

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *JW*

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

STATE OF WASHINGTON,

Respondent,

v.

GREGORY BRISCOE,

Appellant.

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

The Honorable Frederick W. Fleming

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant's guilty plea is invalid because he was misinformed of the consequences of his plea.
2. Appellant's guilty plea is invalid because it was involuntary.
3. The trial court erred in denying appellant's motion to withdraw his guilty plea.
4. The trial court erred in finding that appellant's motion to withdraw his guilty plea was untimely.
5. The trial court erred in failing to consider the merits of appellant's motion to withdraw his guilty plea.
6. The trial court erred in failing to meaningfully consider a Drug Offender Sentencing Alternative (DOSA) for appellant.

Issues Pertaining to Assignments of Error

1. Is appellant's guilty plea invalid because the court misinformed him of the sentencing consequences of his plea and therefore his plea was involuntary?
2. Did the trial court err in finding that appellant's motion to withdraw his guilty plea was untimely and denying his motion without considering its merits when appellant made his motion prior to judgment?
3. Did the trial court abuse its discretion by categorically refusing to meaningfully consider a DOSA for appellant?

B. STATEMENT OF THE CASE

1. Procedural Facts¹

On April 11, 2005, the State charged appellant, Gregory L. Briscoe, with one count of Unlawful Possession of a Controlled Substance, to-wit: cocaine and one count of Driving While In Suspended or Revoked Status in the First Degree, under cause number 05-1-01697-5. CP 87-89; RCW 69.50.4013(1), RCW 46.20.342(1)(a). On October 25, 2005, the State filed an amended information changing the Unlawful Possession of a Controlled Substance count to possession of methamphetamine while under community placement and adding three counts of Bail Jumping while under community placement. CP 102-05; RCW 9A.76.170(1), RCW 9A.76.170(3)(c), RCW 9.94A.525(17). The State filed a second amended information on November 28, 2005, adding another count of Bail Jumping and deleting the community placement enhancements on the previous counts. CP 110-13; RCW 9A.76.170(1), RCW 9A.76.170(3)(c). On June 8, 2005, the State filed a third amended information, reducing the counts to one count of Unlawful Possession of a Controlled Substance, to-wit: cocaine and one count of Bail Jumping. CP 124-25; RCW 69.50.4013(1), RCW 9A.76.170(1), RCW 9A.76.170(3)(c).

¹ This case involves Pierce County Superior Court cause numbers 05-1-01697-5, 05-1-04620-3, and 06-1-01583-7, consolidated on appeal.

On September 20, 2005, the State charged Briscoe with one count of Violation of a Domestic Violence Court Order, one count of Assault in the Fourth Degree, and one count of Theft in the Third Degree under cause number 05-1-04620-3. CP 1-3; RCW 26.50.110(5), RCW 9A.36.041(1)(2), RCW 9A.56.020(1)(a), RCW 9A.56.050(1)(2). On November 4, 2005, the State filed an amended information deleting the count of Assault in the Fourth Degree, adding one count of Burglary in the First Degree, domestic violence, and adding three counts of Theft in the Second degree. CP 5-9; RCW 9A.52.020(1)(b), RCW 9A.56.020(1)(a), RCW 9A.56.040(1)(c). The State filed a second amended information on February 24, 2006 and a third amended information on June 8, 2006, reducing the counts to one count of Residential Burglary, domestic violence, one count of Violation of a Domestic Violence Court Order, and one count of Theft in the Second Degree, domestic violence. CP 21-24, 37-38; RCW 9A.52.025, RCW 9A.46.040(1)(c), RCW 10.99.020.

On April 11, 2006, the State charged Briscoe with one count of Bail Jumping for failing to appear for a hearing on the charge of Burglary in the First Degree, a class "A" felony, under cause number 06-1-01583-7. CP 159-60; RCW 9A.76.170(1), RCW 9A.76.170(3)(b). The State filed an amended information on June 8, 2006, changing the Bail Jumping count to failing to appear for a hearing on the charge of Theft in the

Second Degree, domestic violence, a class “B” or “C” felony. CP 162; RCW 9A.76.170(1), RCW 9A.76.170(3)(c).

