense counsels, Hal Palmer and Kris Jensen, and ex-prosecutor Suzanne Love, was heard. (Transcripts of this hearing has been filed with this court.)

An Order Denying Motion to Withdraw Guilty Plea (Cause No. 10-1-04358-2 SEA) was entered in a 'Summary Decision' by the Hon. Judge Mary Yu on October 31, 2013. Despite the dismissive mischaracterization, found on page 2 of the Order, of arguments said to be merely 'Monday Morning Quarterbacking,' my Motion and related filings was based on the United States Supreme Court rulings found in Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012), Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012), Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and others, that support the facts of ineffective assistance of counsel, as it relates to the plea bargaining process, that occurred in my case, which made my initial plea effectively 'involuntary,' and thus has led to an illegal sentence. Lafler and Frye clarified what constituted 'ineffective assistance of counsel' in the plea bargaining process, and

what should be expected by the lower courts in applying their rulings.

The hearing that was held on my motion, by the same trial judge in my case, did little to bring light on the matter before this Court. Conducted by my paid counsel, Mr. Weinberg, it was clear that he was unable and ill-prepared to argue the points I wrote in my initial motion. What was prepared by me with thought and clarity, having read and researched the points over some time, could not be carried by Mr. Weinberg through the examinations of the witnesses he faced.

This appeal will be argued on the points of my previously filed motions, with support from the record of the hearing and trial, and the constitutional merits of plea bargains as contracts, and the ineffective representation of counsel that I received (as relates to plea bargains,) and the application of the rulings of the courts in this State, and the Supreme Court of the United States. I hope I will be fairly heard, and with that in mind, I have full confidence in this Court's procedure and judgment.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when concluding that "earlier plea offers were specifically rejected by Mr. Williams."

2. The trial court erred when it misstated the substance of the plea offers as having an "expiration," when no evidence was presented that any expiration was stated, with any of the plea offers, to myself, or to my counsel.
3. The trial court erred when it concluded that "an offer with an expiration that is not accepted is rejected."
4. The trial court erred when citing the "standard operating procedure (practically and culturally in King County)" as if it were authority, or law, or founded in any legal principle, and using this non-legal 'standard' as reason for the court's conclusions or decisions.
5. The court erred in concluding that whatever went on before the signing of the third plea bargain, regarding prior plea offers, did not nullify the third plea bargain, that was "ultimately agreed to" because it was reduced to a written form.
6. The trial court erred in finding that defense counsel, Hal Palmer, provided effective assistance of counsel.
7. The trial court erred in determining that my plea "was voluntarily made."
8. The trial court erred in determining that the plea offer I 'accepted' was the third offer, and not the

second offer by the State, despite the fact that the third offer didn't exist at the time that I 'accepted' the State's plea offer.

9. The trial court erred in failing to treat the 'plea bargain offers' as 'contracts' under the law, and ascertaining what was the 'offer' that was being 'accepted' at the time the trial was stopped, and having the terms placed into the record, in written or oral form, which would act to protect all parties.
10. The trial court erred in allowing a plea to be made to a flawed charging document, which was invalid on its face, in that it contained duplicative charges, in clear violation of the 'merger doctrine', and my protected rights against double-jeopardy; thus making the plea agreement as flawed and as invalid as the charging document upon which it was based.

Issues Pertaining to Assignment of Error

1. Is a plea bargain offer a contract that is formed by the acceptance of the offer, and completed when the terms of the contract are fulfilled through the performance of the parties?
(Assignment of Error - 1, 2, 3, 5, and 9)
2. If a contract, as a plea bargain, is ambiguous in any respect, is the ambiguity construed against the drafter

of the contract?

(Assignment of Error - 2, and 3)

3. Does the State have an obligation to specifically set forth all of the terms, considerations, and performances, in any plea offer the State chooses to offer to a defendant, to include what constitutes 'acceptance' and what limits exist upon the offer, such as expiration by time or event?

(Assignment of Error - 1, 2, 3, 4, 5, and 9)

4. Does the existence of a non-codified 'procedural cultural rule' of the office of the prosecutor of King County, create a rule of court, or limit, or requirement, that a defendant or officer-of-the-court, is expected to know, and follow, in the Superior Court of King County? Without notice, or support of law, can such a 'rule' ever used to form a judgment, or impose a limit or requirement on any defendant or officer-of-the-court?

(Assignment of Error - 2, 3, 4, and 9)

5. Can an offer, as a contract, be created after the 'acceptance' is given, or does 'acceptance' require prior knowledge of the offer? If no prior knowledge is possible, for an uncreated offer, then what reasonable person could ever assume that acceptance is

being given to anything except what is actually known to exist? If Offer Two was known to myself, the defendant, while Offer Three did not exist at the moment of 'acceptance,' which was the moment a contract was formed with the State, then wasn't Offer Two the enforceable contract under the law? Is the State in breach-of-contract by the sudden replacement of what was 'accepted' for that which was unknown, as it didn't exist?

(Assignment of Error - 1, 2, 5, 8, and 9)

6. When a defendant indicates to counsel, and court, that he is willing to 'accept' the State's offer, does the court have an obligation to determine, from the defendant, the defendant's intention and understanding of the offer which is being accepted, at the moment the defendant accepts?

(Assignment of Error - 5, 8, and 9)

7. Does a plea bargain offer have an expiration point, prior to a finding of guilt, if no expiration point or event is specified by the drafter, or communicated to the defendant? Is failure to express an expiration time or event an 'ambiguity' in the offer as a contract? If an expiration time or event is not specified, can an offer be retroactively given an

expiration time or event?

(Assignment of Error - 1, 2, 3, 4, 8, and 9)

8. If an offer is not 'accepted' by word or deed, is it then, by non-action, considered rejected?

(Assignment of Error - 1, 2, 3, 8, and 9)

9. Was the second plea offer specifically rejected by me, the defendant?

(Assignment of Error - 1, 8, and 9)

10. Was defense counsel, Hal Palmer, ineffective with regard to the plea bargain process? Did Hal Palmer fail to advise defendant of the substance, specifics, or terms of the State's plea offer? Did Hal Palmer fail to protect his client's interest and zealously defend his rights to the plea bargain that was accepted, to wit, the Second Offer?

(Assignment of Error - 6, 7, and 8)

11. Is counsel ineffective if he does not advise defendant, but chooses to merely report the facts of the plea offer to the defendant, his client?

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12. Is an accepted plea offer considered voluntary if counsel fails to advise the defendant on the merits of acceptance or rejection? Is an accepted plea offer voluntary if counsel fails to advise the defendant that

a plea offer will or has expired? Is an accepted plea offer voluntary if counsel allows another offer, never before seen, to replace the only offer his client, myself, could have possibly been accepting?

(Assignment of Error - 6, and 7)

13. Was the charging document flawed and invalid on its face? Were there duplicative charges in the charging document? Should the 'merger doctrine' been applied to the charging document? Was there a violation of my rights against 'double-jeopardy' in the charging document, and the duplicative charges?

(Assignment of Error - 10)

14. Did the trial court err in allowing a plea to be made to a flawed charging document, for the reasons named above? If the charging document is flawed and invalid, is the accepted plea invalid?

(Assignment of Error - 10)

15. Should the accepted plea, Plea Offer Three, be allowed to be withdrawn for the reasons named above? Should the Second Plea, which I believed I was 'accepting' be imposed?

(Assignment of Error - 1 through 14)

III. STATEMENT OF THE CASE

Three different plea bargains occurred in this case:

the first was offered by King County prosecutor Mafe Rajul (see Stipulation by the Parties as to Testimony of Mafe Rajul - Appendix "D") to myself, through Hal Palmer (RP/Hearing, pgs. 10, 16-18, 123, 124; Hearing Exhibit #1, "E-mail 4/15/2011" (also Appendix "C" of my 'Motion to Withdraw Guilty Plea,' henceforth Motion, "E-mail to Aileen Seney on 4/15/11"; e-mails here cited were sent by Kris Jensen to Aileen Seney one week after his representation ended on 4/8/11 (RP/Hearing, pg. 24)); the second was offered by King County prosecutor Suzanne Love to myself, through Kris Jensen on 4/8/11, the same day he did withdraw as my counsel (see PR/Hearing, pgs. 17-18, 22, 24-25, 133, 136-137; and e-mail cited above, from Kris Jensen to Aileen Seney on 4/15/11); the third was after my acceptance of the second plea offer by the State, through the meeting of the required step of acknowledging to the State that I would agree to plead guilty (see RP/Trial, August 10, 2011 - pg. 13) which fulfilled substantial performance of the second offer (see defendant's Motion, pgs. 8-9). The third, while 'agreed to' from the pressure of the moment, was not the plea offer that I had 'accepted' when I told counsel to stop the trial, and to let the State know that I was agreeing to plead 'guilty,' thus fulfilling the performance requirement of the only plea offer that I, or counsel, knew existed at

that moment: (see "Report of Proceedings, Trial, August 10, 2011" - Appendix "E"; RP/Hearing, pgs. 107-111, 160-161, and 173) which was the second offer.

The first plea offer, under Hal Palmer's first representation, was supplanted by the second plea offer, under Kris Jensen's representation. The second plea offer was still "on the table," viable, and intact at the time of Kris Jensen's withdrawal. (see Hearing Exhibit #1, "E-mail 4/15/2011"; and Motion, Appendix "C")

Hal Palmer: does not remember Suzanne Love saying that the offer was gone (RP/Hearing, pg. 161); has no memory of whether offer was available or not at the start of trial (RP/Hearing, pg. 154); never discussed second offer with me (RP/Hearing, pg. 140).

Suzanne Love: said offers - negotiations can occur up until a jury comes back with a verdict (RP/Hearing, pg. 98); doesn't remember what the specific offer was at any given time (RP/Hearing, pg. 103); admitted that offer could have still been 'on the table' at the time trial started (RP/Hearing, pg. 110); that the idea about when an offer "expires" is only known as a 'standard operating procedure' of the King County prosecutor's office (RP/Hearing, pgs. 110, 148); and that there's no notice to a defendant about such a 'procedure' (RP/Hearing, pgs. 108, 147-148).

The only way the Second offer was ever deemed to have 'expired' was due to the King County prosecutor's office policy, which is not available to defendants (RP/Hearing, pgs. 108, 110, 147-148). Hal Palmer thought it was so because of this policy, as did Suzanne Love; only the defendant, me in this case, doesn't get to see or know this policy. No one told Hal Palmer that it was 'expired,' he just assumed it (RP/Hearing, pgs. 160-161).

Offers One and Two were oral offers, not written offers (RP/Hearing, pgs. 167-168). As nothing was in writing, ambiguities occurred in the offers regarding expiration points or limits. There is no physical or logical evidence to show that I ever rejected any offer, and there is evidence to show that Offer Two was 'still on the table' when Hal Palmer took over from Kris Jensen (e-mails from 4/15/11 cited above).

By Hal Palmer's view, he thought that the first offer was a good offer (RP/Hearing, pg. 129), at the time he got it, and said he never advised on the second offer (RP/Hearing, pg. 140). Though, when he spoke to Ruhksanna Amman, a friend of mine that was in contact with Hal Palmer, he told her, on 8/3/11, that he was "going to strongly suggest to Mr. Williams not to take any plea deals offered to him" due to "the fact that the State hasn't produced any

pictures of shoe prints or even that they have shoes in evidence" (see Motion, Appendix "B", Affidavit pg. 1).

Kris Jensen said that the offer he got was better than the one Hal Palmer had obtained (RP/Hearing, pg. 20; and E-mail to Aileen Seney on 4/15/11, cited above). This matched to his recommendation to me where he told me the first offer was not very good, and that he thought he could get me a better one (see Motion, Appendix "A", my Affidavit pg. 2), which he did. He presented me with the State's second offer on 4/8/11 and I didn't immediately accept. I asked him about the trial, and we argued. We were not communicating. He withdrew that same day. (RP/Hearing, pgs. 25, 46-47)

Kris Jensen said that he didn't see a difference between 'not accepting' an offer and actively 'rejecting' an offer (RP/Hearing, pg. 31). He also said 'a deals not a deal until you take it' (RP/Hearing, pg. 30).

The Amended Information (see Amended Information - Appendix "F") charged crimes that were duplicative in specifics, and shared elements. The third plea, which was based on this Amended Information, has the same issues. My attorney, Hal Palmer, did not object to the charging document, or the plea offer. Hal Palmer did admit there was duplicative charging, and that the 'Anti-Merger Statute'

could have applied. (RP/Hearing, pgs. 175-176). He also acknowledged he could have raised the issue at sentencing (RP/Hearing, pg. 176). As Hal Palmer said under cross, "He pled as charged." (RP/Hearing, pg. 185)

IV. ARGUMENT

1. Plea Agreement is a Contract (Issue 1)

A plea agreement is a contract, as has been held by the courts of this State. In State v. Jerde, 93 Wn.App. 774, 780, 970 P.2d 781 (1999):

"The State enters into a contract with the defendant when it offers a plea bargain and the defendant accepts. State v. Talley, 134 Wn.2d 176, 949 P.2d 358 (1998); State v. Sledge, 133 Wn.2d 828, 947 P.2d 1199 (1997)."

And in Pers. Restraint of Lord, 152 Wn.2d 182, 188-89, 94 P.3d 952 (2004):

"A plea agreement is a contract between the defendant and the prosecutor. State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). A prosecutor must act in good faith when carrying out the terms of the plea agreement. State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997); State v. Marler, 32 Wn.App. 503, 508, 648 P.2d 903, review denied, 98 Wn.2d 1002 (1982). However, plea agreements are more than simple contracts. Sledge, 133 Wn.2d at 839. Since plea agreements concern fundamental rights of the accused, constitutional due process rights apply. Id. "Due process requires a prosecutor to adhere to the terms of the agreement" and recommend the agreed upon sentence. Id. (citing Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); State v. Talley, 134 Wn.2d 176, 183, 949 P.2d 358 (1998)."

It is clear that because a plea agreement is a contract, and 'more than simple contracts,' then the laws

and ruling regarding contracts apply.

2. Acceptance forms the Contract (Issue 1, and 2)

Basic to contract law is the understanding that, in any contract, there is an offer (by the offerer), with some sort of performance that is required by the party that is in receipt of the offer (the offeree), who then gives acceptance, by work or deed, which then forms the contract.

In a plea agreement, the offer comes with a promise, a consideration, that the State will, in exchange for an agreement to plead guilty to all charges, recommend a specific sentence with specific terms; which is, in effect, a bilateral or reciprocal contract.

Acceptance is defined as:

1. An agreement, either by express act or by implication from conduct, to the terms of the offer so that a binding contract is formed.

Black's Law Dictionary, Abridged Seventh Edition, pg. 11, West Group, St. Paul, Minn., (2000)

On August 10, 2011, I stopped the trial on the second day, in the morning, and told my counsel, Hal Palmer, that I wished him to tell the State that I wanted to plead guilty, which was my performance requirement, and was the express act of acceptance of the State's offer. (RP/Trial, pg. 2 (Report of Proceedings, Trial, August 10, 2011 - hereafter referred to as "RP/Trial - Appendix E"). At this

time of 'acceptance,' the only offer known to me, was the offer herein termed Offer Two or the Second Offer. The Third plea agreement didn't exist at the time of my acceptance; therefore, my acceptance formed the contract of Offer Two.

The State chose to offer the plea agreement orally, foregoing the relative certainty of an offer made in writing. Any ambiguity this created is the fault of the offerer. In Forbes v. American Bldg. Maintenance Co. West, 184 Wn.App. 273, 198 P.3d 1042 (2003), the court said:

"Generally, ambiguous contracts are to be construed against the drafter."

