

NO. 34250-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Appellant,
v.
MARY ELIZABETH TRICKETT, Respondent.
FROM THE SUPERIOR COURT FOR CLARK COUNTY THE HONORABLE DIANE M. WOOLARD CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-01718-0
BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The State submits that the trial court did not have adequate grounds to allow withdrawal of change of plea or to enter the Order Granting Defendant's Motion to Withdraw Guilty Plea and Vacating Judgment and Sentence dated December 20, 2005.

2. The trial court erred in entering Conclusions of Law No. 3 which is not supported by the Findings of Fact as contained in the Findings of Fact and Conclusions of Law Re: Order Granting Motion to Withdraw Guilty Plea dated January 30, 2006, and filed on February 3, 2006.

II. STATEMENT OF THE CASE

On August 9, 2005, the Prosecutor's Office filed an Information charging the defendant, Mary Elizabeth Trickett, with the felony of Hit and Run (Injury Accident). (CP 1). On November 3, 2005, the defendant entered a Statement of Defendant on Plea of Guilty to Non-Sex Offense. (CP 6). A copy of the Statement of

Defendant on Plea of Guilty is attached hereto and by this reference incorporated herein. (Appendix "A").

At the time of the change of plea, the defendant was represented by counsel and indicated that she wished to change her plea to guilty. The Statement of Defendant on Plea of Guilty had attached to it the proposed Offer of Settlement made by the Prosecuting Attorney's Office dated September 14, 2005. The court entered into a colloquy with the defendant concerning the potential plea of guilty. A copy of the colloquy is attached hereto and by this reference incorporated herein. (RP 7-20). (Appendix "B").

After discussion with the defendant concerning the change of plea, the court made a finding that the plea was knowingly, voluntarily and intelligently made and that there was a factual basis to support the plea. (RP 15, I. 1-3). The court then set over sentencing to allow the defendant an opportunity to investigate whether or not she could enter into a work release program in her home town of Pleasanton, California. The court placed her back on conditions of release. The court also advised her to be sure and keep in contact with her attorney. (RP 15-17). Her lack of contact

with her attorney had been discussed previously and was frustrating everyone. (RP 3-4).

The defendant returned to the Superior Court on December 8, 2005, with indications that she had been making arrangements in California. As she explained what arrangements she had made, it became obvious that she was talking about Electronic Home Confinement. The State indicated that partial confinement on work release was not Electronic Home Confinement and, therefore, the State was not in agreement that this was appropriate. (RP 67).

The trial court also indicated to the defendant that this was not acceptable to the court.

“THE COURT: Okay,. We have that equivalent here and its called Electronic Home Confinement and we do not recommend and we do not order Electronic Home Confinement unless there are some really extreme circumstances, such as contagious or illness or terminal illness, and that’s our policy here in Clark County. That’s why Ms. Bryant (the prosecutor) is telling you that the state will not accept that. (RP 68, l. 18-25).”

The Court also talked to the defendant about the fact that she had not been keeping in touch with her defense attorney. The court advised her that if she had done so, he would have told her that Electronic Home Confinement was not used by the Clark County Superior Court. (RP 70-71). Finally, at this hearing, the

court again made it clear to the defendant that this procedure that she was trying to do was not acceptable to the court. (RP 72-74).

This matter came back the next day, December 9, 2005, and at that time, the defense attorney indicated to the trial court that he had been in contact with at least one of the counties in California and they would not take out-of-state people for work release. He also advised the court, for the first time, that the defendant wanted to withdraw her plea and that she felt that she had substantially performed her part of the bargain. (RP 24). There was also an indication raised by the defense that the claim was that the prosecution had violated the spirit of the agreement by not agreeing to the Electronic Home Confinement. The court again advised the defendant that the problem wasn't with the prosecution but with the Superior Court Judge who would not order it.

“THE COURT: Okay. I guess it isn't the State that's the issue, it's, you know, I have a discretion to order any kind of sentencing alternatives that exist in the system, and it is the policy of the Superior Court Judges in this county not to order Electronic Home Confinement. And so it isn't whether or not the prosecutor agrees, because that's not – that's not the issue.

I won't. I have ordered work release. Electronic Home Confinement I think twice since I've been on the bench. It has been unusual issues when we've

had some severe health problems. (P 24, l. 19-25, l. 5).

The matter again comes before the Superior Court on December 20, 2005, at which time the defense has filed a formal motion to withdraw guilty plea. (CP 31). As part of the motion to withdraw the guilty plea was an affidavit prepared by the defendant. (CP 32). In that documentation, she maintains the following:

(7) "The stipulated plea agreement filed in this case contained a promise from the prosecuting attorney's office that it would recommend that I be allowed to serve a 90 day jail penalty in a work release facility in the California county of my residence if I was able to find such a facility that would accept me." (CP 32).

The documentation goes on to complain that the prosecuting attorney has breached or violated the terms of the plea bargain.

(9) "I believe the prosecuting attorney's refusal to recommend that I be allowed to serve my penalty in a manner substantially similar to a work release facility and through the only means available to me constitutes an irregularity in obtaining the judgment and a manifest injustice that would support the withdrawal of my guilty plea. In addition, I believe the prosecuting attorney's failure to recommend the monitored home confinement that I sought out with the understanding that it would be acceptable to complete my obligations negates my original understanding of the consequences of the plea." (CP 32).

The defendant then further makes claim that she didn't have an opportunity to fully understand what was going on because she wasn't given adequate time to comprehend the nature of the plea.

"(10) In addition, I would like to add the following: I do not feel I was given adequate time to consider the plea offer. I was given approximately thirty minutes to review the default before making the plea, without a law degree a substantial knowledge of the laws of the State of Washington. I was not given adequate knowledge or time to fully comprehend the nature of the plea." (CP 32).

After the court heard from both sides, it made the comment again that the defendant had made a knowing, intelligent and voluntary plea of guilty. (RP 42, l. 4-5). The court, nevertheless, allowed the defendant to withdraw her plea. The deputy prosecutor asked the court repeatedly to clarify her ruling. The deputy prosecutor was concerned because the defendant at all times was represented by an attorney who was familiar with the work release and electronic home confinement procedures in Clark County. The court merely indicated that "we all miscommunicated that to Ms. Trickett. We all participated in that communication to Ms. Trickett in allowing her the activities which continued in that misunderstanding or miscommunication to her." (RP 45, l. 23-46), l. 2). The prosecutor continued to request information about what

the miscommunication was when she hadn't been keeping in contact with her attorney who could have properly advised her. The State took exception to the ruling by the court and the matter was set over for entry of Findings of Fact. (RP 46).

The final hearing on this took place on January 20, 2006, when the parties discussed the entry of Findings of Fact. The trial court made some corrections, but ultimately findings of fact and conclusions of law were entered dated January 30, 2006, and filed February 3, 2006. The State has filed a request to Supplement the Clerk's Papers with the addition of these late Findings of Fact and Conclusions of Law.