On June 8, 2006, Briscoe pled guilty to residential burglary, domestic violence; violation of a domestic violence court order; theft in the second degree, domestic violence; unlawful possession of a controlled substance, cocaine; and two counts of bail jumping. 12RP² 13-15. On July 28, 2006, the court sentenced Briscoe to concurrent sentences of 84 months for residential burglary; 60 months for violation of a domestic violence court order; 29 months for theft in the second degree; 24 months for possession of cocaine, and 60 months each for the two counts of bail jumping. 13RP 20-21, 30-31, 36; CP 56-57, 146, 180-81. Briscoe filed this timely appeal. Supp CP (Cause No. 05-1-01697-5, Notice of Appeal, 8/1/06; Cause No. 05-1-04620-3, Notice of Appeal, 8/1/06; Cause No. 06-1-01583-7, Notice of Appeal, 8/1/06).

2. Substantive Facts

On June 8, 2006, Briscoe appeared before the Honorable Lisa Worswick for a plea hearing. 12RP 3. The state informed the court that “[t]he parties have reached a resolution,” involving four cause numbers,

² There are 14 volumes of verbatim report of proceedings: 1RP - 4/11/05; 2RP - 6/20/05; 3RP - 10/6/05, 10/25/05, 11/22/05, 11/28/05; 4RP - 11/4/05; 5RP - 11/28/05; 6RP - 12/12/05; 7RP - 1/12/06; 8RP - 1/24/06; 9RP - 2/24/06; 10RP - 3/13/06; 11RP - 4/11/06; 12RP - 6/8/06 (bound with 1/24/06); 13RP - 7/28/06; 14RP - 7/13/06.

05-1-04620-3, 05-1-01697-5, 06-1-01583-7, and 06-1-00905-5. 12RP 3.

The state explained that the “proposed resolution is for amended informations to be filed on three causes and for cause ending in 905-5, the charge of Bail Jumping, be dismissed in exchange for pleas to the other cause numbers.” 12RP 3. The court reviewed Briscoe’s plea of guilty statements:

THE COURT: You’re pleading guilty to a number of charges here, residential burglary, domestic violence court order violation, theft in the second degree, Unlawful Possession of a Controlled Substance cocaine, and two counts of Bail Jumping. Do you understand all that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: There are standard ranges for each of these crimes. They’re listed here on the front page of each of your statements of defendant on plea of guilty. Did you go over all of those with your attorneys?

THE DEFENDANT: Yes, Your Honor.

THE COURT: It looks like the Bail Jumping has standard range of 51 to 60 months. The Unlawful Possession of a Controlled Substance cocaine has a standard range of from 12 months and a day up to 24 months. Domestic violence court order violation is a 60-month sentence for you, and the residential burglary is 63 to 84 months. There’s not a community custody range. Does it not --

MR. LEECH [for the state]: It only does if the offender is not sentenced to DOC, apparently.

THE COURT: Even if it’s domestic violence?

MS. MELBY [defense attorney]: There's some things that say if it's domestic violence it is, Your Honor. I don't know that DOC will actually -- a lot of times they'll send it back and say no.

THE DEFENDANT: I lost you. What did you say on that, Your Honor?

MS. MELBY: She's asking if there's community custody on the residential burglary.

MR. LEECH: I don't think the residential burglary is considered a crime against a person under the domestic violence community custody provision.

THE COURT: All right. There's a community custody range here listed for the domestic violence court order violation. My understanding is I can't impose that if 60 months are being imposed because the maximum is 5 years, I don't think the community custody plus the DOC time can be more than 5 years.

MR. SOMMERFIELD [for the State]: That is right, Your Honor.

THE COURT: All right. There's a community custody range on the Unlawful Possession of a Controlled Substance of 9 to 12 months. Do you understand what we're talking about up here?

THE DEFENDANT: I think so, Your Honor. I'm kind of confused. It sounds good.

THE COURT: That's why we're having this conversation. What I'm discovering is there's a 9 to 12 months community custody range on one of the charges. That's the Unlawful Possession of a Controlled Substance cocaine.

THE DEFENDANT: Mm-hm. (Replies affirmatively.)

THE COURT: Have you been on community custody before?

THE DEFENDANT: Yes.

THE COURT: So you know what that's about?

THE DEFENDANT: Yes.

12RP 6-8.