The ambiguity about how long an offer is available is another example of a problem with an oral offer. The State's averment that there is a 'procedural office policy' in the King County prosecutor's office, to which a defendant doesn't have access, that an offer 'expires' automatically at some point in time or in relation to some action, was never stated as part of any offer the State made. What is not stated, with certainty, cannot be held against the offeree. I made my acceptance in good faith, to an offer that contained no disclaimer as to future loss by action of time.

3. Plea Offer Two was not 'expired' (Issue 3, and 4)

The Second plea offer was made by the State on April

8, 2011. The offer was:

" I agree to plead guilty to all charges, the five original charges, plus an additional charge of 2nd degree Theft (a total of six charges); and for this, the State would recommend 36.75 months of jail time, plus 36.75 months of a monitored drug-treatment program when I got out (a DOSA sentence), and that I would be eligible for 'good time' credit with "definitely 1/3 and maybe 1/2 time credit." (see Motion, pg. 2, No. 6; Motion, Appendix "C" - "E-mail to Aileen Seney on 4/15/11"; and in Hearing Exhibit #1 and #3)

In same cited e-mail above, which was made on April 15, 2011, one week after his withdrawal, Kris Jensen said, just before his recounting of the second plea offer, that "The prosecutor's offer at the time I withdrew was this:".

The State did not challenge or oppose this summary of the Second plea offer, in motion arguments, or at the Hearing.

The claimed 'Rejection' of this offer, I will address below when arguing Issue 8, and 9. What is currently argued is that the offer was not expired.

Hal Palmer received an e-mail from Kris Jensen on April 11, 2011, which was three days after Kris Jensen's withdrawal and Hal Palmer's reappointment, that recounted the terms of the Second plea offer, as it stood when Kris Jensen withdrew. (see Hearing - Exhibit #3; RP/Hearing, pg. 134) Hal Palmer states the terms, of what that Second offer contained, on pg. 137 of the RP/Hearing, which demonstrates he knew of the plea after he took over the case.

It should be noted that this case had been set for trial on January 24, 2011, during the time of Hal Palmer's first representation, and when the DPA Mafe Rajul was representing the State. (see "Stipulation of the Parties as to Testimony of Mafe Rajul" - in Appendix "D". pg. 2) This was not some sudden decision to go to trial by myself during Hal Palmer's second representation, or even during Kris Jensen's time as my counsel. Setting for trial did not end the plea negotiations, nor could it have been a surprise to either of my attorneys, nor could it have thus been a cause for any of their actions during the plea process, as the negotiations continued beyond the case setting on January 24, 2011. The trial setting did not cause an 'expiration' of the offer, as the record shows. And an offer is certainly not negated because a defendant, such as myself, wants his counsel to continue preparing for trial regardless of the status of the plea negotiations.

Hal Palmer spoke with Ruhksanna Ammam, by phone, on August 3, 2011, in a return call he placed to her. Ms. Amman, who is a friend of mine, had been trying to contact him for three weeks. When he finally called her, she asked him about the status of my case, the plea bargain, and the trial; his assessment of those things.

He told her he was "going to strongly suggest to Mr.

Williams not to take any plea deals offered to him, due to the fact that the State hasn't produced any shoes, or pictures of shoe prints." As this would have been the only physical evidence in this case, it was important. He told her he believed we have a good chance, and that the State's case was "weak." (see Motion, my Affidavit - Appendix "A", pg. 2; and Motion, "Affidavit of Ruhksanna Nasreen Amman" - Appendix "B", pg. 1) He had told me similar things before he talked with Ms. Amman.

This is long after he began his second period of representation of me, and only days before trial.

In answer to the question of what he advised me regarding the Second plea offer, with the 36.75 month descriptive terms, Hal Palmer said:

- A. "Well, we didn't talk about that offer, um, the 36.75. That was not conveyed to me while I was representing Mr. Williams. Um, when he set the case for trial I believe the offer to have expired."

(RP/Hearing, pg. 140)

First, trial setting had occurred months earlier than when this offer was made. Second, he had just admitted to have received an e-mail from Kris Jensen on April 11, 2011 (Hearing - Exhibit #3) in which the offer was communicated. As he was pressed, Mr. Palmer said:

- A. "To be honest with you, Mr. Weinberg, no, I don't -- I don't think we ever discussed -- we may have

mentioned it during our conversations, but I did not talk -- I did not spend a lot of time talking with Mr. Williams that second time I begun -- began to represent him, about the DOSA offer."

(RP/Hearing, pg. 140)

Mr. Palmer admits that the reason he felt the second offer had expired, was:

- A. "Because, um -- well, first of all, I -- that's been the long standing policy of the King County Prosecutor's office as long as I've been practicing there."

(RP/Hearing, pgs. 147-148)

Suzanna Love admitted that it was possible the Second offer was still on the table "up until the point we were sent out for trial, sure. It was possible" (see RP/Hearing, pg. 110). And as she was asked what the reason was that the Defense lawyer should know that the offer would terminate once trial began, she said:

- A. "It -- that's the standard operating procedure for the Prosecutor's Office."

(RP/Hearing, pg. 110)

Suzanne Love didn't tell Hal Palmer that the Second offer had expired; Hal Palmer just assumed it was expired.

(RP/Hearing, pgs. 160-161)

Absent specifically standing up in court, and saying the offer was expired, as Hal Palmer said used to be the practice (RP/Hearing, pg. 148), there was nothing to let me know that fact.

And on the first day of trial, August 4, 2011, the Court said:

THE COURT: "I have looked at the amended information and I don't know whether or not you have had an opportunity to talk with your client as to whether or not this case could be resolved, so I want to give you the time to do that as well given all of the changes and what's at risk. ..."

(RP/Trial, 8/4/11, pgs. 3-4)

Mr. Palmer answered:

Mr. Palmer: "Yes, and I think that I could be ready at 3:00 this afternoon to start pretrial motions and to also get the form I need Mr. Williams to sign so that I can get some nice clothes for him for jury selection on Tuesday, and to also get any final offers to resolve this case communicated to Mr. Williams and be ready to go on the record at three with all those issues."

(emphasis added)

(RP/Trial, 8/4/11, pg. 4)

At this time, I was reoffered the DOSA deal, as the Second offer. This became the last any offer was discussed until my 'acceptance' when I stopped my trial.

The offer never expired.

The King County prosecutor's internal office procedure is not accessible to defendants, and is not 'common knowledge' among the accused. Any policy they might have is not the law, and does not give notice of a limit or condition of a plea offer.

The State should have an obligation to set forth all

the conditions of a plea bargain offer, to meet the status of the plea offer as a contract, and one that carries the burden of another person's life and liberty. It is not a small thing.

4. 'Not Accepting' is not 'Rejection' (Issue 8, and 9)

When a person is offered a contract, and they are in the state of considering the offer, they are 'not accepting' the offer at the moment. They are also not 'rejecting' the offer at the moment. They are merely weighing the merits.

If a limit for considering the offer is stated, such as 'have an answer by 5:00,' and 5:00 comes and there is no answer, this is 'rejection by non-acceptance' of the offer, which is different than simply waiting to answer. 'Rejection' is pretty specific, and without limits or conditions stated, the absence of a written contract means there is likely to be things that are ambiguous, or subject to be misconstrued.

Had I rejected the Second offer, then the State wouldn't believe it was possible to be still on the table up to the beginning of the trial. Had I rejected the Second offer, it wouldn't have been available to Hal Palmer to get, after the court instructed him to do so.

This offer was never rejected. It was open, and viable, and is the offer I accepted when I stopped my trial.

5. The Offer I 'accepted was replaced with an offer that didn't exist (Issue 5, and 6)

On August 8, 2011 (see Appendix "E" - RP/Trial) I stopped my trial, and asked Mr. Palmer to let the prosecutor know that I was willing to plead guilty, which was my 'acceptance' of the Second plea offer. Mr. Palmer told the Court (pg. 2):

"Your Honor, Mr. Williams is asking that I tell the Court and that I tell the prosecutor in this case that he is interested in pleading guilty to I don't know, but I want to have a brief discussion with the prosecutor and Mr. Williams to see if we could finish this case today."

At this point, neither my counsel nor the Court inquired as to what I intended by my 'acceptance' and agreement to plead guilty. I didn't know it was possible that the State could change the offer after I had accepted.

As I said above, in Argument 1, Jerde said, citing Talley and Sledge, that "The State enters into a contract with the defendant when it offers a plea bargain and the defendant accepts." And in Argument 2, I offered Black's definition of 'acceptance.' If they are decided to be 'true' to the Court, then the plea offer I should have received is clearly the Second offer. It was the only one that existed at my moment of acceptance.

By the State's switch and replacement of the accepted

Second offer, with another offer, the State effectively breached the contract that had been formed for the Second offer. In State v. James, 35 Wn.App. 351, 666 P.2d 943 (1983):

"Plea bargain is analogous to contract right; where prosecutor breaches agreement, defendant is entitled to remedy which restores him to his position before the breach."

The fact is, the Second plea bargain contained fewer charges, and a DOSA recommendation. In the Order denying Motion to Withdraw Guilty Plea (hereafter the Order), on page 3, the Hon. Judge Yu stated:

"the record reflects the details of the agreement reached, and there is no support for finding that Mr. Williams thought he was accepting an offer that included an agreed DOSA sentence."

The two points that Judge Yu is conflating is the point that I accepted the State's offer, by word and deed, which she ignores; and the second point where the Third plea was present, and the court was going through that plea with me, on the record.

The way the court believes it is able to get to the Third plea is by saying the Second offer was gone. In the Order, pgs. 2-3, the court said:

"An offer with an expiration that is not accepted is rejected. When a case is set for trial, the standard operating procedure (practically and culturally in King County), is that all plea offers from the State are expired and considered rejected, and specific offers are no longer on the table."

First of all, as I addressed in Argument 4 above, 'not-accepting' is not a 'rejection.' Secondly, to use an 'office policy' of the King County prosecutor's office as a reason for saying an offer has 'expired' is unsound reasoning, and undercuts any conclusion arrived at on this point in the Order. As I argued above in my Statement of the Case, and in Argument 3, no expiration point that is based on an undisclosed, private office policy, non-codified under the law, and having no force or effect of the law, can be used to claim an offer, without such a limitation, can be then voided or termed expired, without notice to all parties. That this same Second offer was reaffirmed after trial started, as was ordered to be obtained on the record, on August 4, 2011, shows that there was no expiration, and none expected.

It would be a simple matter for the State to say on the record, as Hal Palmer said it used to be done (RP/Hearing, pg. 148) that the offer was revoked.

Because the State did not specify how acceptance would be met, or refused, then it was up to me to make the determination. In Sanwick v. Puget Sound Title Ins. Co., 70 Wn.2d 438, 423 P.2d 624 (1967), the court stated:

"If an offer does not specify a particular method or manner of acceptance, the party wishing to accept the offer may do so by any words and/or conduct which, under the circumstances, would lead a reasonable person

to conclude that the offer had been accepted."

The offer was such that if I agreed to plead guilty to all the charges, the State would recommend a specific sentence on specific charges. I stopped the trial, long before the four days it was expected to take, and asked my counsel to let the Court, and the prosecutor know that I was willing to plead guilty. What reasonable person could conclude I was not accepting the offer? If the court had questions about what it was I was accepting by my action, it had only to ask. My counsel should have known as he had just, a few days earlier, reaffirmed the Second offer. The Court should have known because of the direction to counsel, and counsel's response, 8/4/11 - cited above, that he would get the 'final offer' from the State. And the State should have known because they had tendered that offer. No one should have been in the dark as to what I was 'accepting' and what was my intention.

I accepted the Second offer, and was manipulated into a position where I felt my attorney, Hal Palmer, was allowing the State to replace the offer, instead of upholding my rights to the Second offer. The tacit approval of the State's actions by my attorney, left me unrepresented, and my rights unprotected; the Third plea offer was therefore 'accepted' involuntarily.

6. Ineffective Assistance of Counsel. (Issue 10, 11, and 12)

Hal Palmer's first representation occurred between 11/17/10 and 2/17/11. During this time, Mr. Palmer did no investigation (RP/Hearing, pgs. 40-41; pg. 146, ln. 11-13, Mr. Palmer says specifically that "in January the investigation hadn't begun.") During this time, Mr. Palmer negotiated the First Plea Offer; he failed to get the plea offer in writing, as all witnesses at the Hearing stated, and the State doesn't contest. Hal Palmer did not advise me to take the offer or to refuse it; he merely gave the offer and a "general assessment" (RP/Hearing, pg. 130).

The duty to investigate, is a minimum requirement of counsel, which Hal Palmer failed to do during his first representation. In Sanders v. Ratell, 21 F.3d 1446, at 1456 (9th Cir., 1994), the Court said:

"The inquiry in determining whether counsel's performance was constitutionally deficient is whether counsel's assistance was reasonable considering all of the circumstances. Strickland, 466 U.S. at 689. To provide constitutionally adequate assistance, "counsel must, at a minimum, conduct a reasonable investigation enabling (counsel) to make informed decisions about how best to represent (the client)."

Mr. Palmer was ineffective in this regard, during his first representation. In failing to advise whether to accept the first plea bargain, the Supreme Court in Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376, 182 L.Ed.2d 398

(2012), at 1376:

"If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence."

Mr. Palmer was ineffective in this regard as well. His failure to get the plea in writing, with all of the specifics, failed to protect my rights and my interests, which invited ambiguity and uncertainty. He was ineffective in this regard as well. Each of these failings caused me to have to find a new attorney. On or about 2/18/11, I hired Kris Jensen.

Kris Jensen performed some investigation, though was reluctant to go to trial. During his representation he obtained the Second Plea Offer, which was better than the First offer, as both he, and Hal Palmer, stated during their testimony at the Hearing. This offer I did not immediately accept when he told me on 4/8/11. I instead asked him about the trial. He did not like that, and we argued, and he left. He withdrew as my attorney that day.

Kris Jensen, at the Hearing stated:

- a) that "he can't recall the exact things that were said between Mr. Williams and I ..." (pg. 24)
- b) "I can't recall with real specificity ..." (pg. 24)
- c) "I'm quite sure he did, but I can't recall any specific

quotes or specific facts that make me say that." (pg. 15)

- d) "... an offer I received, I can't recall if there were dismissed charges in there."

...

"I suspect there was not" (pg. 17)

- e) "So, I can't recall if this particular Offer for Resolution included dismissal of the charges. I -- I just can't recall what the details -- there were." (pg. 18)

- f) "Our communication between me and Mr. Williams was often, um, a bit disjointed and sometimes derailed by what Mr. Williams wanted to talk about." (pg. 20)

Mr. Jensen kept elaborate notes, but after he stated that I had refused the Second offer, his e-mail of 4/15/11 was brought out, and he asked:

- g) Q. "... So, where in here does it say he rejected the offer or that he regrets he did or documented in any way that he rejected it? If it -- if it does."

A. "Um, I don't think it says that he with -- he rejected it." (pg. 25)

Mr. Jensen could find nowhere in his notes that said I ever rejected the offer. And in his e-mails, in Hearing Exhibits 1 and 3, it is clear that the offer was still on the table when he withdrew. His memory was obviously burdened during his testimony, and spotty. But the physical evidence showed the truth of the matter.

Our communication was so bad toward the end of his representation, I had been filing motions to the court myself, just to make sure there was a record (Hearing

Exhibit 2). Kris Jensen didn't want to go to trial, and he withdrew to avoid it. He failed to get the Second plea offer in writing, and so, like Mr. Palmer, failed to protect my rights and interests, which invited ambiguity and uncertainty.

His counsel was ineffective in these regards.