A copy of the Findings of Fact and Conclusions of Law Re: Order Granting Motion to Withdraw Plea is attached hereto and by this reference incorporated herein. (CP 45). (Appendix "C"). This is being done in anticipation that the Court of Appeals will accept the Supplementation of Clerk's Papers.

III. ARGUMENT

1. *The State submits that the trial court did not have adequate grounds to allow withdrawal of change of plea or to enter the Order Granting Defendant's Motion to Withdraw Guilty Plea and Vacating Judgment and Sentence dated December 20, 2005.*

The State submits that this was a knowing, intelligent and voluntary plea to a felony. As such, the defendant should not have been entitled to withdraw the guilty plea.

CrR 4.2(d) prohibits a trial court from accepting a guilty plea that is not voluntary. The rule provides that there must be a factual basis for the plea and requires the trial judge to make sure the plea is voluntary. She must be sure that the defendant reads and signs a statement on plea of guilty that covers the many details and rights as prescribed in CrR 4.2. The court should also interrogate the defendant concerning these matters. State v. Iredale, 16 Wn.App. 53, 553 P.2d 1112 (1976). These strict requirements are designed to insure that guilty pleas will be voluntary, both under the rules of court and the constitution. Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969). Once the safeguards of these rules have been employed, a defendant will be permitted

to withdraw a plea only upon the defendant's showing that withdrawal is necessary to avoid a manifest injustice. State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

The standard of a manifest injustice is a demanding standard that is placed on a defendant who seeks to withdraw a guilty plea. State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). The Taylor court set forth four non-exclusive examples of what is meant by the term "manifest injustice":

1. Denial of effective assistance of counsel,
2. The plea was not ratified by the defendant,
3. The plea was involuntary,
4. The plea agreement was not kept by the prosecution."

Under this rule, a "manifest injustice" is "an injustice that is obvious, directly observable, overt, not obscure." State v. Taylor, 83 Wn.2d at 596. (CrR 4.2(f)).

When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges that she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea's voluntariness. In re Keene, 5 Wn.2d 203, 206-207, 622 P.2d 360

(1980); State v. Ridgley, 28 Wn.App. 351, 623 P.2d 717 (1981). Further, when the judge goes on to inquire orally of a defendant and satisfies herself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable. State v. Ridgley, *supra*; State v. Iredale, *supra*. Finally whether a plea is knowingly, intelligently and voluntarily made is determined from the totality of the circumstances. Wood v. Morris, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976).

On January 30, 2006, the trial judge entered Findings of Facts concerning the withdrawal of the guilty plea. (CP 45) As she had done on the record previously, the Judge stated that the defendant had entered a knowing, intelligent and voluntary plea of guilty. She further found that she entered into a colloquy with the defendant and that the defendant was fully informed of her constitutional rights and did not express any confusion or misunderstanding regarding their scope or extent. She further found that the plea offer made by the prosecuting attorney's office was on a standardized form and if the defendant did not qualify for partial confinement programs, the recommendation would be for total confinement. The court found that the prosecuting attorney had recommended 90 days in alternative confinement at a work

release facility in the county of her residence. That is not incorporated in the written documentation but was orally made at the time of plea. That is, the deputy prosecutor represented to the trial court that the State had no objection to the defendant seeking out partial confinement, (if she qualified) at her place of residence in the State of California. (RP 14). Before the parties left the November 3, 2005, change of plea hearing, the court and prosecutor both indicated to the defendant that she should make contact with "county jail facilities" in California to determine whether or not they would accept her for work release down there. (RP 19). The defendant did not have any questions of them concerning this and appears to have understood what she was to do because later hearings would indicate that she went down to California and was trying to check at jail facilities to see if they would take an out-of-state inmate for work release. At no time, was there any discussion with her that this would not be a partial incarceration. The findings also relate that there was no discussion regarding what constituted a work release facility, but she was specifically told to keep in contact with her attorney, something that she had trouble doing prior to this time. It was later discussed in some detail on the record that had she kept in contact with her attorney,

he could easily have advised her that the proposal that she had worked out would not be acceptable in the Superior Court in Clark County because of a policy among the judges. She chose not to make contact with her attorney. (RP 71-72).

2. *The trial court erred in entering Conclusions of Law No. 3 which is not supported by the Findings of Fact as contained in the Findings of Fact and Conclusions of Law Re: Order Granting Motion to Withdraw Guilty Plea dated January 30, 2006, and filed on February 3, 2006.*

The State really does not challenge the Findings of Facts entered by the court on January 30, 2006, but certainly does challenge the Conclusions of Law No. 3 which reads as follows.

“3. Relief consistent with CrR 7.8(b)(5) and CrR 4.2(d) is appropriate in this case because it is not clear from the record what conditions of alternative confinement would meet the standards of a ‘work release facility’ as identified in the plea agreement and referred to during defendant’s colloquy with the court. The plea agreement was based on misinformation by the defendant who was apparently unaware that the state would oppose electronic home confinement in keeping with Clark County practice. The court said that electronic home confinement is considered total confinement in the case law and statutes of the State of Washington. All parties agreed to several setovers so that the defendant could explore work release in California. Accordingly, the court found that the defendant did not fully understand the nature and consequences of her plea

in this particular circumstance.” (Findings of Fact and Conclusions of Law Re: Order Granting Motion to Withdraw Guilty Plea (Conclusions of Law No. 3). (CP 45).

A guilty plea may be deemed involuntary where there is a mutual mistake of fact or law and where this mistake forms part of the basis for the defendant’s plea. State v. Walsh, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001). However, the person challenging the plea based on a factual dispute must establish that the defendant was misled by the error to her detriment. In re Personal Restraint of Call, 144 Wn.2d 315, 325-326, 28 P.3d 709 (2001). A mistake as to the facts that underlie a plea may be merely technical defects that do not affect the validity of the plea where the defendant was clearly not misled as to the charges. Factual misunderstandings that do not affect the accused understanding of the charges against her are mere technical infirmities. In re Personal Restraint of Goodwin, 146 Wn.2d 861, 874, 50 P.3d 618 (2002); In re Personal Restraint of Hews, 108 Wn.2d 579, 592, 741 P.2d 983 (1987). The State submits that there is nothing in this record to justify the conclusion of law entered by the court. There is nothing to indicate that this defendant was misled as to the charge she was pleading guilty to or the ramifications of that plea.