Following the court's explanation of the joint recommendations and the rights surrendered upon pleading guilty, Briscoe responded that he understood. 12RP 9-12. Briscoe pled guilty to the charges and the court found his pleas to be knowing, voluntary, and intelligent, declaring him guilty as charged. 12RP 13-15

At sentencing, before the Honorable Frederick W. Fleming, defense counsel, G. Helen Whitener, informed the court that Briscoe wanted to withdraw his guilty plea. Whitener stated that she was representing Briscoe on two cause numbers and attorney Dana Ryan was representing him on a third cause number, "this was a package-deal offer made to my client by the State." 13RP 3-4. Explaining that attorney Jane Melby covered for her at the plea hearing, Whitener stated that Briscoe contacted her two weeks later because he wanted to withdraw his plea. However, she never filed a motion to withdraw his plea because Melby told her "there was no issue in regard to the plea being taken." 13RP 5.

The court concluded that it would proceed to sentencing and asked Briscoe if he had anything to say:

THE DEFENDANT: Your Honor, I want to withdraw my plea. I never got a chance to get to court to address this situation here because, for one, you know, I want to withdraw my plea --

THE COURT: Let me tell you something, Mr. Briscoe, this plea was entered before Judge Worswick, and if you're going to make a motion to withdraw your plea, it's my judgment that you do that before Judge Worswick. But it's probably not okay with you, and, therefore, in my judgment, you're not timely in moving to withdraw your plea, so I'm going to deny that motion, and I'm going to go ahead with sentencing in this cause number.

13RP 12.

When Briscoe began explaining that he pled guilty under duress, the court referred to his plea of guilty statements, "[Y]ou said you understood all this." 13RP 12. Whitener addressed the court, stating that she was somewhat surprised in learning that "Mr. Briscoe did in fact take a plea deal from the State." 13RP 16. Whitener expounded that Briscoe had a possible defense on the residential burglary charge because he was living at the residence with his fiancée and there was some sort of misunderstanding. 13RP 16.

Whitener also informed the court that Briscoe wanted to request a DOSA but she could not ask for a DOSA on his behalf because it was not part of the plea agreement. 13RP 5-7. The court acknowledged that a

judge had ordered a presentence investigation chemical dependency screening report and asked whether there was a report. 13RP 7. The state replied, "I think it says he qualifies. The issue here is if Mr. Briscoe pursues the DOSA, he's breaching the plea agreement." 13RP 8. The state opposed the DOSA arguing that "it's inappropriate to consider it." 13RP 8. The court then turned to Briscoe:

THE COURT: You understand, Mr. Briscoe?

THE DEFENDANT: No. When I went in front of Judge Worswick, she said that on this paper --

THE COURT: Well, it's here. They did what she asked him to do. [sic] Here's the report from assist and review, and the State has responded, and your attorney understands, and I'm going to rule -- decide that DOSA is not applicable. That will be an issue that you can raise at the appellate level.

13RP 9.

The court thereafter followed the joint recommendations and sentenced Briscoe to concurrent sentences for a total of 84 months in confinement and nine to eighteen months of community custody. 13RP 20-21, 30-31, 36. Upon Whitener's request, the court agreed to recommend that Briscoe receive treatment within the Department of Corrections. 13RP 15-16.

After sentencing, Briscoe asked the court why it would not sentence him to a DOSA. The court replied that he should receive

treatment within the Department of Corrections because, “very simply, I looked at your criminal history, and you know, in one place there was 98 entries.” 13RP 36.

C. ARGUMENT

1. REMAND IS REQUIRED BECAUSE THE COURT MISINFORMED BRISCOE OF THE SENTENCING CONSEQUENCES OF HIS PLEA AND THEREFORE HIS PLEA WAS INVOLUNTARY.

The court misinformed Briscoe of the sentencing consequences and deprived him of his right to due process because his guilty plea was not knowing, intelligent, and voluntary. Briscoe’s guilty plea is therefore invalid and a remand is required for withdrawal of his plea.

An accused gives up constitutional rights by agreeing to a plea agreement and because fundamental rights are at issue, due process requires that a guilty plea be knowing, intelligent, and voluntary. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001). The state bears the burden of proving the validity of a guilty plea, including the defendant’s knowledge of the direct consequences of the plea. State v. Knotek, 136 Wn. App. 412, 423, 149 P.3d 676 (2006). If based on misinformation about sentencing consequences, a guilty plea is

not entered knowingly. State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988).

A plea is involuntary if the plea is entered without knowledge of the direct sentencing consequences. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). “The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d). An involuntary plea is a manifest injustice and withdrawal of the plea is permitted to correct such an injustice. CrR 4.2(f),³ State v. Ross, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996). A defendant who makes an involuntary plea need not make a special showing of materiality to be afforded a remedy. In re Isadore, 151 Wn. 2d at 296.