On April 8, 2011, Kris Jensen withdrew as counsel, and Hal Palmer was reappointed. On April 11, 2011, Kris Jensen sent an e-mail to Hal Palmer apprising him of critical issues in the case, not the least of which was contained in the Second offer at that time, and that time, and that the State did not produce shoes, or photos of the footprints, per a discovery request by Kris Jensen. (Hearing Exhibit 3)

This lack of evidence through discovery was the source of Hal Palmer's advice to me to not take the Second offer and that the State's case was weak. Which I asserted in my affidavit (Motion, Appendix "A"), and which was corroborated by Ms. Amman, in her affidavit (Motion, Appendix "B"), and then borne out by Mr. Palmer's statements in court on August 4, 2011 (see Motion, pg. 5, citing RP/Trial, pgs. 16-17). Despite Mr. Palmer's disavowment, the facts lead to a different conclusion.

Mr. Palmer, on hearing that there were shoes that were being offered into evidence, on the day of trial, didn't

object. When asked about this at the Hearing, he said (pg. 156):

A. "-- that she had the shoes. So, I was surprised when I heard that."

And yet he didn't object to this last minute production of evidence by the State. Despite the fact that this evidence was the only material evidence the State said they had. There was no DNA, blood, tissue, photographic or video, fingerprint, or any other type of material evidence. And yet, he didn't object or ask for a hearing on it.

As Hal Palmer said, when asked about the search warrant used in this case, and the wrong VIN number, (RP/Hearing, pg. 165) he admitted that I had discussed this with him, and that he knew I had filed a motion to dismiss based on this, yet he didn't ask for a 3.5 hearing on this issue.

In regards to the photo montage, Mr. Palmer said:

"Um, Nancy Lawrence's testimony on the 10th of August -- she testified early in the morning on the 10th of August and she is one of the three civilian witnesses that ID's Mr. Williams. In fact, sh, uh, ID's him a month later out of a photo montage and said she was 90 percent that it was Mr. Williams on the montage. Now, there were some problems with the montage, um, which we could have argued -- uh, suggestibility issues -- um, but it was still problematic."

The State had no physical evidence, a 90 percent match on ID by photo montage, with suggestibility issues and an illegal search based on a flawed search warrant; the State had no experts. That was their case.

The real question is, how could anyone think this was a 'strong' case? One final straw to add to this, he failed to object to the Amended Information, or the Third plea offer that was based on the Amended Information.

As he was asked, regarding the Merger Doctrine, and the charging document, what were his thoughts, he said (RP/Hearing, pg. 175):

A. "Well, my specific -- my specific recollection -- because I did see that as one of the allegations -- um, was -- was -- was that I didn't have a specific recollection regarding that. But after I thought about the case further, um, there was another case that I had handled a month before, which involved a burglary and a theft and I -- I did challenge at sentencing, um, the fact that, uh, as you cited in your response, Blackburger (phonetic) seems to say that you can't have it. And that's when I learned about the Anti-Merger Statute. Um --"

Q. "I think it's older than we are."

A. "Well. So, uh, uh, the anti-merger statute definitely could have applied in this case."

Yet Mr. Palmer never objected to the duplicative charges in the Amended Information, and let me plead to the offer that was based on that flawed instrument.

Mr. Palmer was ineffective in his representation for the second time, and this affected the plea process.

Mr. Palmer didn't object to the substitution of the Third offer to the Second offer. He didn't object to the contents of the Third offer. Or to the fact that the State

gave no consideration or leniency in this plea offer. There was no gain: no DOSA; and then, at sentencing the State asked for an exceptional sentence. Hal Palmer acted as if that was what it was, and nothing was to be done. Two hours after I had accepted the Second offer, I was standing back in front of the court to plead guilty to a worse sentence than at any other point in this case.

Mr. Palmer knew what this deal was, and he abandoned me to it. The ineffectiveness of his counsel, for all of the reason above, and those stated in my Motion, and in my Reply to the State's answer, are borne out in the record, and in his lack of action. Each of these detrimental failures affected the plea bargain process, in violation of Lafler, and Fry, and Strickland, and the harm that resulted was a much longer, and likely illegal sentence.

7. The Charging Document was Flawed and Invalid, and Therefore the Third Plea Offer/Agreement, based on the Charging Document, was as Flawed. (Issue 13, and 14)

In the Amended Information, filed August 4, 2011, the State charged: I. Residential Burglary, against Mr. Kurt Gahnberg; and also, VII. Theft in the Second Degree - for golf clubs belonging to Mr. Kurt Gahnberg, which would have been, and were alleged to have been in the same alleged Residential Burglary in charge I.

The Amended Information also charged: II. Residential Burglary, against Diana Kreklow; and also VIII. Theft in the Third Degree - for golf clubs that belonged to Diana Kreklow, and were alleged to have been stolen in the same Residential Burglary as was alleged in charge II.

Each of these paired offenses had the same time and location, and were the same act: I. and VII.; and II. and VIII. Each of these paired offenses meet the Blockburger "same elements" test, which implies a double-jeopardy violation. In State v. Womac, 160 Wn.2d 646, 658-60, 160 P.3d 40 (2007), the court said that a defendant's double jeopardy claim, based on failure to merge two charges, meets the manifest constitutional error test; and determined that convictions that violate double jeopardy in this way, must be vacated.

The Blockburger test cited above, can be found at Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932), and is the benchmark case.

The Merger Doctrine should have applied to both sets of the paired, duplicative charges; Mr. Palmer should have known and objected to the Amended Information when it was offered by the State on August 4, 2011. This was lack of effective assistance of counsel.

The Third plea, based on this flawed charging document,

and under which I am currently restrained, and was sentenced by the trial court, is as flawed as the Amended Information on which it was founded. The plea contains the same duplicative charges, and should have been objected to by counsel. This, too, was a lack of effective assistance of counsel.

V. CONCLUSION

I ask this Court to set aside my plea, for the reasons argued herein, and allow me whatever relief that is allowable under the law. I also ask the Court to set aside the Amended Information, as a flawed instrument, and all that has come from it's use.

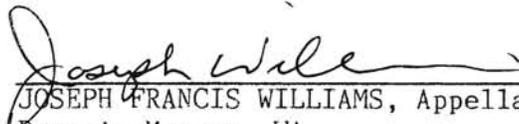
RESPECTFULLY SUBMITTED this 23rd day of June, 2014.


JOSEPH FRANCIS WILLIAMS, Appellant.

CERTIFICATE OF SERVICE BY MAIL

Today I deposited in the institutional mail system of Monroe Correctional Complex - WSRU, by First Class postage, a true and correct copy of my BRIEF OF APPELLANT, addressed to Daniel T. Satterberg, Office of the Prosecuting Attorney, W554 King County Courthouse, 516 Third Avenue, Seattle, WA, 98104, in the matter of State of Washington, Respondent v. Joseph Francis Williams, Appellant, CASE #: 71454-6-I, in The Court of Appeals, Div. I, of 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.



JOSEPH FRANCIS WILLIAMS, Appellant
Done in Monroe, WA.

6/23/14
DATE

A P P E N D I C E S

A P P E N D I X " A "

"State's Response"

(2 pages)

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 10-1-04358-2 SEA
vs.)	
)	STATE'S RESPONSE TO DEFENDANT'S
JOSEPH WILLIAMS,)	MOTION TO WITHDRAW HIS GUILTY PLEA
)	
)	Defendant.
)	
)	
)	

In his *pro se* motion dated May 28, 2013, the defendant moves to withdraw his guilty plea pursuant to CrR 4.2(f) and CrR 7.8. Since this motion seeks post-conviction relief, it would be considered a collateral attack. RCW 10.73.090(2).

Criminal Rule 7.8 allows for vacation of judgment due to mistakes, inadvertence, surprise, excusable neglect, newly discovered evidence, or other irregularities. CrR 7.8(b). Under CrR 7.8(c)(2), collateral attacks must be transferred to the Court of Appeals for consideration as a personal restraint petition unless the trial court determines that the motion is both timely (that is, not barred by RCW 10.73.090) and that the defendant has either made a substantial showing that he is entitled to relief or resolution of the motion would require a factual hearing. Thus, if the motion is apparently time-barred under RCW 10.73.090, then it must be transferred to the Court of Appeals and cannot be considered by the trial court on its merits. State v. Flaherty, 177 Wn.2d 90, 296 P.3d 904 (2013). If the motion is

1 timely but does not establish grounds for relief, then the trial court may deny the motion without a
2 hearing on the merits. State v. Robinson, 153 Wn.2d 689, 695-696, 107 P.3d 90 (2005). A defendant is
3 entitled to appointed counsel at a post-sentence motion to withdraw a guilty plea that is reserved in the
4 trial court only if the court finds that the motion establishes grounds for relief. Robinson, 153 Wn.2d at
5 696.

6 In this case, the State agrees with Mr. Williams that his collateral attack is timely under RCW
7 10.73.090 because it is within one year of the Court of Appeals Division I mandate disposing of a timely
8 direct appeal. Substantively, Mr. Williams claims ineffective assistance of counsel, alleging that he
9 rejected a plea offer based on deficient advice from counsel, and that the terms of the rejected offer
10 were less severe than under the judgment and sentence that in fact was imposed following his later plea
11 mid-trial thus creating prejudice. Under Lafler v. Cooper, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012), and
12 Missouri v. Frye, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), these allegations could form the basis for a
13 claim of ineffective assistance, if substantiated.

14 The issues the defendant raises of ineffective assistance of counsel in plea negotiations are not
15 on their face frivolous, and resolution of them would require a factual hearing involving presentation of
16 testimony by the various parties involved in the plea negotiations and trial. Thus, the State would
17 request the court to set a hearing to address this motion, and that counsel be appointed to Mr. Williams
18 to handle this claim.

19 Respectfully submitted this 13th day of June, 2013.

20 DANIEL T. SATTERBERG
21 Prosecuting Attorney

22 

23 By: AMANDA S. FROH, WSBA #34045
24 Senior Deputy Prosecuting Attorney

A P P E N D I X " B "

"State's Second Response"

(14 pages)

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 10-1-04358-2 SEA
Plaintiff,)	
)	
vs.)	
)	STATE'S RESPONSE OPPOSING
JOSEPH WILLIAMS,)	DEFENDANT'S MOTION TO WITHDRAW HIS
)	GUILTY PLEA
Defendant.)	
)	
)	
)	

In his *pro se* motion dated May 28, 2013, the defendant moves to withdraw his guilty plea pursuant to CrR 4.2(f) and CrR 7.8. Since this motion seeks post-conviction relief, it would be considered a collateral attack. RCW 10.73.090(2). Criminal Rule 7.8 allows for vacation of judgment due to mistakes, inadvertence, surprise, excusable neglect, newly discovered evidence, or other irregularities. CrR 7.8(b). Mr. Williams's collateral attack is timely under RCW 10.73.090 because it is within one year of the Court of Appeals Division I mandate disposing of a timely direct appeal. This motion should be denied because Mr. Williams cannot meet the burden of showing manifest injustice required to withdraw his guilty plea to six felonies and two misdemeanors, entered mid-trial, where he (1) was provided effective assistance of counsel by both Kris Jensen and Hal Palmer regarding the offers made and the potential risks and weaknesses of the case; and (2) was fully informed at the time that he finally

1 pled guilty what the offer was from the State, agreed to that resolution, and enter a knowing, intelligent,
2 and voluntary plea of guilty following a full plea colloquy.

3
4 **I. PROCEDURAL HISTORY & ANTICIPATED TESTIMONY**

5 The State has subpoenaed defense attorneys Hal Palmer and Kris Jensen, along with former
6 Deputy Prosecuting Attorney Suzanne Love to testify at the hearing on August 21, 2013. What follows is
7 a summary of their anticipated testimony.

8 Mr. Williams was initially charged with two counts of Residential Burglary, two counts of
9 Trafficking in Stolen Property in the First Degree, and one count of Possession of Stolen Property in the
10 Third Degree. Defense Attorney Hal Palmer from SCRAP was appointed to represent him. Deputy
11 Prosecuting Attorney (DPA) Mafe Rajul handled the case in the early negotiation stages, and DPA
12 Suzanne Love handled the case once it was set for trial. According to notes in the deputy prosecutor's
13 file, Mr. Palmer met with DPA Rajul on January 4, 2011, where they discussed the State's offer in person.
14 No written offer was made. The State's offer was to dismiss one count of Trafficking in Stolen Property
15 in the First Degree, plead guilty to the other four counts (standard range would be 63 to 84 months
16 regardless of the dismissed count given the defendant's base offender score of 10 prior felony
17 convictions), and the State would recommend a low-end sentence of 63 months with an agreement that
18 the defendant would not ask for a Drug-Offender Sentencing Alternative (DOSA) sentence.

19 On January 25, 2011, the defendant set his case for trial, thus rejecting the State's offer. At
20 casesetting, DPA Rajul had a conversation with Mr. Palmer, where he indicated that the defendant was
21 claiming that another person was responsible for the crime. Mr. Palmer pointed out potential
22 vulnerabilities with the identification of his client.

23 On February 18, 2011, defense attorney Kris Jensen substituted in to the case and Mr. Palmer
24 withdrew (I surmise from Mr. Williams's pleadings that he hired Mr. Jensen because he was dissatisfied

1 with Mr. Palmer's representation). Mr. Jensen then asked the State to reconsider a DOSA resolution.
2 According to notes in the DPA file, on April 8, 2011, Ms. Love presented an oral offer to Mr. Jensen: that
3 Mr. Williams could plead to the original five charges plus one additional count of Theft in the Second
4 Degree (five felonies total) and the State would agree to recommend a prison-based DOSA. With the
5 standard range being 63 to 84 months, Mr. Williams would be facing 36.75 months in custody followed
6 by 36.75 months on community custody, with the threat of that 36.75 months being imposed should
7 Mr. Williams fail to comply with the requirements of the DOSA (total of 73.5 months). Mr. Jensen
8 conveyed this offer to Mr. Williams, but Mr. Williams rejected it. On that same day, Mr. Jensen moved
9 to withdraw from the case due to breakdown in communication with his client. Mr. Palmer was
10 reappointed by the court the same day.

11 The case was assigned to this court on August 4, 2011, for trial. Pretrial motions, jury selection,
12 and witness testimony occurred on August 4, August 9, and August 10, until Mr. Williams decided to
13 plead guilty mid-trial.

14 At the pretrial motion stage, as Mr. Williams notes, Mr. Palmer confirmed on the record with
15 Ms. Love that there was a photograph of a shoeprint as well as the defendant's shoes in evidence. 1RP¹
16

17 On August 9, Ms. Love presented the testimony of her primary investigating officer, Deputy
18 Meyer. Through him, she admitted into evidence State's Exhibit 1, a photograph of the floor of one of
19 the victims' garages. The significance of the photo, according to the testimony, is that the deputy
20 noticed a footprint on the floor of the garage which he visually observed to be very similar to the sole of
21 the shoes being worn by Mr. Williams at the time he was apprehended. 2RP 40-42. Deputy Meyer
22 admitted on direct examination that the footprint is barely visible in the photograph. 2RP 41. Ms. Love

23 ¹ Given that this case was on appeal, we have the benefit of the trial transcripts prepared for the Court of Appeals in
24 referencing the record. The State adopts the following numbering system: 1RP refers to August 4, 2011; 2RP refers to August 9,
2011; 3RP refers to August 10, 2011; and 4RP refers to the sentencing that took place on September 9, 2011.

1 did not offer the shoes into evidence through Deputy Meyer. Mr. Palmer cross-examined Deputy Meyer
2 extensively on the issue of the fuzzy photograph and the shoeprint, pointing out that Deputy Meyer did
3 not compare the print to the homeowner's shoes, did not recall asking the homeowner who else had
4 access to the garage who may have similar shoes, and confirming that the Sheriff's Department has
5 experts available to do shoeprint analysis, but none was done in this case. 2RP 69-71, 79-80.

6 After the testimony of several witnesses, Mr. Palmer asked for a recess and addressed the court:

7 Mr. Palmer: Mr. Williams is asking that I tell the court and that I tell the prosecutor in this
8 case that he is interested in pleading guilty. What he's interested in pleading
9 guilty to I don't know, but I want to have a brief discussion with the prosecutor
and Mr. Williams to see if we could finish this case today.