Another way of saying it is that a defendant must be informed of all direct consequences of the plea. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A “direct consequence” includes one that “represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” Ross, 129 Wn.2d at 284; State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). The State submits that this is an indirect consequence and does not automatically effect the range of the defendant’s punishment. To view this any other way would be absurd. For example, to allow the defendant to claim that this was a “direct consequence” would allow her to either demand specific performance (partial confinement of her choosing) or withdrawal of the guilty plea. This approach would put all pleas of guilty where a defendant does not qualify for partial confinement, for one reason or another, in jeopardy of being overturned simply because a defendant does not qualify for a partial confinement. It does not affect the overall sentence nor does it in any way affect the range of her potential punishment. It merely is an alternative way of looking at how she is to be punished.

It is helpful at this time to review the Taylor court non-exclusive examples of “manifest injustice”.

1. Denial of effective assistance of counsel.

The defendant did not keep in contact with her attorney.

That is both in the record and in the written Findings of the trial court. Had she done so, it is obvious that she would have been advised to seek some other alternatives. She chose not to do this. In a sense, this becomes an invited error. The doctrine of invited error requires some affirmative, knowing and voluntary action by the defendant that materially contributed to the error. In re Personal Restraint of Thompson, 141 Wn.2d 712, 723-724, 10 P.3d 380 (2000). The purpose of the doctrine is to prevent a party from making a tactical maneuver in pursuit of some real or hoped for advantage, and then later argue that her own action is a ground for reversal. State v. Lewis, 15 Wn.App. 172, 176-177, 548 P.2d 587 (1976). A potential error is deemed waived "if a party asserting such error materially contributed thereto." In Re Dependency of K.R., 128 Wn.2d 129, 147, 904 P.2d 1132 (1995).

The doctrine has been considered in cases in which the defendants were sentenced pursuant to plea bargains and then later challenged their sentences on appeal. State v. Wakefield, 130 Wn.2d 464, 925 P.2d 183 (1996); State v. Cooper, 63 Wn.App. 8, 816 P.2d 734 (1991). Had the defendant kept in contact with her

attorney, none of this alleged error would have taken place. As the court makes it very clear on the record this attorney is aware of the procedures in Clark County and would have correctly advised the defendant concerning these matters. She chose not to keep in contact with her attorney.

2. Plea not ratified by the defendant.

This plea agreement was ratified by the defendant. She accepted the recommendation of partial confinement and went about seeking out partial confinement that would qualify. She further was sentenced based on that change of plea and the recommendations that were set forth in it.

3. The plea was involuntary.

As indicated previously, and repeatedly, the court made specific findings, both orally and in writing, that this was a voluntary plea by the defendant.

4. Plea agreement was not kept by the prosecution.

Again, there is repeated information both in the record and in the findings of the court that there has been no breach of the plea agreement by the prosecution. It is interesting to note that the defendant when she files her affidavit of defendant in support of motion to withdraw guilty plea (CP 32) tries to make allegation that

the state has not lived up to the agreement. At No. 7 of her affidavit, she indicates that "I be allowed to serve a 90 day penalty in a work release facility in the California county of my residence if I was able to find such a facility that would accept me." She was unable to find such a work release facility in California. She further goes on in her affidavit to talk about the State not agreeing to the Electronic Home Confinement as complying with this condition. However, it has repeatedly been shown on the record that the court made it clear to her that this was not an issue with the prosecutor but an issue with the Superior Court Judges in Clark County. They had a policy that they would not honor Electronic Home Confinement as a partial confinement. In fact, Electronic Home Confinement is not considered partial confinement, but total confinement.

She further goes on in her affidavit to indicate that she didn't feel as if she was given adequate time to consider the plea offer. This has nothing to do with the prosecution violating some condition of the plea agreement, but really has more to do with her failing to keep in touch with her attorney.

The State further submits that the trial court had different options available to it, short of allowing the drastic remedy of

withdrawal of the guilty plea. The alternative partial confinement could have been considered. Community Service ordered down in the State of California could be an option that the court could consider, weekends in jail in California, total confinement here in the State of Washington or California could also have been considered. Rather than do that, the court made an unjustified finding of a manifest injustice and allowed a withdrawal of a plea. The injustice is not obvious, it is not directly observable and really makes no sense when you look at what is normally run into in the Superior Court. To use this situation as an example, what if she were sent to work release in Clark County and for whatever reason they decided that she was not a proper candidate for work release and immediately jailed her. Would she then have the opportunity, and the right to claim a manifest injustice (a "direct consequence") and be allowed to withdraw her guilty plea because she didn't understand that if she didn't qualify for partial confinement that she would have to do total confinement?

The trial court gave her a break in allowing her an opportunity to find a jail facility near her home in California. It didn't have to do that. Nevertheless, it was decided that she would be given the opportunity to find partial confinement that would satisfy

the court. The alternative that she came up with did not satisfy the court. That is clear from the record. The State submits that there are no adequate grounds presented by the trial court to allow a withdrawal of a guilty plea based on the concept of a "manifest injustice". There simply is no showing in this record or in the findings that would allow this to occur. The defendant was advised of the penalties, the fact that the trial court did not have to go along with any type of agreements or recommendations made by the prosecution and defense, she was fully informed as to her constitutional rights that she was giving up and she chose to do so. This was a straight plea of guilty to a felony crime. To allow this reversal of a plea, would put in question and jeopardy all pleas where recommendations of partial confinement cannot be honored because of the defendant's failure to comply with conditions or ineligibility to fit into the partial confinement program. The argument could then easily be made that rather than being placed in total confinement that the defendant can merely walk into court, claim that she didn't understand the concept of partial confinement, and avoid total confinement as an alternative and place the State back in the posture of having to re-prosecute on a matter that had already been completed.

As the case law clearly indicates, this is a demanding standard. It is meant to be so. The State submits that she has not met her obligations in showing a "manifest injustice" that would qualify in allowing her to withdraw her plea. There simply is no showing here.

IV. CONCLUSION

The State is requesting that the appellate court reverse the trial court finding of manifest injustice and reinstate the finding of guilt and the judgment and sentence previously imposed.

DATED this 20 day of June, 2006.

Respectfully submitted:

ARTHUR D. CURTIS
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By: 
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Senior Deputy Prosecuting Attorney

APPENDIX "A"

(Statement of Defendant on Plea of Guilty to Non-Sex Offense)

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FILED
NOV 03 2005
JoAnne McBride, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON
FOR Clark County**

NO. 05-1-01718-0

STATE OF WASHINGTON
Plaintiff

**STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO NON-SEX
OFFENSE
(STDFG)**

Mary Trickett
vs.
Trickett
Defendant.

1. My true name is:

Mary Trickett

2. My age is: 25 years 5/17/1980 dog.

3. I went through the 14th grade. (I can) cannot read the English language.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer is: James Uebel

(b) I am charged with: Hit & Run - Injury
The elements are: Did fail to remain at the scene of an injury accident and exchange the required information.

