

NO. 38126-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

DAVID LEE ROY GOODWIN,

Appellant.

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BRIEF OF APPELLANT

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STATE OF WASHINGTON  
BY *CA*  
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FILED  
COURT OF APPEALS  
DIVISION II

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**TABLE OF CONTENTS**

|  | Page      |
|--|-----------|
| A. TABLE OF AUTHORITIES .....  | iii       |
| B. ASSIGNMENT OF ERROR   |           |
| 1. Assignment of Error .....   | 1         |
| 2. Issue Pertaining to Assignment of Error .....   | 1         |
| C. STATEMENT OF THE CASE .....   | 2         |
| D. ARGUMENT  |           |
| <b>I. THE TRIAL COURT ABUSED ITS DISCRETION<br/>    WHEN IT DENIED THE DEFENDANT’S MOTION TO<br/>    WITHDRAW A GUILTY PLEA THAT WAS NOT<br/>    KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY<br/>    ENTERED .....</b>   | <b>6</b>  |
| <b>II. THE TRIAL COURT ABUSED ITS DISCRETION<br/>    WHEN IT IMPOSED A MINIMUM, MANDATORY TIME<br/>    AT THE TOP OF THE RANGE IN ORDER TO PUNISH THE<br/>    DEFENDANT FOR HAVING ENTERED AN ALFORD PLEA<br/>    AND HAVING MOVED TO WITHDRAW HIS GUILTY<br/>    PLEA .....</b> | <b>13</b> |
| E. CONCLUSION .....  | 17        |
| F. APPENDIX  |           |
| 1. RCW 9.94A.585 .....   | 18        |
| 2. CrR 4.2 .....   | 19        |
| 3. RAP 2.2 .....   | 20        |

## TABLE OF AUTHORITIES

Page

### *Federal Cases*

*Blakely v. Washington*,  
542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) ..... 10

*Boykin v. Alabama*,  
395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) ..... 6, 9

*North Carolina v. Alford*,  
400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) ..... 15, 16

### *State Cases*

*In re Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001) ..... 6

*State v. Ammons*, 105 Wn.2d 175, 713 P.2d 719 (1986) ..... 13

*State v. Clarke*, 156 Wn.2d 880, 134 P.3d 188 (2006) ..... 11

*State v. Grayson*, 154 Wn.2d 333, 111 P.3d 1183 (2005) ..... 14-16

*State v. James*, 138 Wn.App. 628, 158 P.3d 102 (2007) ..... 9

*State v. Kisse*, 88 Wn.App. 817, 947 P.2d 262 (1997) ..... 8

*State v. Mail*, 121 Wn.2d 707, 854 P.2d 1042 (1993) ..... 14

*State v. Majors*, 94 Wash.2d 354, 616 P.2d 1237 (1980) ..... 9

*State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988) ..... 6

*State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976) ..... 15

*State v. Riley*, 19 Wn.App. 289, 576 P.2d 1311 (1978) ..... 9

*State v. Rodriguez*, 61 Wn.App. 812, 812 P.2d 868 (1991) ..... 13

|  |      |
|--|------|
| <i>State v. Ross</i> , 129 Wn.2d 279, 916 P.2d 405 (1996) .....      | 6    |
| <i>State v. Saas</i> , 118 Wn.2d 37, 820 P.2d 505 (1991) .....       | 6    |
| <i>State v. Van Buren</i> , 101 Wn.App. 206, 2 P.3d 991 (2000) ..... | 7    |
| <i>State v. Walsh</i> , 143 Wn.2d 1, 17 P.3d 591 (2001) .....        | 7, 8 |
| <i>State v. Williams</i> , 149 Wn.2d 143, 65 P.3d 1214 (2003) .....  | 13   |

***Constitutional Provisions***

|  |   |
|--|---|
| Washington Constitution, Article 1, § 3 .....          | 6 |
| United States Constitution, Fourteenth Amendment ..... | 6 |

***Statutes and Court Rules***

|                     |        |
|---------------------|--------|
| CrR 4.2(f) .....    | 6, 15  |
| CrR 4.2(g) .....    | 10, 11 |
| RAP 2.2(b)(6) ..... | 13     |
| RCW 9.94A.585 ..... | 13     |
| RCW 9.94A.712 ..... | 10, 11 |

## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court abused its discretion when it denied the defendant's motion to withdraw a guilty plea that was not knowingly, voluntarily, and intelligently entered.

2. The trial court abused its discretion when it imposed a minimum, mandatory time at the top of the range in order to punish the defendant for having entered an *Alford* plea and for having moved to withdraw his guilty plea.

### ***Issues Pertaining to Assignment of Error***

1. Does a trial court abuse its discretion if it denies a defendant's motion to withdraw a guilty plea that was not knowingly, voluntarily, and intelligently entered?

2. Does a trial court abuse its discretion if it imposes a minimum, mandatory sentence at the top of the range in order to punish a defendant for having entered an *Alford* plea and for having moved to withdraw his guilty plea?