9 The Court: Okay. Why don't I get off the bench and let you have a discussion....

10 Following a brief recess, Mr. Palmer readdressed the court:

11 Mr. Palmer: Your Honor, Ms. Love and I have had engaged in discussions both together and
12 with Mr. Williams and also Ms. Love's supervisor regarding what the final offer
13 would be, and it appears that we've come to a resolution. Ms. Love and I both
came back to your courtroom with paperwork so that we could start working on
the paperwork. I'm fairly certain that it's going to happen this morning that we
can get this done, but Mr. Williams will be pleading guilty.

14 3RP 14.

15
16 After this exchange, the parties completed the necessary plea paperwork and the defendant
17 engaged in an extensive plea colloquy with both the prosecutor and the court. 3RP 15-35. He never
18 expressed any confusion about the charges he was pleading guilty to or the State's recommendation. At
19 one point, he specifically requested that the prosecutor change some wording in paragraph 11 of the
20 plea form to more accurately reflect his behavior. 3RP 27. The plea agreement left open the possibility
21 that the defendant could argue for a prison-based DOSA at sentencing, as Mr. Palmer noted:

22 Mr. Palmer: Your Honor, I believe that Mr. Williams is an intelligent young man. He has been
23 very active both in discussions with me and negotiating the case and in
24 analyzing the facts that would be presented at trial; to understanding the
consequences of waiving his right to a trial, understanding the sentencing
recommendation specifically bargained-for provision which allowed me to
recommend – to be open to recommend a prison-based DOSA in this case. So I

1 believe he is making a knowing, intelligent and voluntary decision to plead guilty
2 and a knowing, intelligent, voluntary waiver of his trial rights.

3 3RP 31.

4 At sentencing on September 9, 2011, the court denied Mr. Williams's request for a DOSA, with
5 the following rationale:

6 Judge Yu: In addition, I did consider the request for a DOSA, and I'll be very clear that I am
7 not granting a DOSA on this. And it's because you may have a drug problem and
8 you may have for a long time. But the fact that you've come in and out of
9 prison and you've had the opportunity to be out and getting treatment yourself
10 and haven't is some indicia to me that maybe you don't want to deal with the
11 problem or maybe you don't think you have a problem or maybe you don't have
12 one? And maybe the real issue is a mental issue that Ms. McKee has seemed to
13 suggest.

14 I'm also not a professional and I'm not here to do the diagnosis. And a DOSA is
15 not about mental health treatment. It really is dealing with people who are
16 wrestling with an addiction. And I haven't seen evidence of that, at all.

17 3RP 12.

18 Mr. Williams was sentenced to 84 months in prison on September 9, 2011. 4RP 13. This motion
19 to withdraw his guilty plea timely follows.

20 II. ARGUMENT

21 CrR 4.2(f) provides:

22 The court shall allow a defendant to withdraw the defendant's plea of guilty
23 whenever it appears that the withdrawal is necessary to correct a manifest
24 injustice.

A "manifest injustice" is one that is "obvious, directly observable, overt, not obscure." State v. Saas, 118
Wn.2d 37, 42, 820 P.2d 505 (1991); State v. Hystad, 36 Wn.App. 42, 45, 671 P.2d 793 (1983).

The defendant bears the burden of demonstrating manifest injustice. State v. Osborne, 102
Wn.2d 87, 97, 684 WP.2d 683 (1984). Because the criminal rules are so carefully designed to insure that
the defendant's rights have been protected before a guilty plea is accepted, CrR 4.2(f) creates a
"demanding standard" which the defendant must meet if he wishes to withdraw his guilty plea. State v.

1 Saas, 118 Wn.2d at 42 (citing State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974)). A motion to
2 withdraw a guilty plea implies that the judge taking the plea has not done his or her job in taking a plea
3 that is constitutionally valid. A defendant must meet a stringent standard to demonstrate that a guilty
4 plea is invalid.

5 Before a trial court can allow a defendant to withdraw his or her guilty plea, the defendant must
6 prove one of the following: (1) that he was denied effective assistance of counsel; (2) that the
7 defendant did not ratify the plea; (3) that the plea was involuntary; or (4) that the plea agreement was
8 not honored by the prosecution. State v. Watson, 63 Wn. App. 854, 857, 822 P.2d 327 (1992); State v.
9 Dixon, 38 Wn. App. 74, 76, 683 P.2d 1144 (1984). The defendant has the burden of establishing a
10 manifest injustice "in light of all the surrounding facts" of his or her case. Dixon, 38 Wn. App. at 76.

11 In this case, Mr. Williams alleges that he was denied effective assistance of counsel and that the
12 plea agreement was not honored by the prosecution, and thus he should be permitted to withdraw his
13 guilty plea to five felonies and three misdemeanors. Both of these allegations are baseless, and should
14 be rejected for the reasons stated below.

15
16 **(1) Claims of Ineffective Assistance of Counsel**

17 Mr. Williams claims that he was denied effective assistance of counsel because his two
18 attorneys had differing ideas about whether or not an offer from the State was a good offer, and
19 because Mr. Palmer had represented to him that he believed that the State did not have a photo of the
20 shoeprint or the shoes in evidence. Even if true, these claims are insufficient to meet the demanding
21 standard required to either establish that there was ineffective assistance of counsel or to permit a plea
22 withdrawal on that basis.

23 A criminal defendant has a constitutional right to effective assistance of counsel. Strickland v.
24 Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The benchmark for judging a claim

1 of ineffective assistance of counsel is whether counsel's conduct "so undermined the proper functioning of
2 the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

3 The defendant has the burden of establishing ineffective assistance of counsel. Id. at 687. To
4 prevail on a claim of ineffective assistance of counsel, the defendant must meet both prongs of a two-part
5 standard: (1) counsel's representation was deficient, meaning it fell below an objective standard of
6 reasonableness based on consideration of all the circumstances (the performance prong); and (2) the
7 defendant was prejudiced, meaning there is a reasonable probability that the result of the proceeding
8 would have been different (the prejudice prong). Id. at 687; State v. McFarland, 127 Wn.2d 322, 334-35,
9 899 P.2d 1251 (1995). If the court decides that either prong has not been met, it need not address the
10 other prong. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244 (1990).

11 The inquiry in determining whether counsel's performance was constitutionally deficient is whether
12 counsel's assistance was reasonable considering all the circumstances. Strickland, 466 U.S. at 688. In
13 judging the performance of trial counsel, courts must engage in a strong presumption of competence. Id. at
14 689. In plea negotiations, counsel's duty is to assist the defendant in evaluating the evidence against him
15 and determining whether to plead guilty. State v. S.M., 100 Wn. App. 401, 410-11, 996 P.2d 1111 (2000).

16 There are a couple of different scenarios in which a defendant may show prejudice in the context of
17 plea bargaining. Where plea offers were rejected or lapsed due to deficient advice, the defendant must
18 demonstrate the following to prove prejudice:

19 To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or
20 been rejected because of counsel's deficient performance, defendants must demonstrate a
21 reasonable probability they would have accepted the earlier plea offer had they been
22 afforded effective assistance of counsel. Defendants must also demonstrate a reasonable
23 probability the plea would have been entered without the prosecution canceling it or the
24 trial court refusing to accept it, if they had the authority to exercise that discretion under
state law. To establish prejudice in this instance, it is necessary to show a reasonable
probability that the end result of the criminal process would have been more favorable by
reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, ___ U.S. ___, 132 S. Ct. 1399, 1409, 182 L. Ed. 2d 379 (2012).

1 Where a defendant complains that ineffective assistance led him to accept a plea offer rather than
2 risk trial, the defendant must show “a reasonable probability that, but for counsel’s errors, he would not
3 have pleaded guilty and would have insisted on going to trial.” Frye, 132 S. Ct. at 1409, *citing Hill v.*
4 Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

5 Recently, the U.S. Supreme Court addressed issues of ineffective assistance of counsel in the course
6 of representation during the plea-bargaining stage of a criminal case in Missouri v. Frye, *supra*, and Lafler v.
7 Cooper, ___ U.S. ___, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). In both cases, deficient performance by the
8 attorneys involved was presumed. In Frye, the defense attorney failed to convey a favorable offer to his
9 client, and in the meantime the defendant got a new similar criminal charge. The Court found that while
10 the attorney’s performance was clearly deficient for not conveying the offer, and that the defendant would
11 likely have taken the misdemeanor offer had it been conveyed to him (he pled to a felony with a much
12 harsher sentence), the case needed to be remanded as to the Strickland prejudice prong because there was
13 insufficient evidence that the plea would have been entered without the prosecution withdrawing it, given
14 the new pending charge. Frye, 132 S. Ct. at 1411. In Lafler, the defense attorney reported a favorable plea
15 offer to the client, but it was rejected on the advice of counsel. The advice given by counsel in supporting
16 the rejection was essentially erroneous as a matter of law – the defendant was convinced by his attorney
17 that the prosecution would be unable to prove his intent to murder the victim (who survived) because she
18 had been shot below the waist. Lafler, 132 S. Ct. at 1383. Following a trial and guilty verdict, the defendant
19 received a sentence much harsher than the rejected plea bargain. The parties all admitted that the advice
20 that the defendant relied upon was deficient (though the Court questions this presumption), thus meeting
21 the first prong of the Strickland test. Id. at 1384. In addition, there was prejudice because but for counsel’s
22 deficient performance, the defendant would have accepted the plea offer. Id. at 1391.

23 The most interesting question raised in Lafler is what the remedy should be. The Court ruled that
24 the remedy in these circumstances would be to order the State to reoffer the rejected offer. Should the

1 defendant then take the offer, the trial court can exercise its discretion in determining whether to vacate
2 the convictions and resentence the defendant pursuant to the plea agreement, to vacate only some of the
3 convictions and sentence accordingly, or to leave the convictions and sentence following trial undisturbed.
4 Id. at 1391.

5
6 *(a) The representations provided by defense counsel were not deficient, and thus do not
7 satisfy the "performance prong" of the Strickland test.*

8 In this case, the representation provided by both Mr. Jensen and Mr. Palmer was not deficient, and
9 thus Mr. Williams does not satisfy the Strickland performance prong.

10 Courts presume that counsel has provided effective representation and are "highly deferential"
11 when scrutinizing counsel's performance. Strickland, 466 U.S. at 689. "It is all too tempting for a
12 defendant to second-guess counsel's assistance after conviction . . . and it is all too easy for a court,
13 examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or
14 omission of counsel was unreasonable." Id. Because an ineffective-assistance claim can function as a
15 way to escape rules of waiver and raise issues not presented at trial, the Strickland standard must be
16 scrupulously applied. Harrington v. Richter, ___ U.S. ___, 131 S. Ct. 770, 788, ___ L. Ed. 2d. ___ (2011).

17 On review, the relevant inquiry is "whether counsel's assistance was reasonable considering all
18 the circumstances." Strickland, 466 U.S. at 688. There is a "wide range" of reasonable performance,
19 and a recognition that even the best criminal defense attorneys take different approaches to defending
20 someone. Id. at 689. If counsel's conduct can be characterized as legitimate trial strategy or tactics,
21 then it cannot be the basis for an ineffective assistance of counsel claim. State v. Lord, 117 Wn.2d 829,
22 883, 822 P.2d 177 (1991). The defendant must show the absence of legitimate strategic or tactical
23 reasons to support the challenged conduct. State v. McFarland, 127 Wn.2d 322, 336, 899 P.2d 1251
24 (1995).

1 In this case, it is absurd to claim that there was ineffective assistance of counsel merely because
2 two skilled attorneys differed in opinion as to the merits of a given offer by the State. To make this
3 argument is analogous to saying that two doctors cannot give differing opinions regarding a patient's
4 care without one committing malpractice. A defense attorney's job is to counsel the defendant as to the
5 risks, benefits, and potential consequences of any given choice (to plea or go to trial), not make the final
6 decision for him as to whether or not to take a plea or go to trial. Defense attorneys may, and often do,
7 have differing opinions regarding the strengths and weaknesses of any given case. In this case, both Mr.
8 Jensen and Mr. Palmer did their jobs. They conveyed offers to their client. They discussed the possible
9 evidentiary issues and risks. Nothing about the conduct of the attorneys in the plea negotiation stages
10 suggests ineffective assistance of counsel.

11 Mr. Williams claims that Mr. Palmer's advice regarding the second DOSA offer was
12 fundamentally flawed and deficient because of a misunderstanding of the evidence that would be
13 presented in the State's case, similar to Frye. He states, "Mr. Palmer, during his second representation
14 of me, advised that the second plea bargain shouldn't be accepted, because the State didn't have the
15 shoes, or photographic evidence, which they needed to prove their case, and that their case was weak
16 as a result." Defendant's Brief at 3.

17 However, contrary to Frye, this interpretation of the evidence is not fundamentally incorrect.
18 The record suggests that the State's evidence surrounding the shoeprint, which was an element of
19 identification, was admittedly weak. The State did not admit the shoes into evidence because the photo
20 of the shoeprint (which was admitted, contrary to the defendant's assertion) was of such poor quality
21 that there was no way a photographic comparison could be made. 2RP 41-42. Instead, Ms. Love asked
22 the witness to describe his observations of the footprint and the defendant's shoe, which the witness
23 claimed were similar. 2RP 42. The weaknesses of the State's evidence were well probed through Mr.
24 Palmer's cross-examination of the State's witness. 2RP 69-80. Advising his client that there were

1 weaknesses in the State's case as to identification that made going to trial a viable option was a
2 legitimate assessment, and not based on an impermissible view of the evidence to be presented.

3 Under these facts, Mr. Williams cannot satisfy the performance prong of Strickland. Thus, the
4 inquiry of the court should end there regarding his claims of ineffective assistance of counsel. In that
5 sense, this case is not governed by Frye and Lafler – in those cases, ineffective assistance was presumed,
6 and the Court then addressed the prejudice prong. Because the performance of both attorneys was
7 satisfactory and within professional reason in this case, we need not address the issue of prejudice.

8
9 **(2) The State Did Not Breach Any Prior Plea Agreement By Negotiating A New Resolution Mid-Trial.**

10
11 Mr. Williams states that he was informed at the time that the case was assigned out for trial that
12 the DOSA offer was still on the table. He argues that the State breached a "plea agreement" by not giving
13 him that same deal three days after trial started and testimony had been presented. This argument is
14 without merit.

15 The defendant's argument conflates two distinct plea concepts: that of a "plea agreement" and
16 that of an "offer." A plea agreement is a contract entered into by the parties at the time of the defendant's
17 plea of guilty in which the State promises any of a variety of actions or results, including to move for
18 dismissal of other charges or counts, to recommend a particular sentence to the judge, to agree to file or
19 not to file other counts, or any other promises pertinent to that case. RCW 9.94A.421. Breach of that plea
20 agreement by the State or defendant (which usually would occur between the time of the plea and the
21 sentencing) can result in the court ordering a variety of remedies including demanding specific performance
22 by the State or withdrawing the defendant's guilty plea. See State v. Sledge, 133 Wn.2d 828, 947 P.2d 1199
23 (1998) (State breached plea agreement by undercutting its own recommendation); State v. Collins, 144 Wn.

1 App. 547, 182 P.3d 1016 (2008) (defendant breached plea agreement by challenging his agreed-upon
2 offender score).

3 On the other hand, an offer is entirely within the control of the State and not subject to the controls
4 of the court. The State is not obligated to make any plea offer or plea bargain to a defendant to resolve a
5 case. See Weatherford v. Bursey, 429 U.S. 545, 561, 97 S. Ct. 837, 51 L. Ed. 2d 30 (1977); Missouri v. Frye,
6 132 S. Ct. at 1406-1407. As a result, an offer can be withdrawn or changed by the State at any time prior to
7 the entry of the plea by the defendant. In the King County Prosecutor's Office, an offer is often
8 communicated via a standard form called a "Felony Plea Agreement" or "Non-Felony Plea Agreement and
9 State's Recommendation." Those forms specifically state the following:

10 The State of Washington and the defendant enter into this **PLEA AGREEMENT** which is
11 accepted only by a guilty plea. This agreement **may be withdrawn at any time prior to**
12 **entry of the guilty plea.** The PLEA AGREEMENT is as follows: ...