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3 5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM
4 ALL UP BY PLEADING GUILTY:

- 5 (a) The right to a speedy and public trial by an impartial jury in the county where the
6 crime is alleged to have been committed;
- 7 (b) The right to remain silent before and during trial, and the right to refuse to testify
8 against myself;
- 9 (c) The right at trial to hear and question the witnesses who testify against me;
- 10 (d) The right at trial to testify and to have witnesses testify for me. These witnesses
11 can be made to appear at no expense to me;
- 12 (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt
13 or I enter a plea of guilty;
- 14 (f) The right to appeal a finding of guilt after a trial.

15
16 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND
17 THAT:

- 18 (a) Each crime with which I am charged carries a maximum sentence, a fine, and a
19 STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 8(f))	MAXIMUM TERM AND FINE
20 1	0	3-9mos		3-9mos	0	5 yrs 10,000.
21 2						
22 3						

23
24
25 *(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See
26 RCW 46.61.520, (JP) Juvenile present
27

STATEMENT ON PLEA OF GUILTY (NON-SEX OFFENSE)
(STTDFG) - Page 2 of 11
CrR 4.2(g) (08/2002)

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3 (b) The standard sentence range is based on the crime charged and my criminal
4 history. Criminal history includes prior convictions and juvenile adjudications or
5 convictions, whether in this state, in federal court, or elsewhere.
- 6 (c) The prosecuting attorney's statement of my criminal history is attached to this
7 agreement. Unless I have attached a different statement, I agree that the
8 prosecuting attorney's statement is correct and complete. If I have attached my
9 own statement, I assert that it is correct and complete. If I am convicted of any
10 additional crimes between now and the time I am sentenced, I am obligated to tell
11 the sentencing judge about those convictions.
- 12 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
13 history is discovered, both the standard sentence range and the prosecuting
14 attorney's recommendation may increase. Even so, my plea of guilty to this
15 charge is binding on me. I cannot change my mind if additional criminal history is
16 discovered even though the standard sentencing range and the prosecuting
17 attorney's recommendation increase or a mandatory sentence of life imprisonment
18 without the possibility of parole is required by law.
- 19 (e) In addition to sentencing me to confinement, the judge will order me to pay
20 \$500.00 as a victim's compensation fund assessment. If this crime resulted in
21 injury to any person or damage to or loss of property, the judge will order me to
22 make restitution, unless extraordinary circumstances exist which make restitution
23 inappropriate. The amount of restitution may be up to double my gain or double
24 the victim's loss. The judge may also order that I pay a fine, court costs, attorney
25 fees and the costs of incarceration.
- 26 (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to
27 confinement, the judge may order me to serve up to one year of community
supervision if the total period of confinement ordered is not more than 12 months.
If this crime is a drug offense, assault in the second degree, assault of a child in
the second degree, or any crime against a person in which a specific finding was

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3 made that I or an accomplice was armed with a deadly weapon, the judge will
4 order me to serve at least one year of community placement. If this crime is a
5 vehicular homicide, vehicular assault, or a serious violent offense, the judge will
6 order me to serve at least two years of community placement. The actual period of
7 community placement, community custody, or community supervision may be as
8 long as my earned early release period. During the period of community
9 placement, community custody, or community supervision, I will be under the
10 supervision of the Department of Corrections, and I will have restrictions and
11 requirements placed upon me.

12 For crimes committed on or after July 1, 2000: In addition to sentencing me to
13 confinement, the judge may order me to serve up to one year of community
14 custody if the total period of confinement ordered is not more than 12 months. If
15 the crime I have been convicted of falls into one of the offense types listed in the
16 following chart, the court will sentence me to community custody for the community
17 custody range established for that offense type unless the judge finds substantial
18 and compelling reasons not to do so. If the period of earned release awarded per
19 RCW 9.94A.150 is longer, that will be the term of my community custody. If the
20 crime I have been convicted of falls into more than one category of offense types
21 listed in the following chart, then the community custody range will be based on the
22 offense type that dictates the longest term of community custody. -

23

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by	9 to 18 months or up to the period of

24
25
26
27

RCW 9.94A.440(2)	earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge:

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

1 (J.I) Until your right to vote is reinstated by a judicial
2 court, you will not be able to vote.

3 (k) Public assistance will be suspended during any period of imprisonment.

4 (l) I understand that I will be required to have a biological sample collected for
5 purposes of DNA identification analysis. For offenses committed on or after July 1,
6 2002, I will be required to pay a \$100 DNA collection fee.

7 NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING
8 PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE
9 DEFENDANT AND THE JUDGE.

10 [m] This offense is a most serious offense or strike as defined by RCW 9.94A.020, and
11 if I have at least two prior convictions for most serious offenses, whether in this
12 state, in federal court, or elsewhere, the crime for which I am charged carries a
13 mandatory sentence of life imprisonment without the possibility of parole.

14 [n] The judge may sentence me as a first-time offender instead of giving a sentence
15 within the standard range if I qualify under RCW 9.94A.030. This sentence could
16 include as much as 90 days' confinement, and up to two years community
17 supervision if the crime was committed prior to July 1, 2000, or up to two years of
18 community custody if the crime was committed on or after July 1, 2000, plus all of
19 the conditions described in paragraph (e). Additionally, the judge could require me
20 to undergo treatment, to devote time to a specific occupation, and to pursue a
21 prescribed course of study or occupational training.

22 [o] If this crime involves a kidnapping offense involving a minor, I will be required to
23 register where I reside, study or work. The specific registration requirements are
24 set forth in the "Offender Registration" Attachment.

25 [p] If this is a crime of domestic violence and if I, or the victim of the offense, have a
26 minor child, the court may order me to participate in a domestic violence
27 perpetrator program approved under RCW 26.50.150.

[q] If this crime involves prostitution, or a drug offense associated with hypodermic
needles, I will be required to undergo testing for the human immunodeficiency
(AIDS) virus.

1
2
3 [r] The judge may sentence me under the special drug offender sentencing
4 alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses
5 committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or
6 after July 1, 2001). This sentence could include a period of total confinement in a
7 state facility for one-half of the midpoint of the standard range plus all of the
8 conditions described in paragraph 6(e). During confinement, I will be required to
9 undergo a comprehensive substance abuse assessment and to participate in
10 treatment. The judge will also impose community custody of at least one-half of
11 the midpoint of the standard range that must include appropriate substance abuse
12 treatment, a condition not to use illegal controlled substances, and a requirement
13 to submit to urinalysis or other testing to monitor that status. Additionally, the judge
14 could prohibit me from using alcohol or controlled substances, require me to
15 devote time to a specific employment or training, stay out of certain areas, pay
16 thirty dollars per month to offset the cost of monitoring and require other
17 conditions, including affirmative conditions.