In State v. Walsh, 143 Wn.2d 1, 10, 17 P.3d 591 (2001), the Washington Supreme Court remanded Walsh’s case to allow him to withdraw his guilty plea. Walsh pled guilty to second-degree rape upon entering into a plea agreement that the state would recommend an 86-month sentence, based on the defense and prosecution’s mistaken understanding that the standard range was 86 to 114 months. Before

³ CrR 4.2(f) provides in relevant part. “The court shall allow a defendant to withdraw the defendant’s plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.”

sentencing, a community corrections officer informed the court that Walsh's standard range was 95 to 125 and recommended an exceptional sentence of 136 months due to deliberate cruelty to the victim. At sentencing, the state recommended 95 months but the court imposed an exceptional sentence of 136 months. Id. at 3-5.

On appeal, Walsh argued that his plea was not voluntary because he was mistakenly informed about his standard sentencing range and was therefore entitled to withdraw his plea. Id. at 6. The Supreme Court held that Walsh established that his guilty plea was involuntary and where a plea agreement is based on misinformation, the defendant may choose specific enforcement of the agreement or withdrawal of his plea. Id. at 8-9.

In In re Pers. Restraint of Murillo, 134 Wn. App. 521, 531, 142 P. 3d 615 (2006), this Court granted Murillo's petition and remanded his case to allow him to withdraw his guilty plea. Murillo pled guilty to first degree child molestation, which required a statutory sentence of life imprisonment. However, at the plea hearing, the court mistakenly advised Murillo that he would be sentenced within a range of 51 to 68 months. Id. 524. The court also failed to inform Murillo that he must serve community custody if released before his maximum sentence expires. Id. at 531. At sentencing, the court imposed a determinate sentence of 59 ½ months. The Department of Corrections informed the court of the error

and the court subsequently amended Murillo's sentence to life in prison with a statutory minimum of 59 ½ months. Id. at 524.

Murillo argued in his petition that no one told him that he must be sentenced to the maximum term of life imprisonment. Id. at 530. This Court determined that a plea is involuntary if the plea is entered without knowledge of the direct sentencing consequences and the "sentence the court will impose is, of course, a direct consequence of the plea." Id. 530-31. Concluding that the court failed to meet its duty to ensure that the defendant is entering his plea with a correct understanding of the consequences of his plea, this Court ordered the superior court to allow Murillo to withdraw his plea. Id. 531.

At the plea hearing here, Judge Worswick determined that she could not impose community custody for the domestic violence court order violation because the statutory maximum is five years and the plea agreement was for a 60-month sentence. 12RP 7-8. The state agreed with the court, "That is right, your Honor." 12RP 8. At sentencing however, Judge Fleming inquired about community custody and the state replied, "I believe the range is nine to eighteen months." 13RP 20. The court followed the agreed recommendation that had not been changed and imposed a sentence of 60 months for the domestic violence court order

violation and nine to eighteen months community custody. 13RP 21; CP 57.

Like in Walsh and Murillo, Briscoe was misinformed as to the sentencing consequences of his guilty plea. Judge Worswick mistakenly informed Briscoe that the court could not sentence him to community custody for the domestic violence court order violation, “My understanding is that I can’t impose that if the 60 months are being imposed because the maximum is 5 years.” 12RP 7-8. Under State v. Sloan, 121 Wn. App. 220, 223-224, 87 P.3d 1214 (2004), an imposition of community custody does not violate the maximum sentence law because prisoners could earn early release credits and transfer to community custody status in lieu of earned early release if they have not yet served the maximum.

The record reflects that the court, the state, and defense counsel, misunderstood the maximum sentence law. 12RP 7-8. Moreover it is apparent from Briscoe’s remarks that he was “lost” and “confused” that he did not understand the sentencing consequences. 12RP 7-8. “A defendant must understand the sentencing consequences for a guilty plea to be valid.” Miller, 110 Wn.2d at 531.