13 In this case, there was no prior plea agreement in place that the State could have breached at the
14 time that the defendant entered his pleas of guilty. No written contract had been entered with the
15 defendant promising him some performance by the State in exchange for a plea of guilty. Rather, there was
16 an oral offer made by the State at some point during the plea bargaining stage, that offer was
17 communicated to the defendant by his counsel, and then that offer was subsequently rejected by the
18 defendant. The prosecutor has discretion at all times whether or not to keep an offer open, or to revise any
19 existing offer on the table.

20 In this case, because there was no plea to the earlier DOSA offer, there was no plea agreement in
21 place that the State could have breached. The State exercised its discretion to negotiate a new offer at the
22 time that Mr. Williams indicated his intent to plead guilty.

23 **(3) Mr. Williams' Plea of Guilty was Knowing, Intelligent, and Voluntary.**

24 As the plea colloquy transcript reflects, at the time Mr. Williams pled guilty he was well aware of
the parameters of the State's offer that was on the table at that moment. 3RP 15-34. He was

1 specifically told that he was pleading guilty to five felonies and three misdemeanors, and that the State
2 would be recommending an exceptional sentence but that he could ask for a prison-based DOSA. 3RP
3 16-19. Even if Mr. Williams believed at the moment that he stopped the trial proceedings that the
4 second DOSA offer was still on the table, he was soon disabused of this notion once he had discussions
5 with his attorney, Ms. Love, and Ms. Love's supervisor. Yet, he still decided to go forward. He reviewed
6 the entire Statements of Defendant on Plea of Guilty with his attorney and signed them. 3RP 29; see
7 Exhibit A, Statements of Defendant on Pleas of Guilty. He went through the entire colloquy with Ms.
8 Love and the court with no hesitation. He was properly informed of the consequences. Thus, his plea
9 was knowing, intelligent, and voluntary.

11 III. CONCLUSION

12 In the end, it is Mr. Williams's decision to plead guilty or go to trial at any given point in time,
13 not the decision of his attorneys. The fact that he regrets his decision to twice reject an offer that in
14 retrospect was "better" than the sentence imposed by this court² does not amount to ineffective
15 assistance. The fact that two attorneys have differing opinions of the relative strength of the State's
16 case or the merits of a specific plea offer does not amount to ineffective assistance. The attorneys
17 advising Mr. Williams were not deficient in any way in their performance, and appropriately advised him
18 of the offers presented and the relative risks and benefits of taking the offers or going to trial. On these
19 facts, Mr. Williams fails to establish the manifest injustice required for withdrawal of a guilty plea under
20 CrR 4.2(f). The State respectfully requests the court to deny the defendant's motion.

23 ² This, too, is something that could be debated. Some defendants feel that doing straight time is "better" than having the
24 obligation of community custody under a DOSA following release, especially when failure to comply with DOSA requirements
could result in even more jail time being imposed.

1 Dated this 14th day of August, 2013.

2 DANIEL T. SATTERBERG
3 Prosecuting Attorney

4 
5 _____
6 Amanda S. Froh, WSBA #34045
7 Senior Deputy Prosecuting Attorney

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A P P E N D I X " C "

"Defendant's Reply"

(14 pages)

WORKING COPIES

Judge: The Honorable Mary Yu
**FACTUAL HEARING ON DEFENSE
MOTION TO WITHDRAW GUILTY PLEA**
Hearing Location: King County Superior
Court; 9th Floor, Room/Department W-928
Hearing Date(s): October 23, 2013
Hearing Time: 9:00 AM

**IN THE
KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Plaintiff,

vs.

WILLIAMS, JOSEPH FRANCIS,
(DOB: 04/28/1968),
Defendant.

NO. 10-1-04358-2 SEA
(Res. Burg. *et al*)

**DEFENDANT'S REPLY TO STATE'S
SECOND RESPONSE TO DEFENDANT'S
MOTION FOR WITHDRAWAL OF GUILTY
PLEA**

NEXT COURT DATE: Wed., 10/23/2013 @ 9:00 AM;
Evidentiary Hearing on Defense Motion to Withdraw Guilty
Plea; before The Honorable Judge Mary Yu.

COMES NOW, Joseph Francis Williams, defendant and moving party of the original motion to withdraw his guilty plea, through his undersigned attorney, and now does offer the following reply to the State's second 'Response,' despite the significant burden and hardship this has imposed upon the moving party. It is apparent that the State considered their first response insufficient to their purpose, and decided a second try was warranted, and allowed.

REPLY TO STATE'S OPENING REMARKS

1. The State recounts the rules and law that identifies and allows defendant's motion, but does so incompletely; the State cites CrR 7.8(b) but only goes on to incompletely quote 7.8(b)(1) as that which allows for vacation of judgment, when part of defendant's motion clearly

DEFENDANT'S REPLY TO STATE'S SECOND
RESPONSE TO DEFENDANT'S MOTION FOR
WITHDRAWAL OF GUILTY PLEA

PHILLIP L. WEINBERG
Attorney at Law
14241 Woodinville-Duvall Road, #385
Woodinville, WA 98072-8564
Tel.: (425) 806-7200; Fax: (425) 742-1200

1 deals with CrR 7.8(b)(3):

2 Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other
3 misconduct of an adverse party;

4 and, §7.8(b)(5):

5 Any other reason justifying relief from the operation of the judgment.

6 Such reasons include ineffective assistance of counsel, or 'bad faith' by the State in plea
7 negotiations, or duplicative charges that are allowed in the State's "Amended Information," and
8 to which the defendant plead guilty in the third plea 'bargain,' and other points and arguments
9 covered by the CrR 7.8 rule. The defendant filed his motion under CrR 7.8, and all that it
10 contains, not merely the one part of the rule that the State cited.

11 2. The State introduced Mafe Rajul, DPA, as the person that negotiated the first
12 plea bargain offer (State's Response II, hereafter "SR II," at Page 2). This was the first
13 time Ms. Rajul was ever mentioned, anywhere, in the record. The State claimed that their
14 information regarding the first plea offer was founded on "notes in the deputy prosecutor's
15 file," which said: "Mr. Palmer met with Ms. Rajul on January 4, 2011, where they
16 discussed the State's offer in person. No written offer was made." (SR II, Page 2) The
17 State listed, in the previous paragraph at SR II, Page 2, three people they were
18 subpoenaing, including Suzanne Love, the former DPA, but did not subpoena Ms. Rajul,
19 even though she was the one that negotiated the first plea offer. I sought to correct this
20 'oversight' but was informed by the State that Ms. Rajul could not be subpoenaed by the
21 Defense at this time, as she is encountering medical issues that make her unable to testify.
22 The time period that she would be unable to testify would last, by the State's reckoning,
23 until mid-November, at least, and there would be no guarantee she could testify even then.

24 While there were specific questions the Defense would have liked to ask Ms. Rajul,
25 questions which she was uniquely in the position of answering, the State sent the notes they
26 cited in SR II, and offered to work past the issues we had wanted to bring forward through the
27 currently ill and unavailable Ms. Rajul's testimony. It is unknown, at this point, whether this
28 will be sufficient. It is dependent on the Defense's ability to bring the same issues to light
29 through the testimony of other witnesses.

30 2a. The State correctly recounted the first and second plea bargain offers, and what
31

1 they contained (SR II, Page 2 and 3), and as they match exactly with what the defendant said in
2 his Motion to this court (Motion to Withdraw Guilty Plea, hereafter Motion, at Page 2), the State
3 is therefore not contesting the point of 'what the offers contained.' Thus, uncontested are the
4 facts that: both pleas existed, in the substance and form contained in the defendant's Motion and
5 the State's Second Response; and that both were negotiated between the State and the Defense;
6 that both were noted in the DPA's file; and, that neither were made as written offers, but were
7 oral offers.

8 3. The State claims, at SR II, Page 2, that: "on January 25, 2011, the defendant set
9 his case for trial, thus rejecting the State's offer." Yet, there were no limitations in the plea offer
10 that said the offer would only be available until or unless the defendant set a date for trial. In
11 fact, there was no expiration point or condition of termination of the offer ever mentioned, as
12 part of any of the plea bargain offers the State made in this case. (see: State's summary of each
13 of the plea offers, at SR II, Pages 2-3, and the summary of the pleas in the Motion at Page 2).
14 Since Mr. Williams never actually rejected the first offer, the State is unable to infer a rejection
15 from a contractually unspecified action. Absent an actual rejection, or the withdrawal of the
16 plea offer before acceptance, the offer was still 'open' at the time the defense counsel, Mr.
17 Palmer, set a court date; the setting of which did not connote a rejection of the offer.

18 The State, at SR II, Page 3, referring to the second plea offer, said:

19 Mr. Jensen conveyed this offer to Mr. Williams, but Mr. Williams rejected it. On that same day,
20 Mr. Jensen moved to withdraw from the case due to a breakdown in communication with his client.
21 Mr. Palmer was reappointed by the court the same day.

22 There are three things wrong with this quote from the State's second response: Firstly, if there
23 was a breakdown in communication between Mr. Williams and Mr. Jensen on the day that the
24 State made their offer, how then was Mr. Jensen able to convey to the State a rejection of the
25 offer? Secondly, at the time that Mr. Jensen withdrew, he was under the impression that the
26 State's second offer was still on the table, and he so informed his successor, Mr. Palmer, who
27 was reappointed on the same day. Thirdly, the only way Mr. Palmer could have offered advice
28 about the second plea offer, after he took over from Mr. Jensen, would have been possible only
29 if the offer was still viable at that point. Mr. Williams didn't reject the second plea offer; he
30 simply didn't immediately accept it.

1 4. The second plea bargain offer also did not contain, as stated above, an expiration
2 point or condition of termination. It was still on the table at the time of trial, and on August 4,
3 2011, Mr. Palmer answers, in response to court query as to whether he is "ready to go on
4 Tuesday" (RP 4, Lines 9-10):

5 MR. PALMER: Yes, I think that I could be ready at 3:00 this afternoon to start
6 pretrial motions and to also get the form I need Mr. Williams to
7 sign so that I can get some nice clothes for jury selection on
8 Tuesday, and to get any final offers to resolve this case
9 communicated to Mr. Williams and to be ready to go on the
10 record at three with all of those issues.

11 (RP 4, Lines 11-17; Emphasis added.)

12 Mr. Palmer did, in fact, go to the State and ask for any final offers, to which they said the
13 second plea offer was still 'on the table,' which Mr. Palmer communicated to Mr. Williams, and to
14 which he did not change his prior advice concerning. (Motion, Appendices "A" and "B" -
15 Affidavits by Joseph Francis Williams, and Ruhksanna Nasreen Amman.) The State's ongoing
16 desire to tell this court that Mr. Williams rejected his plea offers is a disservice to this court, insofar
17 as it is misleading, not through errant 'opinion,' but by intentional misrepresentation of the facts.

18 5. The State goes on to attempt to disprove a point regarding the reason for Mr.
19 Palmer's opinion to Mr. Williams, pertaining to the second plea offer, in which he expressed
20 his assessment of the weakness of the State's case (SR II, Page 2, Lines 20-21, and Page 3-4),
21 due to the lack of evidence, *i.e.*, 'no shoes or photos of footprints' being placed into evidence,
22 by the State saying at SR II, Page 3, that shoes were in evidence at the pretrial hearing on
23 August 4, 2011. Ignoring the fact that the State's "List of Exhibits" (see: Motion, Appendix
24 "D"), which was filed on August 10, 2011, did not show shoes in evidence; and see: the
25 State's own contradictory admission that said: "Ms. Love did not offer the shoes into
26 evidence through Deputy Meyers." The reasons for this were stated on SR II, at Pages 3-4,
27 where the State said that the photo of the so-called footprint was barely visible in the
28 photograph, and was not visible enough to even be used for comparison. Which means it was
29 not 'evidence' of anything; it was akin more, perhaps, to art. And no footprint analysis was
30 done by the State, even though, as the State said: "the Sheriff's Department has
31 experts to do shoeprint analysis, but none was done in this case."

1 Therefore, contrary to the State's assessment, there were no shoes in evidence, and
2 no photographic evidence of footprints, just as Mr. Palmer believed, and had said to Mr.
3 Williams months earlier. That was when Mr. Palmer first gave his opinion to his client,
4 which was after he had a chance to review the file Mr. Jensen had left him, and after he
5 had a chance to consider the second plea offer in the context of the current status of the
6 case, in late April to early May of 2011.

7 On August 4, 2011, nearly four months later, the State was claiming that they had
8 evidence that they did not have, and to which Mr. Palmer did not object to its late admission,
9 nor did he investigate it as to its evidentiary value. When the State said it existed, he took them
10 at their word, even though he was not going to be able to see the 'evidence' until Monday,
11 August 8, 2011.

12 On August 4, 2011, at the pretrial hearing, when Mr. Palmer queried the State on the
13 existence of the shoes and photos, he was told they were now in evidence, which as I've shown
14 above was untrue. At RP 16, Line 17 to RP 17, Line 7, Mr. Palmer asked:

15 MR. PALMER: . . .

16 G, I do have a motion for disclosure that's rather specific. At this
17 point we don't have -- I'd like to ask if the State has pictures of
18 the footprints that were taken. I believe they are in evidence.
19 They are in evidence. Could we review those prior to Monday
20 together to make sure they match with what I have?

21 MS. LOVE: If not prior to Monday then on Monday.

22 MR. PALMER: Okay. What about the fingerprint [RP 17] analysis by any
23 fingerprint examiner?

24 MS. LOVE: There are no fingerprints.

25 MR. PALMER: What about shoes that were collected from the defendant?

26 MS. LOVE: Those are in evidence.

27 MR. PALMER: Okay. Those are in evidence as of Monday.

28 [Emphasis added.]

29 However, no shoes were in evidence, as proven above, and the sole photo of supposed
30 footprint(s) was so poor no real footprint could be seen with any certainty from a "fuzzy"
31 photo, as the State described it, and thus had no evidentiary weight. Also, the photo was not
32 specified on the "List of Exhibits" as a 'footprint photo,' or in any way noted for reference as to

1 what it was purported to show. Additionally, Mr. Palmer, if he had looked at the 'evidence'
2 before trial, would have known that; along with the absence of shoes.

3
4 **ARGUMENTS AGAINST STATE'S (SECOND) RESPONSE**

5 1. **"Manifest Injustice":**

6 The State cites CrR 4.2(f) and argues that the only way a plea of guilty might be
7 withdrawn is through a supported claim of "manifest injustice." (SR II, Pages 5-6.) However,
8 the last line of CrR 4.2(f) explicitly states:

9 ... If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8."

10 [Emphasis added.]

11 Moreover, CrR 7.8(b) states:

12 On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding
13 for the following reasons: ...

14 The rule then proceeds to list those reasons, of which, none includes "manifest injustice." Reading CrR
15 4.2(f), it is clear that it is meant to apply to a 'plea withdrawal' up to the moment a judgment is entered,
16 but after that point or occurrence CrR 7.8 is applied instead. There is no language in CrR 7.8 that
17 points back to CrR 4.2(f), or its requirements. Thus, the State errs in its argument regarding "manifest
18 injustice" under CrR 4.2(f), and that argument should therefore be rejected as invalid, and without
19 merit.

20 2. **"Ineffective Assistance of Counsel":**

21 a) **Opposing Opinions of Successive Counsel.**

22 The State argues, at SR II, Page 6:

23 Mr. Williams claims he was denied effective assistance of counsel because his two attorneys had
24 differing ideas about whether or not an offer from the State was a good offer...