18 [s] If the judge finds that I have a chemical dependency that has contributed to the
19 offense, the judge may order me to participate in rehabilitative programs or
20 otherwise to perform affirmative conduct reasonably related to the circumstances
21 of the crime for which I am pleading guilty.

22 [t] If this crime involves the manufacture, delivery, or possession with the intent to
23 deliver methamphetamine or amphetamine, a mandatory methamphetamine
24 clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

25 [u] If this crime involves a violation of the state drug laws, my eligibility for state and
26 federal food stamps, welfare, and education benefits will be affected. 20 U.S.C.
27 § 1091(r) and 21 U.S.C. § 862a.

[v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be
suspended or revoked. If I have a driver's license, I must now surrender it to the
court.

1
2
3 [w] If this crime involves the offense of vehicular homicide while under the influence of
4 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or
5 after January 1, 1999, an additional two years shall be added to the presumptive
6 sentence for vehicular homicide for each prior offense as defined in RCW
7 46.61.5055(8).

8 [x] The crime of _____ has a mandatory minimum
9 sentence of at least _____ years of total confinement. The law does not allow
10 any reduction of this sentence. This mandatory minimum sentence is not the
11 same as the mandatory sentence of life imprisonment without the possibility of
12 parole described in paragraph 6[m].

13 [y] I am being sentenced for two or more serious violent offenses arising from
14 separate and distinct criminal conduct and the sentences imposed on counts
15 _____ and _____ will run consecutively unless the judge finds substantial and
16 compelling reasons to do otherwise.

17 [z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or
18 firearm enhancement. Deadly weapon or firearm enhancements are mandatory,
19 they must be served in total confinement, and they must run consecutively to any
20 other sentence and to any other deadly weapon or firearm enhancements.

21 [aa] I understand that the offenses I am pleading guilty to include both a conviction
22 under RCW 9A.1.040 for unlawful possession of a firearm in the first or second
23 degree and one or more convictions for the felony crimes of theft of a firearm or
24 possession of a stolen firearm. The sentences imposed for these crimes shall be
25 served consecutively to each other. A consecutive sentence will also be imposed
26 for each firearm unlawfully possessed.

27 [bb] I understand that if I am pleading guilty to the crime of unlawful practices in
obtaining assistance as defined in RCW 74.08.331, no assistance payment shall
be made for at least 6 months if this is my first conviction and for at least 12

months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:

count 01 Hit & Run - Injury

count _____

count _____

in the Original Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily, of my own decision after consulting with my lawyer.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

On 8/3/2005 in Clark County, WA I
did leave the scene of an ~~injury~~ accident ^{where an} ~~injury~~ ^{was} ~~caused~~
in which I had been involved before providing the
original information.

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

With my attorney I have reviewed the police reports and evidence in this case and believe there is sufficient evidence for a jury to conclude I am guilty beyond a reasonable doubt; and, I want to take advantage of the plea offer.

1
2
3 12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs
4 and the "Offender Registration" Attachment, if applicable. I understand them all. I have
5 been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further
6 questions to ask the judge.

7 Mary Tuck - 1
8 Defendant

9
10 I have read and discussed this statement
11 with the defendant and believe that the defendant is competent and fully understands the
12 statement

11 *J. Bryant*
12 Prosecuting Attorney Bar # 17607
13 Jeannie Bryant
14 Print Name

11 *J. Wood*
12 Defendant's Lawyer Bar # 29523
13 Print Name

15 The foregoing statement was signed by the defendant in open court in the presence of the
16 defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate
17 box]:

- 18 (a) The defendant had previously read the entire statement above and that the defendant
19 understood it in full;
- 20 (b) The defendant's lawyer had previously read to him or her the entire statement above
21 and that the defendant understood it in full; or
- 22 (c) An interpreter had previously read to the defendant the entire statement above and that
23 the defendant understood it in full. The Interpreter's Declaration is attached.

24 I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant
25 understands the charges and the consequences of the plea. There is a factual basis for the plea.

26 The defendant is guilty as charged.

27 Dated: 6/13/05

Diane M. Woods
Judge

1
2
3 INTERPRETER'S DECLARATION

4 I am a certified interpreter or have been found otherwise qualified by the court to interpret in the
5 _____ language, which the defendant understands, and I have
6 translated the _____ for the defendant from English into
7 that language.

8 (Identify document being translated)

9 The defendant has acknowledged his or her understanding of both the translation and the subject
10 matter of this document. I certify under penalty of perjury under the laws of the state of
11 Washington that the foregoing is true and correct.

12 Dated: _____

13
14
15 _____
16 Interpreter

17 Location: _____
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STATE OF WASHINGTON V. MARY ELIZABETH TRICKETT - CAUSE NO 05-1-01718-0

CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT

TO: DEFENSE ATTORNEY JIMMY E WOODEN, WSBA #29523
The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
01	HIT AND RUN (INJURY ACCIDENT)	0	3-9 months		3-9 months

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying criminal history which the defendant must acknowledge as accurate, true and complete. It may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: _____. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
01	HIT AND RUN (INJURY ACCIDENT)	0	3-9 months		3-9 months

In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:

- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.
- The State will refer this case for Drug Court screening.

RECOMMENDATION AS TO CONFINEMENT

Days Months in Total Confinement, and
90 Days Months Partial Confinement [_____ days Work Crew; 90 days Work Release], and
_____ Days Community Service (Eight (8) hours per day)
_____ Days with _____ days suspended/deferred on a misdemeanor/gross misdemeanor

If the defendant does not qualify for partial confinement program(s), the recommendation will be for total confinement.

TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of \$700.00 restitution of \$1.00 or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

Other legal financial obligations include:

Drug Fund of _____ Emergency Response Fee of _____
Warrant Fees of _____ Extradition Costs of _____
Lab Fee of _____ Other of _____ for _____
DV Penalty Assessment _____

SUPERVISION

- First Offender Option with up to two years of supervision
- Community Custody for _____ months or for a range of _____ to _____ months.
- _____ Years of probation/supervision on misdemeanor/gross misdemeanor.

SPECIAL SENTENCE OPTIONS

If recommended by PSI, the state will recommend/consider DOSA.

MANDATORY SENTENCE REQUIREMENTS

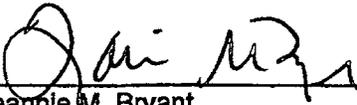
- No possession/use/ownership of firearms/surrender concealed pistol license
- HIV testing
- Provide biological sample for DNA identification
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

OTHER CONDITIONS OF SUPERVISION

(This list is non-exclusive – the State is free to recommend other usual conditions)

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for: substance abuse; mental health; anger control; other _____
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with all victims for 5 years.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime: _____
- Forfeiture of the following property: _____
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER _____

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.



 Jeannie M. Bryant
 Deputy Prosecuting Attorney, WSBA #17607

9-14-05

 Date

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APPENDIX "B"

**(Colloquy between Judge Diane M. Woolard and defendant regarding
change of plea on November 3, 2005)**

1 tomorrow.