It is evident from the record that Briscoe’s guilty plea was based on misinformation and therefore involuntary. In re Isadore, 151 Wn.2d at

298. Accordingly, remand is required to allow Briscoe to withdraw his entire plea because the plea agreement was one bargain or a “package deal.” State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). In Turley, the Washington Supreme Court held that a trial court must treat a plea agreement as indivisible when pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding. Id. Although Briscoe signed three plea agreements, defense counsel informed the court that “this was a package-deal offer made to my client by the State.” 13RP 4. The state explained, “this is a case that involved multiple counts -- close to a dozen counts, I believe, between the three cases. The State agreed to amend the informations on all three cause numbers in exchange -- and we dismissed a cause, in exchange for the defendant’s agreement to 84 months on these three causes.” 13RP 8. The record substantiates that the plea agreement was one bargain and intended to be indivisible.

A remand to allow Briscoe to withdraw his plea is required because his involuntary plea constitutes a manifest injustice.⁴ Ross, 129 Wn.2d at 283-84.

⁴ If not remanded on this basis, remand is required for amendment of the judgment and sentence for cause number 05-1-04620-3, which is insufficient because it does not expressly set forth the maximum sentence and state that the total of incarceration and community custody cannot exceed that maximum. Sloane, 121 Wn. App. at 223-24.

2. IN THE ALTERNATIVE, REMAND IS REQUIRED BECAUSE THE TRIAL COURT ERRED IN DENYING BRISCOE'S MOTION TO WITHDRAW HIS GUILTY PLEA AS UNTIMELY WHEN BRISCOE MADE HIS MOTION PRIOR TO JUDGMENT.

The trial court erred in failing to consider the merits of Briscoe's motion to withdraw his guilty plea and denying his motion as untimely because he made his motion prior to judgment. The court's error requires a remand to superior court for a decision on the merits of Briscoe's motion.

Our courts have long recognized that the law favors trials on the merits and "permission to withdraw a plea of guilty should not be denied in any case where it is evident that the ends of justice will be subserved by permitting the entry of a plea of not guilty in its stead." State v. McDowall, 197 Wn. 323, 332, 85 P.2d 660 (1938). Motions to withdraw guilty pleas are addressed to the sound discretion of the trial court, to be exercised liberally in favor of life and liberty. State v. Harris, 57 Wn.2d 383, 385, 357 P.2d 719 (1960). A determination of whether to allow a withdrawal of a guilty plea requires consideration of the facts and circumstances of each case and a motion to withdraw a plea should be considered liberally in favor of the accused. U.S. v. Artabane, 868 F. Supp. 76, 77 (M.D. Pa. 1994).

In State v. Davis, 125 Wn. App. 59, 104 P.3d 11 (2004), Davis pled guilty to one count of delivery of cocaine. After the trial court

pronounced a sentence of 47 months confinement, Davis moved to withdraw his guilty plea. Davis asserted that his attorney had coerced him and that he was under duress when he entered his plea. Id. at 60-61. The trial court refused to consider the merits of Davis's motion, concluding that judgment had occurred and CrR 4.2(f) constituted a procedural bar. Id. at 60.

This Court determined that a motion to withdraw a guilty plea under CrR 4.2(f) requires only that the defendant make a motion, oral or written, before judgment. Concluding that "judgment" means the date the judgment and sentence are filed with the clerk, this Court held that the trial court erred by not considering the merits of Davis's motion to withdraw his plea. Id. at 68. In so holding, this Court remanded Davis's case to the superior court for a decision on the merits of his motion. Id. at 71.

As in Davis, the court here refused to consider the merits of Briscoe's motion to withdraw his guilty plea based on its erroneous conclusion of law. When Briscoe informed the court that he wanted to withdraw his plea, the court replied, "you're not timely in moving to withdraw your plea, so I'm going to deny that motion." 13RP 11-12. The court erred in hastily denying Briscoe's motion because judgment had not yet been entered. Contrary to the court's ruling that he was untimely, Briscoe properly made his motion to withdraw under CrR 4.2(f).

This Court reasoned that “CrR 4.2 protects criminal defendants by mandating that guilty pleas be entered into voluntarily and requiring the trial court to ensure that pleas are supported by facts,” noting that “CrR 4.2(f) provides for motions to withdraw guilty pleas prior to judgment. It requires the court to allow a defendant to withdraw a plea to correct a manifest injustice.” Davis, 125 Wn. App. at 63. This Court’s holding in Davis requires a remand for consideration of Briscoe’s motion to withdraw his plea.

3. THE TRIAL COURT ABUSED ITS DISCRETION IN CATEGORICALLY REFUSING TO CONSIDER A DOSA FOR BRISCOE.

Remand for resentencing is required because the trial court abused its discretion in categorically refusing to consider whether a DOSA was appropriate for Briscoe.