25 This is not what Mr. Williams claimed. What he claimed, as shown in our Motion, at Page 3, was
26 that his two successive attorneys gave opposing legal advice, not merely 'ideas,' regarding the
27 first and second plea bargain offers from the State. These opinions were all that Mr. Williams
28 had to go on, in order to try to make a decision, the consequences of which would affect his
29 entire future and his life.

30 The State returns to this point at SR II, Page 10, and argues:

1 In this case, it is absurd to claim that there was ineffective assistance of counsel
2 merely because two skilled attorneys differed in opinion as to the merits of a
3 given offer by the State. To make this argument is analogous to saying that two
4 doctors cannot give differing opinions regarding a patient's care without one
5 committing malpractice.

6 This is an overly-simplistic view by the State; the argument they use is non-analogous, and
7 depends upon acceptance of a conclusion derived from a false premise. The true argument
8 is more correctly framed as:

9 If two different doctors advise a patient that, for their own good health, the patient should ...

10 According to the First Doctor - get a medical procedure, based on his diagnosis, that shows a specific
11 harm if not done;

12 According to the Second Doctor - don't get the same medical procedure, based on his diagnosis that
13 shows a specific harm if the procedure is done.

14 In that scenario, both 'harms' specified are the same; the result being that the patient is now in
15 a quandary; the effect of the two opposing views is a nullification of advice. The patient is now
16 at a 'dead center' position, with a 50/50 choice; effectively, having little better to go on than a
17 coin flip. This means the patient is at the exact same state as he was before any advice was
18 given; an 'unadvised' state.

19 But compare, if a criminal defendant is in an 'unadvised' state, then he or she does
20 not have effective assistance of counsel, and any process that occurs while he or she is in
21 an unadvised state is a violation of his right to effective assistance of counsel under the
22 Sixth Amendment of the U.S. Constitution, and Article I, §22, of the Constitution of
23 Washington State, and thus a violation of his or her V and XIV Amendment rights of Due
24 Process under the U.S. Constitution, and Article I, §22, of the Washington State
25 Constitution. The defendant's right to effective assistance of counsel is what is at issue
26 here.

27 In Lafler v. Cooper, _____ U.S. _____, 132 S.Ct. 1376, 1387, 182 L.Ed.2d 398
(2012), the Court said:

28 If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in
29 considering whether to accept it. If that right is denied, prejudice can be shown if loss of the
30 plea opportunity led to a trial resulting in a conviction on more serious charges or the
31 imposition of a more severe sentence.

32 [Emphasis added.]

1 There, the Defendant's right to effective assistance of counsel was compromised
2 when the advice of counsel from two different, and successive, counsels gave contradictory
3 advice, which resulted in defendant's paralysis in considering whether to accept the pleas the
4 State offered; resulting in a more serious sentence.

5
6 b) Failure to Object to State's Third Plea Agreement.

7 Mr. Palmer failed, on August 10, 2011, to protect his client's interests when he failed
8 to object to the State's replacement of the accepted second plea bargain offer, with a third
9 plea deal that had never previously been offered to the defendant for consideration, or
10 acceptance.

11 Mr. Williams asked his attorney to stop the trial because he had decided to take the
12 plea offered by the State at the start of trial, which was the second plea offer by the State, and
13 which had been negotiated by Kris Jensen during his representation of Mr. Williams. This
14 was also the plea the State confirmed as "still being on the table" at the beginning of trial, and
15 which was the last plea that Mr. Williams, or Mr. Palmer had heard, or had known existed at
16 the time Mr. Williams said he accepted the State's offer.

17 In stopping the trial, Mr. Williams had acted detrimentally in reliance on the second
18 plea bargain offer. As there was no point at which the State had ever said the offer was
19 withdrawn, and none at which Mr. Williams had rejected the offer, the second plea offer was
20 still an offer open to acceptance. Mr. Williams was expressly told the day before trial that the
21 second offer was still on the table (i.e., long after they'd set the case for trial (Joe Williams &
22 Hal Palmer) -- as set forth in Mafe Rajul's stipulated written testimony, at page 2, Para. 10, that:
23 "As a matter of office policy and practice, when a defendant sets a case for trial, any offers
24 made at the "EPU" (Early Plea Unit) stage are off the table unless further negotiated."

25 [Emphasis added.] Mr. Williams was never given any actual or constructive notice of this said
26 "office policy."

27 Acceptance by Mr. Williams of the State's second plea offer created a contract. In
28 State v. Jerde, 93 Wn.App.774, 970 P.2d 781 (1999), the court said, at 780:

29 The State enters into a contract with a defendant when it offers a plea bargain and the defendant
30 accepts. State v. Talley, 134 Wn.2d 176, 949 P.2d 358 (1998); State v. Sledge, 133 Wn.2d 828,
31 947 P.2d 1199 (1997).

1 Acceptance of a contract comes when the defendant tells his attorney that he "accepts the
2 offer." This is not done in writing, but is done orally. The signature part of the acceptance of the
3 State's offer is that the defendant says he "is willing to plead guilty," since that is the defendant's
4 performance part of the agreement. That acceptance is a significant detrimental step, insofar as
5 the court and State has been notified on the record that the defendant is pleading guilty, and the
6 trial has been stopped. Defendant's attorney has gone to retrieve the specific plea documents,
7 which the defendant is ready to sign.
8

9 It is then that, the State decides to alter the accepted plea offer, and supplant it with a
10 different, never before seen or heard of, plea agreement; one that was never "offered" for any
11 kind of consideration. Mr. Palmer receives the documents, and never questions or objects to
12 their changed contents. Mr. Williams asks Mr. Palmer where the DOSA part is, and why the
13 recommended time is different (longer), and he's told by Mr. Palmer that the plea offer before
14 him is what the State is agreeing to at this point, and that the State has a right to change the plea.
15 Mr. Williams is now (*i.e.*, was then) 'cornered'. He has not been told by the court that he has a
16 right to object to the altered plea, or that he has a right to refuse the plea and resume the trial. In
17 fact, he is not offered this choice during the court's colloquy regarding the plea agreement, as is
18 shown by the record. (August 10, 2011 - RP 15 to RP 34.)

19 The decision by Mr. Palmer to not demand that the second plea offer be enforced,
20 and to not object to the third plea offer, which suddenly appeared to replace the accepted
21 second plea offer, was absolutely ineffective assistance of counsel. As the court said in
22 State v. Julian, 102 Wn.App. 296, 303, 9 P.3d 851 (2000):

23 A plea bargain is no more than a proposal, an offer which the State can revoke
24 until the moment when the defendant enters a plea or has acted detrimentally in
25 reliance on the offer.

[Emphasis added.]

26 Note that the court described a plea bargain as an offer, and that is because the plea
27 bargain, or plea agreement, is "offered" for acceptance to the defendant. Though the State
28 would have this court believe that:

29 The defendant's argument conflates two distinct plea concepts: that of a "plea
30 agreement" and that of an "offer."
31

1 (SR II, Page 11.)

2 The defendant has always maintained that a "plea agreement," or "plea bargain," is
3 negotiated contract that is offered to a defendant by the prosecution, whereby the defendant
4 pleads guilty in exchange for some concession or leniency by the State. As it is a contract, it
5 follows the same rules that apply to any other negotiated instrument: there is an offer, which if
6 accepted, creates a binding contract. If a counter-offer is made prior to acceptance, then the
7 original offer is void. A contract exists within the four corners of the agreement; nothing
8 outside what is specified is part of the contract. If there is no time limitation, then it exists
9 until it is accepted, or withdrawn by the offering party, or a counter-offer is made, or it can no
10 longer possibly be fulfilled because there is no circumstance under which the terms can be met.

11 The State argued at SR II, Pages 11-12, for some slightly skewed reading of
12 "plea agreement" and "offer," but it is an argument that shows a distinction without a
13 difference. The defendant will rely instead on the law.

14 Mr. Williams believed he was accepting the second plea bargain offer from
15 the State, even if he was, as the State put it at SR II, Page 13, "disabused of this
16 notion once he had discussions with his attorney, Ms. Love, and Ms. Love's
17 supervisor." Mr. Williams never had any discussions with Ms. Love, or Ms. Love's
18 supervisor. He was, however, certainly 'disabused of the notion' that he had rights,
19 and that he had accepted a contract the State was not honoring, and that his attorney
20 was allowing this without a fight. He was disabused, too, of the 'notion' that he had
21 any choice; to refuse at that point was not an option because, as his attorney told
22 him, he had already stopped the trial. He didn't know what else he could do, as he
23 was in a courtroom and was being pressed from and thus deprived of time to
24 consider by his attorney and by the situation that had by then arisen. No one was
25 giving him any other option. No one said to him: "Look, we can always go back to
26 the trial." Not even in colloquy did the court give him that option, or say that it
27 existed. Instead, he was being asked to sign away his rights, and plead guilty, for
28 absolutely no consideration or leniency. It was a 'Hobson's Choice' for him. And
29 he was left unrepresented by an attorney willing to place the State's interests ahead
30
31

1 of his client's.

2 Mr. Williams' acquiescence to the State's third plea agreement was done with
3 the knowledge of what the words meant, and what the consequences might be, but it
4 was only as 'voluntary' as it was for him to stand alone, with a stranger beside him
5 that had so abandoned him and his interests that all he could do was to stand there,
6 and participate where called on, and accept his fate. If the State wishes to call that
7 effective assistance of counsel, then that raises more questions than it answers.

8
9 c) Failure to Investigate the State's 'Evidence'.

10 When the State said, on August 4, 2011, that there was photographic evidence of
11 footprints, and that the shoes that were collected from the defendant were also in evidence
12 (Id., at 6), Defense counsel, Hal Palmer, did not investigate the evidence, or he would have
13 seen, with his own two eyes, what later came out at trial – that there were no photos of
14 footprints that had any evidentiary weight. A non-deficient, even minimally effective defense
15 attorney would have then challenged the evidence, and found that there was no footprint
16 analysis that was ever performed, despite the fact that the State had an expert in that field.
17 (SR II, Page 4). Had Mr. Hal Palmer investigated the evidence, or had he had it investigated
18 for him by his staff investigator(s), he also would have discovered that there were no shoes in
19 evidence, despite the State's on-record claim to the contrary. (Id., at 6.)

20 This should have led him to the conclusion that the State didn't have the evidence to
21 support their allegations of the crimes of Burglary or Theft. All they had was possession of
22 stolen property. He then would have had to challenge whether the State had the evidence
23 necessary to bring their case to trial on the charges contained in the Information, or the later
24 Amended Information. If his conclusion placed the State's case in serious doubt, he should
25 have Moved to Dismiss based upon lack of evidence.

26 The proof that he didn't perform his due diligence, and look at the evidence the State
27 said existed, is that if he had he would have seen a "fuzzy" photo, with no detail, that was
28 evidence of nothing, and no shoes; he would have had to utter a protest, a challenge, an
29 objection. But there was nothing from him on this obvious point!

30 As far as evidence, there was no blood, no DNA, no shoes, no shoeprint analysis, no
31

1 fingerprints, or photographic evidence of his presence at the scenes of the alleged burglaries or
2 thefts. The State produced a witness that saw someone that looked like Mr. Williams in the
3 vicinity of one of the scenes of one of the thefts. Under this issue, Mr. Palmer
4 did not provide his client effective assistance of counsel, and if he had, then the conviction of
5 Mr. Williams would have been unlikely.

6 d) Failure to Investigate the Case Against Mr. Williams.

7 Mr. Palmer never performed any investigation on behalf of his client, Mr. Williams,
8 despite having been given specific information which, if followed up on, would have provided
9 his client with the exculpatory evidence he needed to prove he wasn't guilty of the charges, as
10 alleged against him.

11 The proof of this statement can be found with the State; no discovery was
12 presented to the State from Hal Palmer, and none of the people Mr. Williams provided to
13 his attorney, were ever contacted by Mr. Palmer.

14 In Sanders v. Ratell, 21 F.3d 1446, at 1456 (9th Cir., 1994), the court said:

15
16 The inquiry in determining whether counsel's performance was constitutionally
17 deficient is whether counsel's assistance was reasonable considering all of the
18 circumstances. Strickland, 466 U.S. at 689. To provide constitutionally adequate
19 assistance, "counsel must, at a minimum, conduct a reasonable investigation
20 enabling (counsel) to make informed decisions about how best to represent (the
21 client).

22 The duty to investigate is a basic requirement, because no counsel can effectively
23 represent his client if he has not met that legal minimum. Hal Palmer did not investigate,
24 despite his client's continued insistence and pleas urging him to do so.

25 This was ineffective assistance of counsel, and the result is a conviction that should
26 not have occurred.

27 e) Failure to Object to Flawed Charging Document.

28 In the AMENDED INFORMATION, as filed on August 4, 2011, the State alleges the
29 crime of: §I. Residential Burglary, against a Mr. Kurt Gahnberg; and also, at §VII, Theft in the
30 Second Degree, to-wit: golf clubs belonging to Mr. Kurt Gahnberg, which would have been, and
31

1 are alleged to have been, stolen during that same alleged Residential Burglary. Both time and
2 place were the same, and it was a single alleged act.

3 The AMENDED INFORMATION also alleged the crime of: §II. Residential
4 Burglary, against a Ms. Diana Kreklow; and also, at §VIII, Theft in the Third
5 Degree, to-wit: golf clubs that belonged to Diana Kreklow, which would have
6 been, and are alleged to have been, stolen during that same alleged Residential
7 Burglary. Both time and place were the same, and it was a single alleged act.

8 Each of these paired offenses meet the Blockburger "same elements" test. This
9 implies a double jeopardy violation. In State v. Womac, 160 Wn.2d 643, 658-60, 160 P.3d
10 40 (2007), the court said that a defendants' double jeopardy claim, based on failure to merge
11 two charges, meets the manifest constitutional error test; and determined that convictions
12 that violate double jeopardy in this way, must be vacated.

13 The Blockburger test cited above, can be found at Blockburger v. United States, 284
14 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed 306 (1932), and is the benchmark merger doctrine / double
15 jeopardy case that still stands today.

16 The Merger Doctrine should have applied in both of those paired, duplicative
17 charges, and Mr. Palmer should have known that and objected to the AMENDED
18 INFORMATION when the court queried whether he had any objections to it, after his
19 review of it, on August 4, 2011. (RP 6, Lines 12-25.)

20 Mr. Palmer's lack of objection in this regard constituted further ineffective assistance of
21 counsel.

22 f) Failure to Object to Flawed Plea Agreement.

23 As pointed out in § (e), above, the AMENDED INFORMATION was flawed, and therefore a
24 plea agreement based on a flawed charging document is no less flawed.

25 The State's Third Plea Agreement, which was signed, and accepted by this court,
26 should be set aside.

27 Mr. Palmer was ineffective in not protecting his client from agreeing to a double jeopardy
28 violation of his rights.

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CONCLUSION

The State's "Second Response" to defendant's "Motion for Withdrawal of Guilty Plea." is largely comprised of argument citing various parts of Strickland as it relates to trial, instead of arguing the issues of plea bargain offers. This is misplaced and irrelevant to the true legal issues now before the court.

The State's claim that Mr. Williams had effective assistance of counsel is unsupported by the evidence, or their argument in the State's First or Second "Responses." Therefore, the plea should now be set aside.

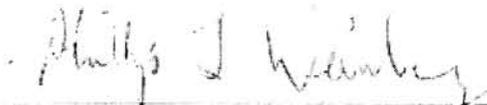
The Third Plea Agreement was never offered by the State to the Defense until after the defendant accepted the Second Plea Bargain Offer, which was a violation of the contract the defendant entered into with the State upon his acceptance, and "bad faith" bargaining by the State. And for that reason, the plea should be set aside.