2 THE COURT: Uh-huh.

3 MR. WOODEN: On (inaudible) appeal, and I'm not
4 sure if -- it's been set over a number of times, so
5 I wasn't sure if we had courtesy copies of
6 (inaudible) or not, so --

7 THE COURT: Not of yours.

8 MR. WOODEN: And I know you don't want them,
9 necessarily (inaudible).

10 THE COURT: Did this get filed some- -- is this
11 the original?

12 MR. WOODEN: It's a -- no, it's a copy.

13 THE COURT: It's a copy?

14 MR. WOODEN: Yeah.

15 THE COURT: Okay. Well, I've read the other one,
16 so I'll read this one. Anything further?

17 MS. BRYANT: Not at this time, Your Honor. -

18 THE COURT: Okay. Thank you.

19 (Recess.)

20 THE COURT: Okay, we're on the record, **State v.**
21 **Trickett**, 05-1-01718-0.

22 And I've been handed a statement of plea of
23 guilty, and, Ms. Trickett, have you read it?

24 THE DEFENDANT: Yes.

25 THE COURT: And is this your signature

1 (indicating)?

2 THE DEFENDANT: Yes.

3 THE COURT: Right here (indicating), look at me.

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. And this is -- she's pleading
6 as charged?

7 MS. BRYANT: That is correct, Your Honor.

8 THE COURT: Okay. Now I'll make sure I find a
9 copy of the Information. There we go. Hit-and-run
10 injury accident. And you're entering a guilty
11 plea. And by entering a plea of guilty, the State
12 does not have to prove the elements beyond a
13 reasonable doubt that you in this county and state
14 did operate a vehicle which was involved in an
15 accident which involved injury to another person,
16 and knowing that you'd been involved in the
17 accident did either immediately fail to stop or
18 fail to return or fail to render assistance to the
19 persons injured.

20 You face possible consequences of three to
21 nine months in custody, maximum term and fine of
22 five years and \$10,000.

23 You also are going to be obligated to
24 certain fines and fees and costs, restitution,
25 court-appointed attorney's fees, filing fees and so

1 forth.

2 And how are you going to pay those?

3 THE DEFENDANT: Payments.

4 THE COURT: Payments? You going to be able to
5 get a job when you're released from custody?

6 THE DEFENDANT: (Inaudible.)

7 THE COURT: Okay. Good. You also understand
8 that if you're not a citizen you could be deported.
9 You also understand you may not possess, own or
10 have under your control any firearm. That could be
11 the basis of further felony filings.

12 You also understand that your right to vote
13 will be not in effect and has to be reinstated by a
14 valid court order and court process.

15 You also understand you're going to lose
16 your driver's license for a period of time. Is
17 that going to be a year, Ms. Bryant?

18 MS. BRYANT: I believe it may be, Your Honor.
19 I'm not as familiar with all the Department of
20 Licensing rules as I wish, but it could be up to a
21 year.

22 THE COURT: Okay.

23 MR. WOODEN: I was actually able to do some
24 research this afternoon. It will be for one year.

25 THE COURT: Okay.

1 MR. WOODEN: And I made a copy of the statute for
2 Ms. Trickett. Apparently she would be someone who
3 could qualify -- could petition for a temporary
4 license.

5 THE COURT: For a work permit?

6 MR. WOODEN: Yeah.

7 THE COURT: Okay. All right, and good, I
8 appreciate your doing some of the research on that.

9 And you have to give a DNA sample, \$100 cost
10 to you.

11 You also by pleading guilty give up your
12 rights to trial, the right to speedy and public
13 trial by an impartial jury in this county, the
14 right to remain silent, the right to refuse to
15 testify against yourself and the right at trial to
16 hear and question the State's witnesses who testify
17 against you, the right at trial to testify and have
18 witnesses testify in your behalf.

19 You give up the presumption of innocence and
20 you give up the right to appeal a finding of guilt
21 after trial.

22 Now, the State has made the recommendation
23 of ninety days in custody, and which is the low end
24 of your standard range. And you understand I don't
25 have to follow that.

1 THE DEFENDANT: (No audible response.)

2 THE COURT: Is that a yes?

3 THE DEFENDANT: Uh-huh.

4 THE COURT: You need to answer out loud --

5 THE DEFENDANT: Yes.

6 THE COURT: -- yes.

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Has anyone made you any
9 threats or promises?

10 THE DEFENDANT: No.

11 THE COURT: And are you making this plea freely
12 and voluntarily?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And how do you plead to hit-
15 and-run injury accident?

16 THE DEFENDANT: (Pause; no response.)

17 THE COURT: Well, we can always go to trial next
18 Wednesday.

19 THE DEFENDANT: (No audible response.)

20 THE COURT: Okay. Tell me in your own words what
21 it is that makes you guilty.

22 THE DEFENDANT: (Inaudible.)

23 THE COURT: That's about right.

24 Ms. Bryant.

25 MS. BRYANT: Your Honor, the victim was rear-

1 ended on August 3rd, and the two individuals
2 encountered each other. (Inaudible) hit the back
3 of or the front of the vehicles, and Ms. Trickett
4 apparently indicated to the victim she wanted her
5 to follow her home so that she could get her
6 insurance and (inaudible). Ms. Pittman said no,
7 and then Ms. Trickett got in her vehicle and left.

8 Ms. Pittman was able to give a description
9 and a license plate to the police dispatcher, and
10 so that they were able to trace the car back to Ms.
11 Trickett through the license, and they had some
12 local address information, Jason and Jessica
13 Trickett on Fruit Valley Road, that they -- I guess
14 they (inaudible) them and determined they were
15 relatives or whatever.

16 Ms. Trickett indicated to the police that
17 she did stop and she did talk with the other
18 driver. The other driver refused to follow Ms.
19 Trickett to her residence to get the insurance
20 information, and that her passenger had a warrant,
21 and so they left the scene.

22 She has no prior criminal history. Ms.
23 Pittman indicated to me on the phone, and I have --
24 does the Court have --

25 THE COURT: Yes.

1 MS. BRYANT: -- a copy of the --

2 THE COURT: Yeah.

3 MS. BRYANT: -- victim impact statement. She
4 indicated to me on the phone today and her victim
5 impact statement indicates she was not seriously
6 injured. She suffered no broken bones.

7 However, as we're all familiar with, those
8 whiplash injuries can be long-lasting and very
9 painful, and she still -- she indicated to me
10 earlier today that she still suffers from pain
11 caused by the accident.

12 So that's what the (inaudible) in place. It
13 certainly -- we don't know whose fault the accident
14 was, but it's imperative that people remain at the
15 scene to render aid and to exchange information and
16 do that.