While a trial court’s decision whether to grant a DOSA is generally not reviewable, an offender can always challenge the procedure by which a sentence was imposed. State v. Williams, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). Thus, it is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies. State v. White, 123 Wn. App. 106, 114, 97 P.3d 34 (2004). Reversal is required when a trial court categorically refuses to meaningfully consider whether a sentencing

alternative is appropriate. State v. Grayson, 154 Wn.2d 333, 342-43, 111 P.3d 1183 (2005).

At sentencing, defense counsel informed the court that Briscoe wanted to ask the court for a DOSA but she could not make that request on his behalf because it was not part of the agreed recommendation. Counsel explained that she did however obtain a presentence chemical dependency investigation screening report. 13RP 5-8. The state acknowledged receiving the report, "I think it says he qualifies. The issue here is if Mr. Briscoe pursues the DOSA, he's breaching the plea agreement." 13RP 8. The state opposed the DOSA, arguing that "it's inappropriate to consider it." 13RP 8. The court asked Briscoe if he understood and when Briscoe started to respond, the court immediately interrupted him, "I'm going to rule -- decide that DOSA is not applicable. That will be an issue that you can raise at the appellate level." 13RP 9.

The court did not articulate any reasons for refusing to consider a DOSA before denying it. The agreed recommendation notwithstanding, the plea of guilty statements expressly provide that, "[t]he judge may sentence me under the special **drug offender sentencing alternative (DOSA)** if I qualify under RCW 9.94A.660." CP 43, 129, 166. The court asked the state what the screening report indicated but did not read or consider the report even when the state admitted that Briscoe appears to

qualify for a DOSA. 13RP 7-9. Furthermore, the record reflects that the court merely filed letters written to the court by Briscoe and others in support of a DOSA for Briscoe without reading or considering them.⁵ 13RP 34.

The purpose of a DOSA is to provide meaningful treatment and rehabilitation incentives for those convicted of drug crimes when it would be in the best interests of the individual and the community. Grayson, 154 Wn.2d at 343 (citing RCW 9.94A.660). The court's categorical refusal to meaningfully consider a statutorily authorized sentencing alternative constitutes reversible error.

⁵ Briscoe stated that if the court granted a DOSA, he would be "one out of the ten percent that turn their lives around and make it back to your court room to show you my appreciation by telling you thank you for giving me that chance that was the factor in getting My Life and My Family back together again." Briscoe's fiancée, Jessica L. Kliener, wrote that she has known Briscoe for ten years and has seen him "battle with drug addiction" and "he needs a very structured program." Briscoe's aunt, Odette Adams, explained that Briscoe "has had a hard life" and as with many young men, he "has made some bad decisions in his life, which unfortunately led him to a life of drug addiction and incarceration." However, "In the last few years I have seen a change in Greg. Quite positive I must add. I have seen Greg clean himself up, get a job and become a parent in his children's lives." Ms. Adams asked the court to please help Briscoe by putting him in a DOSA "so that he may get back on the right track." Briscoe's relative, Yvette Gaston, who works for King County Superior Court's Aggression Replacement Training Program, wrote, "Some amazing things that I have seen within the last four years is Mr. Briscoe hold down a job at the Keg restaurant, stay clean and sober, and have relationships with his children." Ms. Gaston explained that unfortunately Briscoe turned to drugs due to stress in his life. She asked the court for mercy in considering a DOSA for Briscoe rather than long-term incarceration. Supp CP (Cause No. 05-1-01697-5, Letters In/For Support, 7/28/06).

D. CONCLUSION

For the reasons stated, this Court should remand Mr. Briscoe's case to the superior court to allow him to withdraw his guilty plea.

DATED this 3rd day of July, 2007.

Respectfully submitted,

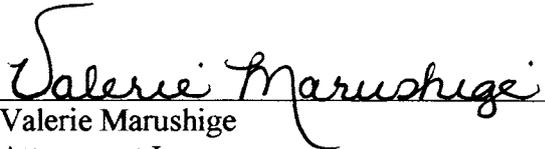

VALERIE MARUSHIGE
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DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached, to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402 and Gregory Briscoe, DOC # 634513, MCC-WSR, P.O. Box 777, Monroe, Washington 98272-0777.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of July, 2007 in Des Moines, Washington.


Valerie Marushige
Attorney at Law
WSBA No. 25851