The State's "First Response" to defendant's Motion, was non-responsive to the issues, and failed to refute any of the arguments contained therein. The State's highly-irregular Second Response should not have been allowed, but even so, it failed to refute the issues raised. It was poorly cited and argued, and should be rejected by this court.

The Third Plea Agreement, to which the defendant pled guilty, is flawed and invalid because it is based on a flawed and invalid charging document. The plea, therefore, should be set aside, and the charges dismissed.

WHEREFORE, Mr. Williams now asks THAT his plea be set aside; THAT the State's case be dismissed for lack of evidence and for the State improperly charging this defendant; THAT the harm he has suffered from the already-served prison sentence now be considered sufficient; AND THAT the State be barred from re-prosecuting this matter under any of those same charges.

Respectfully submitted,


Phillip L. Weinberg, WSBA #18622
Attorney for Defendant

A P P E N D I X " D "

"Stipulation of the Parties
as to Testimony of Mafe Rajul"

(3 pages)

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSEPH FRANCIS WILLIAMS,

Defendant.

)
)
) No. 10-1-04358-2 SEA
)
)
) STIPULATION OF THE PARTIES AS
) TO TESTIMONY OF DEPUTY
) PROSECUTING ATTORNEY MAFE
) RAJUL
)
)
)
)

Deputy Prosecuting Attorney Mafe Rajul was subpoenaed by the defense to testify at the defendant's motion to withdraw his guilty plea scheduled for September 25, 2013 before the Honorable Judge Yu. Ms. Rajul is currently on medical leave and is unavailable to testify. The parties stipulate that if she was available, she would testify to the following:

1. Mafe Rajul is a Deputy Prosecuting Attorney in the King County Prosecutor's Office. In late 2010 and early 2011, she was the deputy prosecutor handling high-impact burglary defendants as part of the Repeat Burglar Initiative (RBI) in the Seattle courthouse. As such, she was assigned to negotiate this defendant's burglary case.
2. The cases assigned to RBI deputies typically involved defendants believed to be responsible for far more burglaries than they were charged with or confessed to, or who had substantial criminal history.
3. This case was filed on June 21, 2010, on a \$50,000 warrant. The defendant failed to appear at arraignment, and was eventually booked on the warrant on November 14, 2010. He was arraigned on these charges on November 29, 2010.

STIPULATION OF THE PARTIES AS TO
TESTIMONY OF DEPUTY PROSECUTING
ATTORNEY MAFE RAJUL - 1

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

- 1 4. Ms. Rajul reviewed the file and the defendant's criminal history in early December 2010
2 and determined that she needed to confirm whether or not a federal conviction washed.
3 She eventually determined and received agreement from the defense that it did not wash,
4 giving the defendant at a minimum 10 prior scoring felony points (which does not take
5 into account multipliers or other current offenses).
- 6 5. On January 4, 2011, after review of the file, Ms. Rajul determined that the State's initial
7 offer would be as follows: the State will dismiss one count of Trafficking in Stolen
8 Property 1°, and the defendant would plead guilty as charged to all other counts (two
9 counts of Residential Burglary; one count of Possession of Stolen Property 3°; and one
10 count of Trafficking in Stolen Property 1°); the State would recommend a low end
11 sentence of 63 months; the defendant would agree in exchange that he would not ask for
12 a DOSA.
- 13 6. Ms. Rajul did no independent investigation into the defendant's drug history when
14 developing this offer, other than to note that he has prior VUCSA convictions.
- 15 7. As a general policy matter, where an RBI defendant had several prior VUCSA
16 convictions and he/she was "maxed out" on the sentencing grid, Ms. Rajul did not allow
17 for a DOSA unless the defense brought mitigating information that justified it. This
18 practice was grounded in the knowledge that with prior VUCSA convictions, the
19 defendant had had the benefit of drug treatment in the past, but likely failed to capitalize
20 on the opportunity. This was especially true where there were prior federal drug
21 convictions, given how much more rigid federal probation is compared with state
22 probation. The rationale for the low-end, no-DOSA up front offer in such cases is that if
23 the defendant previously had the benefit of drug treatment, then the request for a DOSA
24 at this point would be primarily an effort to minimize a long term of incarceration. If the
25 defendant insisted, then Ms. Rajul would sometimes relent, but with the caveat that the
26 State would ask for a high end or exceptional sentence.
- 27 8. In this case, the State's condition that the defendant not seek a DOSA was contemplated
28 because of his extensive criminal history (including 10 felonies) including multiple
29 VUCSA conditions (one of them a federal drug crime), and because the State was already
30 making substantial concessions by agreeing to dismiss one felony count and recommend
31 a low-end standard range sentence.
- 32 9. On January 4, 2011, Ms. Rajul met with defense attorney Hal Palmer in person and
33 discussed the offer with him. No written offer was provided.
- 34 10. On January 24, 2011, at casesetting, the defendant set the case for trial. As a matter of
35 office policy and practice, when a defendant sets a case for trial, any offers made at the
36 "EPU" (Early Plea Unit) stage are off the table unless further negotiated.
- 37 11. On January 25, 2011, Ms. Rajul noted with surprise that the defendant set the case for
38 trial. She contacted Mr. Palmer, who told her that the defendant claimed the following:
39 (1) that Ray Mendez did it; (2) that the police didn't locate the skis (Ms. Rajul assumed

1 that either the defendant or the defense attorney was confusing his burglaries, since the
2 stolen item in this case was golf clubs); and (3) that the witness said that the defendant
was wearing a black shirt when in fact he was wearing a gray shirt.

3 12. After this point, Ms. Rajul had no responsibilities with this case, as it was transferred to
4 Suzanne Love to handle for trial and any further negotiations.
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24 STIPULATION OF THE PARTIES AS TO
TESTIMONY OF DEPUTY PROSECUTING
ATTORNEY MAFE RAJUL - 3

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

A P P E N D I X " E "

"Report of Proceedings, Trial,
August 10, 2011"

(23 pages)

1 (Jury not present.)

2 MR. PALMER: Your Honor, Mr. Williams is
3 asking that I tell the Court and that I tell the prosecutor
4 in this case that he is interested in pleading guilty.

5 What he's interested in pleading guilty to I don't know,
6 but I want to have a brief discussion with the prosecutor
7 and Mr. Williams to see if we could finish this case today.

8 THE COURT: Okay. Why don't I get off the
9 bench and let you have a discussion. If you need for some
10 reason to have the prosecutor step out in order for you to
11 have some private communications, I trust that you will do
12 that. I will give you the space that you need, okay?

13 MR. PALMER: Thank you, Your Honor.

14 THE COURT: All right.

15 (Court recessed.)

16 (Court reconvened without the jury present.)

17 MR. PALMER: Well, Your Honor, Ms. Love and
18 I had engaged in discussions both together and with Mr.
19 Williams and also Ms. Love's supervisor regarding what the
20 final offer would be, and it appears that we've come to a
21 resolution. Ms. Love and I both came back to your
22 courtroom with paperwork so that we could start working on
23 the paperwork. I'm fairly certain that it's going to
24 happen this morning, that we can get this done, but Mr.
25 Williams will be pleading guilty.

1 MS. LOVE: Although it will take a while to
2 fill out the paperwork and go over the paperwork, I believe
3 I have a witness who has a hearing at 11 that he e-mailed
4 me about. So if the plea fell through, then we could get
5 to the point where we would be taking testimony this
6 afternoon, I'm just wondering and looking at the Court for
7 some guidance about what to do with the three witnesses
8 that I have in the hallway. Also the jurors.

9 THE COURT: I can tell you right now what
10 we're going to do. We're going to do this paperwork.
11 We're doing this now. You keep those witnesses, and the
12 jury stays there. I, unfortunately, have had too many
13 things go wrong, and one recently. We're not taking any
14 risks. We do this now or we keep going to trial. I'm
15 sorry.

16 MS. LOVE: That's no problem. I'll just let
17 my witnesses know to hang tight and we'll get going on that
18 paperwork.

19 MR. PALMER: We'll write fast, Your Honor.

20 (Court recessed.)

21 (Court reconvened.)

22 MS. LOVE: Good morning, Your Honor, again.
23 The parties are present in the matter of the State of
24 Washington versus Joseph Williams, Cause No. 10-1-04358-2,
25 Seattle designation. And the parties are prepared to move

1 Q Okay. Remember when I'm asking you a
2 question, just wait until I'm finished so we can get an
3 accurate record.

4 A Thank you.

5 Q All right. You have been charged with a
6 total of five felony offenses. Those are, two counts of
7 Residential Burglary, two counts of Trafficking in Stolen
8 Property in the First Degree, and one count of Theft in the
9 Second Degree. You have also been charged with three
10 misdemeanor offenses. Those are Possessing Stolen Property
11 in the Third Degree, Criminal Trespass in the First Degree,
12 and Theft in the Third Degree.

13 Do you understand that should you take this
14 case to trial, the State would have to prove each and every
15 element of each of those offenses beyond a reasonable
16 doubt?

17 A Yes.

18 Q All right. Moving now to page number two.
19 Paragraph number five on both of the plea forms lists a
20 number of the important rights that you give up by entering
21 pleas of guilty. Those are, that you have a right to a
22 speedy and public trial; you have the right to remain
23 silent before and during trial, which means you don't need
24 to testify against yourself; you have a right to hear and
25 to question any witnesses who may testify against you; you

1 have the right at trial to have witnesses testify on your
2 behalf; you have the right to be presumed innocent unless
3 and until the charge has been proven beyond a reasonable
4 doubt or you enter a plea of guilty. And the sixth is that
5 you have a right to appeal a finding of guilt after trial.

6 Do you have any questions about these or any
7 of the other important rights that you give up by entering
8 pleas of guilty?

9 A No.

10 Q Turning to the misdemeanor form. Each one
11 of the three misdemeanor offenses carries maximum penalties
12 of 364 days in jail and a \$5,000 fine. Do you understand
13 that?

14 A Yes.

15 Q Turning to the felony form. Counts I, II,
16 IV and V all have maximum penalties of ten years in custody
17 and a \$20,000 fine. Do you understand that?

18 A Yes.

19 Q For those same counts, I, II, IV and V, they
20 each have a standard range of 63 to 84 months. Do you
21 understand that?

22 A Yes.

23 Q For the last felony count, Count No. VII,
24 the standard range is 22 to 29 months with a maximum
25 penalty of five years in custody and a \$10,000 fine. Do

1 you understand that?

2 A Yes.

3 Q Turning to page three of the felony form.
4 Those standard ranges we just discussed are based not only
5 on the crimes charged, but also on your criminal history.
6 The prosecuting attorney's statement of your criminal
7 history has been attached, and unless you attach a
8 different statement, you are agreeing that the prosecuting
9 attorney's statement is correct and complete. Do you
10 understand that?

11 A Yes.

12 Q Paragraph D, if you are convicted of new
13 crimes prior to sentencing or some additional criminal
14 history is discovered, then both those standard sentence
15 ranges and the prosecuting attorney's recommendation may
16 increase. Do you understand that?

17 A Yes.

18 Q However, your pleas of guilty today would
19 still be binding. Do you understand that?

20 A Yes.

21 Q Paragraph E. In addition to sentencing you
22 to any confinement, the judge will order you to pay a
23 mandatory \$500 Victim Compensation Fund assessment and a
24 \$100 DNA fee, do you understand that?

25 A Yes.

1 Q You will also -- or may also be required to
2 pay other court costs, fees and assessments including
3 restitution. Do you understand that?

4 A Yes.

5 Q Turning now to page four of the felony form.
6 Looks like paragraph F has been crossed out although -- and
7 paragraph F involves community custody. You are requesting
8 at sentencing that the judge give you a DOSA sentence, is
9 that correct?

10 A Yes.

11 Q If the judge grants that DOSA sentence, part
12 of that will involve community custody. Do you understand
13 that?

14 A Yes.

15 Q However, if the judge does not grant a DOSA
16 sentence, there will be no community custody components.
17 Do you understand that?

18 A Yes.

19 Q Turning to page five of the felony form.
20 Paragraph G is the recommendation that the prosecuting
21 attorney, that's me, will make to the judge. And that is
22 for a total -- it's an exceptional sentence. A total of
23 100 months in custody. To get there the State is asking
24 for 78 months on Counts I, II, IV and V, and that would run
25 -- the time on those counts would run concurrent with each

1 other as well as with the misdemeanors. And then Count
2 VII, the State would ask for 22 months. That would run
3 consecutive to everything else. So that adds up to a total
4 of 100 months. Do you understand that?

5 A Yes.

6 Q The State will ask that you have no contact
7 with all of the victims and their residences, and then I
8 included the list on the State's recommendation. The court
9 costs -- that you pay court costs, the Victim's Penalty
10 Assessment, the DNA fee, restitution, recoupment, and costs
11 of incarceration. Do you understand that that's the
12 State's recommendation?

13 A Yes, I do.

14 Q Do you understand that the judge is not
15 bound by that recommendation?

16 A Yes.

17 Q In fact, the judge does not have to follow
18 anyone's recommendation as to the sentence that she decides
19 to impose, do you understand that?

20 A Yes.

21 Q If the judge stays inside of that standard
22 range, however, you would not be able to appeal your
23 sentence. Do you understand that?

24 A Yes.

25 Q If the judge elects to go outside of the

1 standard range, you would be able to appeal that. Do you
2 understand that?

3 A Yes.

4 Q Turning now back to the misdemeanor form on
5 the bottom of page two, paragraph C is where I've made the
6 prosecuting attorney's recommendation for those counts.
7 The State there is asking for 364 days on each one of the
8 three counts, to run concurrent with each other. I should
9 fill in so just to make it clear 364 days on each count.
10 Those would run concurrent, which means at the same time
11 with each other, the other misdemeanor counts as well as
12 with Counts I, II, IV and V of the felonies. But the State
13 is asking that the misdemeanor counts would also run
14 concurrent -- excuse me -- consecutive, which means after
15 the 22 months on Count No. VII, do you understand that?

16 A Yes.

17 Q Okay. The State is also asking for the same
18 court costs and fees that we're asking -- that I just went
19 over on the felony form. Again, no contact with the
20 victims and their residences, and for restitution. Do you
21 understand that that is the State's recommendation for the
22 misdemeanor offenses?

23 A Yes.

24 Q Do you understand that that also is just a
25 recommendation that the judge is not bound by?

1 A Yes.

2 Q Staying with the non-felony form, paragraph
3 E on page number three, the judge may place you on
4 probation for up to five years if you are sentenced under
5 RCW 46.65.5055, or up to two years for all other offenses.
6 Do you understand that?

7 A Yes.

8 Q Paragraph F, this is similar to what we have
9 done on the felony form, but you will be required to pay
10 the Victim Compensation Fund Assessment and you may be
11 ordered to pay other fines, fees and costs, including
12 restitution. Do you understand that?

13 A Yes.

14 Q And just to make it clear, you would only
15 have to pay the Victim's Penalty Assessment once for this
16 case, so you won't have to pay it once for the felony and
17 once for the misdemeanor. Do you understand that?

18 A Yes.

19 Q Okay. Paragraph number G, if you are not a
20 citizen of the United States -- actually maybe I will get
21 caught up on the felony form, so let's turn back to the
22 felony form. We're on page five. And turning to page six
23 looks as though none of those paragraphs apply except
24 paragraph K indicating that there is a presumption the
25 counts would all run concurrent to each other unless the

1 judge finds there's substantial and compelling reasons to
2 deviate from that, do you understand that?

3 A Yes.

4 Q Okay. Turning now to page number seven on
5 the felony form, paragraph O. The judge may sentence you
6 under the DOSA which is the Special Drug Offender
7 Sentencing Alternative if you qualify, do you understand
8 that?

9 A Yes.

10 Q Paragraph P at the bottom, the judge may
11 also sentence you under a class called a parenting
12 sentencing alternative if you qualify for that, do you
13 understand that?