17 And for whatever reason -- the State does
18 not find it persuasive that her passenger had legal
19 difficulties. Her passenger could have walked
20 home. She could have just (inaudible) and settled
21 up and dealt with the situation.

22 She did, and as I think she's indicating
23 here today, it would have all been solved if she
24 had just remained at the scene.

25 THE COURT: Yeah.

1 MS. BRYANT: So we don't oppose, Your Honor, the
2 work release. She was authorized travel to
3 California to live and work, and that's what she
4 has represented to the Court on a couple of
5 occasions, that she works in California.

6 She's gonna have to pay the costs.
7 Restitution is not something I can ask the Court to
8 order or ask that she agree to because the statute
9 doesn't deal with fault, it just deals with her not
10 remaining at the scene.

11 THE COURT: Okay.

12 MS. BRYANT: So I'm sure the insurance companies
13 will settle up with her as --

14 THE COURT: I don't know that --

15 MS. BRYANT: What Ms. Pickett indicated to --
16 Pittman, pardon me, indicated to me is that she
17 actually didn't have insurance, it had lapsed,
18 and -- and that Ms. Pittman had to pay her
19 deductible to get her own insurance to pay the
20 costs for the medical and the car and that.

21 So I think it's important that she continues
22 to work, because I anticipate there will be someone
23 try to settle (inaudible).

24 THE COURT: On a personal injury level.

25 MS. BRYANT: Yes.

1 THE COURT: Okay. I find that the plea has been
2 knowingly, voluntarily and intelligently made and
3 that there is a factual basis.

4 THE DEFENDANT: I actually have two insurances.

5 THE COURT: Well, if you'd have stayed, then
6 maybe some of that might have gotten taken care of.
7 So that's a tough situation. So where are you
8 working?

9 THE DEFENDANT: I work for a temp agency. I'm
10 currently almost up with my ninety days. Working
11 for a (inaudible) company.

12 THE COURT: Okay. So is this in California?

13 THE DEFENDANT: Yeah.

14 THE COURT: How is that we're going to do work
15 release in California?

16 THE DEFENDANT: I have to find a place that has
17 work-release there (inaudible).

18 THE COURT: Have you looked into any of the
19 facilities there?

20 THE DEFENDANT: This is my first time. I've
21 never been (inaudible) before. I haven't had much
22 time (inaudible).

23 THE COURT: Okay. Where in California is this?

24 THE DEFENDANT: Pleasanton.

25 THE COURT: Okay. So I'm going to allow you

1 thirty days to do that. But your conditions of
2 release will remain in effect. I will come back
3 and review this in thirty days. And that will be
4 all the time that you have.

5 Part of your conditions of release, you
6 know, you'll be allowed to go back to California,
7 but you're going to maintain weekly contact with
8 your attorney. He's very knowledgeable, very
9 helpful and you've probably found him very, very
10 helpful on your driver's license situation today
11 also.

12 Was that California or Washington driver's?

13 MR. WOODEN: Only --

14 THE COURT: Washington.

15 MR. WOODEN: -- Washington (inaudible), so --

16 THE COURT: Yeah, so you'll have to talk to the
17 -- the Department of Licensing in California will
18 be eventually notified that you're in a driver's
19 suspension situation, and it may take a little bit
20 of time to get caught up.

21 But you're not suspended as of today, it
22 will only be as of the day of sentencing. Okay?
23 So if you're having trouble making arrangements,
24 that's what your attorney is for.

25 So, Mr. Wooden, what's a good day for you to

1 come back?

2 MR. WOODEN: Oh, Your Honor, any day, Your Honor,
3 would be fine. Just set a date and I'll be here.

4 THE CLERK: Did I hear you say thirty days?

5 THE COURT: About thirty days, and we could
6 probably set it on a -- on a Thursday. Mr. Wooden
7 would be around on Thursdays for most --

8 MR. WOODEN: That's right.

9 THE CLERK: Okay. We could set it on the 8th of
10 December. We could either do an 8:30 or a 1:15,
11 whatever you prefer.

12 THE COURT: What am I doing that day?

13 THE CLERK: We'll be in the second day of a
14 criminal trial or in a civil trial, one-day civil
15 trial starting on Thursday, non-jury. So I don't
16 know which we'll be in.

17 THE COURT: My preference is on those -- so it
18 will only be the two-day jury -- criminal trial?

19 THE CLERK: Uh-huh. If that's what we're doing.

20 THE COURT: All right. So my preference is
21 usually to start, do those at 8:30, because that
22 way then I have the freedom to have the jury take a
23 12 to 1 lunch only.

24 THE CLERK: Uh-huh.

25 THE COURT: So let's do it 8:30.

1 THE CLERK: On December 12th -- I mean December
2 8th.

3 THE COURT: Well, let's -- you better -- are you
4 going to do a memo?

5 MS. BRYANT: Yes, Your Honor, I have one right
6 here. December 8th at 8:30 here in Department 8.

7 THE COURT: Great. And conditions of release
8 remain in full force and effect.

9 MR. WOODEN: And you're reinstating her right to
10 go California (inaudible)?

11 MS. BRYANT: Yes. And I wrote that in.

12 MR. WOODEN: So if I understand, the -- excuse
13 me. The problem we're running into or -- of
14 course, it would be nice if she would go back to
15 California and make contact with a work release
16 facility --

17 THE COURT: That was why I'm giving her thirty
18 days.

19 MR. WOODEN: -- and even if she could start doing
20 those during the time you -- I guess I was trying
21 to think of some way that maybe to avoid her having
22 to come back, but we can't really do anything until
23 we get a sentence, and they -- the work release
24 couldn't -- center in California couldn't do
25 anything (inaudible) sentence, so --

1 THE COURT: Yes, but I need to know who's going
2 to accept her so I know what I'm gonna do in --

3 MR. WOODEN: Okay.

4 THE COURT: -- thirty days, so I need -- need --

5 MR. WOODEN: Sure, I understand.

6 THE COURT: Yeah.

7 MR. WOODEN: That's exactly it.

8 THE DEFENDANT: So for thirty days I have
9 (inaudible).

10 THE COURT: Do you --

11 THE DEFENDANT: (Inaudible.)

12 THE COURT: You don't have --

13 THE DEFENDANT: (Inaudible.)

14 THE COURT: Go about what you need to be doing
15 for the next thirty days and check in with the
16 county jail facilities to see if you can do a work
17 release on a Washington sentence.

18 I mean, we take federal prisoners here, and
19 we take prisoners from Department of Corrections,
20 so sometimes people are, you know, county jails are
21 willing to do that kind of thing. But I don't
22 know --

23 MS. BRYANT: Typically there's fees involved
24 (inaudible) so you have to check back how much they
25 would charge you.