14 A Yes.

15 Q Turning now to page eight of the felony
16 form, paragraph T is similar to paragraph G on page three
17 of the misdemeanor form, and that is, if you are not a
18 citizen of the United States, entering pleas of guilty is
19 grounds for deportation, exclusion from admission to the
20 United States, or denial of naturalization. Do you
21 understand that?

22 A Yes.

23 Q Paragraph U on the felony form, you will be
24 required to provide a biological sample for purposes of DNA
25 identification and analysis, do you understand that?

1 A Yes.

2 Q And turning back to the misdemeanor form
3 paragraph H, this is the same as the felony form, but if
4 you are convicted of new crimes before you are sentenced or
5 if additional criminal history is discovered, then the
6 prosecuting attorney's recommendation may increase,
7 however, your pleas today would still be binding. Do you
8 understand that?

9 A Yes.

10 Q Turning to page number four on the
11 non-felony form, everything has been crossed out except for
12 paragraph K, which indicates that this plea of guilty will
13 result -- does that -- I don't know if that applies.

14 MR. PALMER: It doesn't apply. Yes, I
15 crossed it out on the felony form.

16 MS. LOVE: If you don't mind maybe having
17 him initial that.

18 MR. PALMER: He's initialling that. It's
19 not an automatic revocation of the driver's license.

20 BY MS. LOVE:

21 Q So it's been crossed out before, but you
22 understand that pleading guilty will not involve a
23 revocation of your driver's license? You understand that?

24 A Yes.

25 Q Okay. Looks like all the paragraphs have

1 been crossed out on page number five as well.

2 Okay. Turning to page number nine on the
3 felony form, paragraph W at the top. This plea of guilty
4 will result in the revocation of your right to possess, own
5 or have under your control any firearm unless and until
6 your right to do so has been restored by a court. Do you
7 understand that?

8 A Yes.

9 Q Paragraph X, you will not be eligible to
10 vote unless your right has been restored. Do you
11 understand that?

12 A Yes.

13 Q So looking at page seven on the non-felony
14 form, paragraph 11 starts out on page seven, and it looks
15 like it actually continues on to a handwritten or to an
16 extra page, but I'd like to read that statement to you. It
17 says, "on March 15th, 2009, in King County, Washington, I
18 did knowingly receive, retain, possess, conceal or dispose
19 of stolen property, to wit, electric scooters knowing that
20 such property had been stolen, and did withhold and
21 appropriate the same to the use of a person other than to
22 Gary Matthews, the true owner and person entitled thereto."

23 Paragraph seven continues. "On 3-15-2009,
24 in King County, Washington, I did knowingly enter or remain
25 unlawfully in a building located at 9308 Northeast 135th

1 Street in Kirkland."

2 Final paragraph. "On March 15th, 2009, in
3 King County, Washington, I, with the intent to deprive
4 another of property, to wit, golf clubs, did wrongfully
5 obtain such property belonging to Diana Kreklow."

6 Looking now to paragraph number 11 on the
7 felony form which also spills over into a second page.
8 Paragraph 11 here reads, "on March 15th, 2009, in King
9 County, Washington, I did enter and remain unlawfully in
10 the dwelling of Kurt Gahnberg at 9626 Northeast 141st
11 Street Place in Kirkland, and also the residence of Diana
12 Kreklow at 14431, 82nd Avenue Northeast in Bothell, with
13 the intent to commit crimes of theft in both residences.

14 On March 4th, 2009, in King County,
15 Washington, I did knowingly dispose of property. I sold
16 it, belonging to Mark Kihlstrom to another person, or did
17 knowingly -- "

18 MR. PALMER: Buy.

19 MS. LOVE: "Buy, receive, possess or obtain
20 control of such property stolen with the intent to sell,
21 distribute, dispense, or otherwise dispose of the property
22 to another person. The property was tools."

23 MR. PALMER: He has a question.

24 MS. LOVE: Sure.

25 MR. PALMER: Can we change it to I pawned

1 it?

2 MS. LOVE: Sure, absolutely.

3 MR. PALMER: I'll go ahead and make that
4 change.

5 Do you want him to initial my change?

6 THE COURT: Yes, initial that change right
7 there.

8 BY MS. LOVE:

9 Q Okay. Just so we're clear here, Mr.
10 Williams. The change was made. Your statement now says
11 "you pawned the tools that belonged to Mark Kihlstrom," is
12 that correct?

13 A Yes.

14 Q Okay. Continuing on to the second page,
15 page 10A, paragraph 11 continues. "On March 28th, 2009, in
16 King County, Washington, I did knowingly sell, transfer,
17 distribute, dispense, or otherwise dispose of stolen
18 property." And then here it says that you pawned it and it
19 was a generator belonging to Kenneth Westberg "to another
20 person or did knowingly buy, receive, possess or obtain
21 control of such property with the intent to sell, transfer,
22 distribute, dispense or otherwise dispose of the property
23 to another person."

24 The final paragraph there reads, "between
25 March 1st, 2009, and March 15th of 2009, in King County,

1 Washington, I, with the intent to deprive another person,"
2 excuse me, "another of property, to wit, golf clubs, did
3 wrongfully obtain such property belonging to Kurt Gahnberg.
4 That the value of such property did exceed \$250."

5 I'm looking now on both of these
6 statements, on the non-felony form and on the felony form,
7 paragraph 11. Did you write out these statements or did
8 someone else?

9 A Well, I agreed. It was written by the
10 lawyer but I signed it.

11 Q Okay. So your attorney was the one that
12 actually wrote these out?

13 A Yes.

14 Q Do you agree with these statements?

15 A Yes.

16 Q Are these both statements that you adopt as
17 your own here today?

18 A Yes.

19 Q In looking now on the felony form, page 11
20 (sic), there's a signature above where it says "defendant."
21 On the non-felony form page seven there's a signature above
22 where it says "defendant." Do you recognize these
23 signatures?

24 A Yes.

25 Q Whose signatures are they?

1 A They're mine.

2 Q Both of them?

3 A Yes.

4 Q When did you sign these forms?

5 A Today.

6 Q When you signed the forms, were you in the
7 presence of your attorney?

8 A Yes.

9 Q Mr. Williams, has anyone made any threats or
10 promises to get you to enter a plea of guilty today?

11 A No.

12 Q Do you feel as though you have had enough
13 time to think about these cases and to discuss the matters
14 with your attorney?

15 A Yes.

16 Q Then we'll start with the felony form. As
17 to Counts I and II of Residential Burglary, Counts IV and
18 V, Trafficking in Stolen Property in the First, and Count
19 VII, Theft in the Second Degree, how do you plead? Guilty
20 or not guilty?

21 A Guilty.

22 Q And to the non-felony form to Count III,
23 Possessing Stolen Property in the Third Degree, Count VI,
24 Criminal Trespass in the First Degree, and Count VIII,
25 Theft in the Third Degree, how do you plead? Guilty or not

1 guilty?

2 A Guilty.

3 MS. LOVE: Your Honor, the State is
4 satisfied that there are sufficient factual bases for all
5 of these pleas. I ask that Your Honor accept them and find
6 that they have been made knowingly, intelligently and
7 voluntarily.

8 THE COURT: Mr. Palmer?

9 MR. PALMER: Your Honor, I believe that Mr.
10 Williams is an intelligent young man. He has been very
11 active both in discussions with me in negotiating the case
12 and in analyzing the facts that would be presented at
13 trial. He understands the consequences of waiving his
14 right to a trial, understands the sentencing recommendation
15 specifically bargained for provision which allows me to
16 recommend -- to be open to recommend a prison-based DOSA in
17 this case.

18 So I believe he is making a knowing,
19 intelligent and voluntary decision to plead guilty, and a
20 knowing, intelligent and voluntary waiver of his trial
21 rights.

22 BY THE COURT:

23 Q Mr. Williams, I'm going to ask you a couple
24 of questions. And first of all, let me open it up and ask,
25 do you have any general questions of the Court?

1 A No, ma'am.

2 Q And were you the individual who signed the
3 documents that the prosecutor handed up to me?

4 A Yes, ma'am.

5 Q Mr. Williams, we started the trial. I did
6 have an opportunity to observe you assisting your attorney
7 in trial and obviously asking questions. So you know what
8 rights you are giving up in the sense that we sat a jury,
9 there was an opportunity for cross-examination of some of
10 the State's evidence and the witnesses. So I want to make
11 sure that you do understand what you are giving up, and
12 that you are stopping that process and you're entering now
13 into a guilty plea, is that correct?

14 A Yes, ma'am.

15 Q I have these documents also that have some
16 handwritten language. I think the prosecutor asked you who
17 wrote those. You indicated that it was your attorney who
18 wrote those statements out. So I just want to specifically
19 ask you whether or not you are adopting those statements as
20 your statements?

21 A Yes, Your Honor.

22 Q And then finally, I want to make sure that
23 you understand, and I know the prosecutor already mentioned
24 this and I apologize for being repetitive, but it's very
25 important that you understand that at sentencing the State

1 will get up, they'll make their recommendation, you will
2 make your recommendation. But the judge, which it's likely
3 to be me, is not bound by any of the recommendations that
4 anybody is going to bring. That I independently exercise
5 my own judgment in imposing a sentence. Do you understand
6 that?

7 A Yes, ma'am.

8 Q Again, one last time, Mr. Williams. Any
9 questions about the process or anything about what we're
10 doing now?

11 A No, ma'am.

12 Q All right. And at this point I will ask you
13 to tell in your own words, are you pleading guilty or not
14 guilty to the charges filed by the State in the amended
15 Information?

16 A I'm pleading guilty.

17 THE COURT: I heard some of the evidence and
18 feel that I am familiar with the facts as presented by the
19 State. And I'll first of all make a finding that there is
20 a sufficient factual basis to support the plea in this
21 particular case. In addition, I have had an opportunity to
22 observe Mr. Williams, gave him an opportunity to ask some
23 questions, and I'm satisfied that you are entering into
24 this plea today knowingly and voluntarily and with a full
25 understanding of what you are doing.

1 So I will go ahead and I will accept your
2 pleas to all of the charges as amended by the State, and
3 that would include Residential Burglary, that is two
4 counts, which are felonies, Possessing Stolen Property in
5 the Third Degree, which is a misdemeanor, Trafficking in
6 Stolen Property, two counts of those which are felonies,
7 Criminal Trespass in the First Degree which is a
8 misdemeanor, Theft in the Second Degree, which is a felony,
9 and Theft in the Third Degree, which is a misdemeanor.

10 I will go ahead and enter your guilty plea
11 and find you guilty of those charges.

12 I will go ahead now and sign these documents
13 that have been handed up to me.

14 Counsel, let me ask you if you have had a
15 discussion about when you want to set this for a sentencing
16 date.

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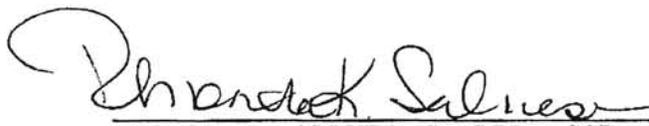
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STATE OF WASHINGTON)
)
KING COUNTY SUPERIOR COURT) ss.

I, RHONDA K. SALVESEN, RPR, CSR, RMR, An Official Court Reporter for King County Superior Court, State of Washington, hereby certify that the foregoing pages, 1 through 23, inclusive, comprise a full, true and correct transcript of the proceedings in the above-entitled cause.

Dated this 10th day of July, 2013.


RHONDA K. SALVESEN, RPR, CSR, RMR
Official Court Reporter

A P P E N D I X " F "

"Amended Information"

(4 pages)

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COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH FRANCIS WILLIAMS of the crime of **Residential Burglary**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, on or about March 15, 2009, did enter and remain unlawfully in the dwelling of Diana Kreklow, located at 14431 82nd Avenue NE, Bothell, in said county and state, with intent to commit a crime against a person or property therein;

Contrary to RCW 9A.52.025, and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant JOSEPH FRANCIS WILLIAMS has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished, under the authority of RCW 9.94A.535(2)(c).

COUNT III

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH FRANCIS WILLIAMS of the crime of **Possessing Stolen Property in the Third Degree**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, on or about March 15, 2009, did knowingly receive, retain, possess, conceal or dispose of stolen property, to-wit: electric scooters, knowing that such property had been stolen, and did withhold and appropriate the same to the use of a person other than Gary Matthews, the true owner and person entitled thereto;

Contrary to RCW 9A.56.170 and 9A.56.140(1), and against the peace and dignity of the State of Washington.

COUNT IV

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH FRANCIS WILLIAMS of the crime of **Trafficking in Stolen Property in the First Degree**, based on a series of acts connected together with another crime charged herein, committed as follows:

1 That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, during
2 a period of time intervening between March 2, 2009 through March 4, 2009, did knowingly sell,
3 transfer, distribute, dispense or otherwise dispose of stolen property belonging to Mark
4 Kihlstrom, to another person, or did knowingly buy, receive, possess or obtain control of such
5 stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of the
6 property to another person;

7 Contrary to RCW 9A.82.050, and against the peace and dignity of the State of
8 Washington.

9 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
10 the authority of the State of Washington further do accuse the defendant JOSEPH FRANCIS
11 WILLIAMS has committed multiple current offenses and the defendant's high offender score
12 results in some of the current offenses going unpunished, under the authority of RCW
13 9.94A.535(2)(c).

14 COUNT V

15 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH
16 FRANCIS WILLIAMS of the crime of **Trafficking in Stolen Property in the First Degree**,
17 based on a series of acts connected together with another crime charged herein, committed as
18 follows:

19 That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, on or
20 about March 28, 2009, did knowingly sell, transfer, distribute, dispense or otherwise dispose of
21 stolen property belonging to Kenneth Westerberg, to another person, or did knowingly buy,
22 receive, possess or obtain control of such stolen property, with intent to sell, transfer, distribute,
23 dispense or otherwise dispose of the property to another person;

24 Contrary to RCW 9A.82.050, and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant JOSEPH FRANCIS
WILLIAMS has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished, under the authority of RCW
9.94A.535(2)(c).

COUNT VI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH
FRANCIS WILLIAMS of the crime of **Criminal Trespass in the First Degree**, based on a
series of acts connected together with another crime charged herein, committed as follows:

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, on or
2 about March 15, 2009, did knowingly enter or remain unlawfully in a building located at 9308
NE 135th Street, Kirkland, in said county and state;

3 Contrary to RCW 9A.52.070, and against the peace and dignity of the State of
4 Washington.

5 COUNT VII

6 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH
FRANCIS WILLIAMS of the crime of **Theft in the Second Degree**, based on a series of acts
7 connected together with another crime charged herein, committed as follows:

8 That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, during
a period of time intervening between March 1, 2009 through March 15, 2009, with intent to
9 deprive another of property, to-wit: golf clubs, did wrongfully obtain such property belonging to
Kurt Gahnberg, that the value of such property did exceed \$250;

10 Contrary to RCW 9A.56.040(1)(a) and 9A.56.020(1)(a), and against the peace and
11 dignity of the State of Washington.

12 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant JOSEPH FRANCIS
13 WILLIAMS has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished, under the authority of RCW
14 9.94A.535(2)(c).

15 COUNT VIII

16 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH
FRANCIS WILLIAMS of the crime of **Theft in the Third Degree**, based on a series of acts
17 connected together with another crime charged herein, committed as follows:

18 That the defendant JOSEPH FRANCIS WILLIAMS in King County, Washington, on or
about March 15, 2009, with intent to deprive another of property, to-wit: golf clubs, did
19 wrongfully obtain such property belonging to Diana Kreklow;

20 Contrary to RCW 9A.56.050 and 9A.56.020(1)(a), and against the peace and dignity of
the State of Washington.

21 DANIEL T. SATTERBERG
22 Prosecuting Attorney

23 By: _____
Suzanne Love, WSBA #37701
24 Deputy Prosecuting Attorney

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955