1 THE COURT: Okay. Now, failure to come back here
2 in thirty days on that date can constitute bail
3 jumping. So don't make a -- don't make a tough
4 situation worse.

5 THE DEFENDANT: Don't worry, I'll be here.

6 THE COURT: Okay. Good.

7 MR. WOODEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 *(Proceedings recessed this 3rd day of November, 2005.)*

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APPENDIX "C"

**(Findings of Fact and Conclusions of Law Re: Order Granting Motion
to Withdraw Guilty Plea)**

4

FILED

FEB 03 2006

JoAnne McBride, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

STATE OF WASHINGTON

NO. ⁰⁵⁻¹⁻⁰¹⁷¹⁸⁻⁰~~05-9-07598-7~~

Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
RE: ORDER GRANTING MOTION TO
WITHDRAW GUILTY PLEA

and

MARY ELIZABETH TRICKET

Defendant.

I.

FINDINGS OF FACT

1. Mary Elizabeth Tricket, d.o.b. 05/17/1980, was charged by information with one count of Injury Hit and Run (RCW 46.52.020(4)(b) in Clark County, Washington on August 10, 2005.
2. On November 3, 2005 Ms. Tricket entered a guilty plea in the above-entitled and numbered matter. A Statement of Defendant on a Plea of Guilty accompanied by a written copy of a plea recommendation agreed to by the State and the defendant was submitted to the court as part of the plea proceedings. A colloquy regarding the plea and the written documents was conducted by the court. It is agreed that the defendant was fully informed of her constitutional rights and did not express any confusion or misunderstanding regarding their scope or extent.

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FINDINGS OF FACT CONCLUSIONS OF LAW

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1 3. On November 3, 2006 the court found that the defendant's plea was made knowingly,
2 intelligently and voluntarily. The defendant was also instructed by the court to stay in contact
3 with her court-appointed attorney.

4 4. The plea agreement was memorialized on a standardized form prepared by the office of the
5 prosecuting attorney and agreed to by the defendant. As part of the standardized form the plea
6 agreement specified that if the defendant does not qualify for partial confinement programs the
7 recommendation will be for total confinement.

8 5. As part of the agreed plea recommendation submitted to the court the Defendant would be
9 allowed to serve the minimum jail penalty of 90 days in alternative confinement at a work release
10 facility in the county of her residence. The defendant was a resident of California. Sentencing
11 was set for December 8, 2005 and the defendant was advised that she would need to present the
12 court with the name of the work release facility which would accept her. There was no
13 discussion regarding what constituted a "work release facility."
14

15 6. On December 8, 2005 the defendant appeared before the court for sentencing. The defendant
16 stated that she had diligently sought out a work release facility in her area of residence and had
17 contacted a variety of law enforcement agencies only to learn that they would not accept an
18 individual serving a sentence imposed by an out-of county court. The defendant presented
19 documentation to the court relating to a private agency that would provide electronic home
20 confinement services in the county of her residence. The defendant was informed by both the
21 court and the prosecutor that these arrangements did not meet the standards of a "work release
22 facility" and would not satisfy the conditions anticipated by the plea agreement. Sentencing was
23 set over one day to allow the defendant's counsel to contact authorities in the defendant's county
24 of residence to ascertain the availability of a work release facility in which she might serve her
25
26
27

FINDINGS OF FACT CONCLUSIONS OF LAW

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1 term. The court again instructed the defendant to stay in contact with her attorney so that he
2 could assist her with these matters.

3 7. On December 8, 2005, and subsequent to her previously scheduled sentencing hearing, the
4 defendant informed her counsel that she wished to withdraw her guilty plea.

5 8. On December 9, 2005 the defendant and her counsel appeared in court for sentencing.

6 Defendant's counsel informed the court that the defendant had provided him with the names of
7 three California counties in her area of residence. Defendant's counsel had been able to speak
8 with the administrator of the work release center in one county and had been informed that they
9 would not accept an individual from a foreign jurisdiction. Subsequently, defendant's counsel
10 was in contact with the Sheriff's office of a second county and was informed that this county
11 followed the same procedure.
12

13
14 Defendant's counsel informed the court of defendant's desire to withdraw her guilty plea.

15 The court found that the defendant had knowingly, intelligently, and voluntarily entered a guilty
16 plea on November 3, 2006. Sentencing was completed and the defendant was taken into custody
17 in order to start her term of confinement. A hearing date was set for December 20, 2005
18 regarding defendant's motion to withdraw her guilty plea.
19

20 9. Defendant's motion to withdraw her guilty plea and affidavit in support was filed with the
21 court. Plaintiff's motion in response was filed with the court. After presentation of the motions
22 on December 20, 2005 the defendant's motion to withdraw her guilty plea was granted.
23

24 II.

25 CONCLUSIONS OF LAW

26 . The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears
27 that the withdrawal is necessary to correct a manifest injustice. CrR4.2(f). Each plea must be made

FINDINGS OF FACT CONCLUSIONS OF LAW

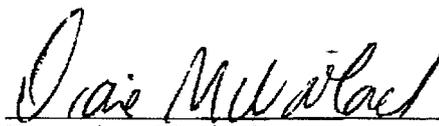
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1 voluntarily, competently and with an understanding of the nature and the consequences of the plea.
2 CrR4.2(d). If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.
3 CrR4.2(f).

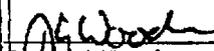
4 2. Relief from a Judgement or Order is appropriate pursuant to CrR7.8(b)(1) when the order is
5 obtained by mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining a
6 judgment or order. Relief from a Judgment or Order is appropriate pursuant to CrR7.8(b)(5) for
7 any other reason justifying relief from the operation of the judgement.

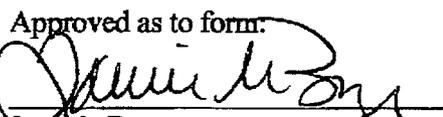
9 3. Relief consistent with CrR7.8(b)(5) and CrR4.2(d) is appropriate in this case because it is not
10 clear from the record what conditions of alternative confinement would meet the standards of a
11 "work release facility" as identified in the plea agreement and referred to during defendant's
12 colloquy with the court. The plea agreement was based on misinformation by the defendant who
13 was apparently unaware that the state would oppose electronic home confinement in keeping with
14 Clark County practice. The court said that electronic home confinement is considered total
15 confinement in the caselaw and statutes of the State of Washington. All parties agreed to several
16 setovers so that the defendant could explore work release in California. Accordingly, the court
17 found that the defendant did not fully understand the nature and consequences of her plea in this
18 particular circumstance.

21 Dated 1/30/06


Hon. Diane Woolard
Superior Court Judge

24 Presented by:

25 
26 James Wooden
WSBA#29523
27 Attorney for Defendant

Approved as to form:

Jeannie Bryant
WSBA#17607
Clark County Deputy Prosecuting
Attorney

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