## STATEMENT OF THE CASE

By information filed October 25, 2007, the Lewis County Prosecutor charged the defendant David Lee Roy Goodwin with ten counts of first degree rape of a child against the same complaining witness. CP 1-5. The prosecutor also filed a notice of aggravating factors and intent to seek an exceptional sentence. CP 6-7. On March 18, 2008, the court began a *Ryan* hearing with the state calling seven witnesses. CP 51-54. The court then continued the hearing until March 28, 2008, at which time the state called two more witnesses before resting. CP 56-57. Prior to the court's ruling on the *Ryan* issues, the state and the defense came to an agreement whereby the defendant would enter an *Alford* plea to one count of attempted first degree child molestation under an amended information charging no other crimes. CP 66-67, 68-81.

Under the plea bargain, both sides acknowledged that the plea called for sentencing under RCW 9.94A.712, that the defendant would be sentenced to life in prison, and that the applicable minimum mandatory standard range was between 156.75 months and 207.75 months in prison, and that both sides would recommend 156.75 months. CP 69. During a break in the proceedings, the prosecutor prepared the amended information and the defendant's counsel prepared a statement of defendant on plea of guilty and reviewed it with the defendant. CP 56-57, 66-67, 68-81. The parties then

appeared back before the court, at which time the state filed the amended information, the defendant's attorney presented the court with the written statement of defendant on plea of guilty, and the court held a guilty plea colloquy with the defendant. *Id.* Paragraph (h) of the written statement of defendant on plea of guilty included the following language:

The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

CP 72.

During the guilty plea colloquy, the court said nothing contrary to the

foregoing portion of the guilty plea form. RP 3-28-08 1-8.<sup>1</sup>

After accepting the guilty plea, the court ordered a presentence investigation report and set a sentencing hearing. RP 3-28-08 8-10. However, prior to the scheduled sentencing hearing, the defendant filed a motion to withdraw his guilty plea, arguing that such was warranted by the fact that he had recently discovered new evidence. RP 98-99, 101-101. This new evidence consisted of statements by two witnesses who reported that following the guilty plea hearing, the father of the complaining witness had stated that he had finally “got his revenge” against the defendant. *Id.* The state responded, arguing that (1) the evidence was not “newly discovered,” and (2) it was too vague to qualify as a basis to justify withdrawal of the defendant’s guilty plea. RP 7-9-08 2-9. The court disagreed with the state’s first argument, finding that the evidence was “newly discovered.” *Id.* However, the court agreed with the state’s second argument and found that the evidence was too vague to have any effect on the defendant’s decision to plead guilty. *Id.* As a result, the court denied the defendant’s motion to withdraw his guilty plea. *Id.*

Following the denial of the defendant’s motion to withdraw his guilty

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<sup>1</sup>The record in this case includes verbatim reports of the hearing held on March 28, 2008, July 9, 2008, and July 23, 2008. The are referred to herein by the date of the hearing and the page number.

plea, the court sentenced the defendant to life in prison, community custody for life, and a minimum, mandatory time of imprisonment before first becoming eligible for release of 207.75 months. CP 104-117. The court stated that it was not following the joint recommendation of 156.75 months because the defendant had entered an *Alford* plea and he tried to withdraw his guilty plea. RP 7-23-08 5. The court stated:

THE COURT: All right. The sentence in this case will be, under 9.94A.712, minimum term would be 207.75, maximum term will be life. I'm going to the top end of that range. I understand this was a plea agreement. Given I'm not satisfied that there has been any acceptance of responsibility here, that coupled with the motion to withdraw the guilty plea tells me that he's not entitled to a sentence at the low end of the range. That's why I'm going to the top end of 207.75 months.

RP 7-23-08 4-5.

After imposition of this sentence, the defendant filed timely notice of appeal. CP 121-136.

## ARGUMENT

### **I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANT'S MOTION TO WITHDRAW A GUILTY PLEA THAT WAS NOT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED.**

Under the due process clauses found in Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, all guilty pleas must be knowingly, voluntarily, and intelligently entered. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001). Guilty pleas that are entered without a statement of the consequences of the sentence are not “knowingly” made. *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988). While the trial court need not inform a defendant of all possible collateral consequences of his or her guilty plea, the court must inform the defendant of all direct consequences. *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996).

Failure to inform a defendant of direct sentencing consequences upon a plea of guilty is also governed by court rule. Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a “manifest injustice.” A plea that is not knowingly, voluntarily and intelligently entered produces a manifest injustice. *State v. Saas*, 118 Wn.2d 37, 820 P.2d 505 (1991). Finally, since pleas which are not knowingly, voluntarily, and

intelligently entered violate a defendant's right to due process, they may be challenged for the first time on appeal. *State v. Van Buren*, 101 Wn.App. 206, 2 P.3d 991 (2000).

For example, in *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), the state originally charged the defendant with First Degree Kidnaping, First Degree Rape, and Second Degree Assault. The defendant later agreed to plead guilty to a single charge of Second Degree Rape upon the state's agreement to recommend a low end sentence upon a range that both the state and the defense miscalculated at 86 to 114 months. In fact, at sentencing, the court and the attorneys determined that the defendant's correct standard range was from 95 to 125 months. Although the state recommended the low end of the standard range, the court imposed an exceptional sentence of 136 months based upon a finding of intentional cruelty. The defendant thereafter appealed, arguing that his plea was not voluntarily, knowingly, and intelligently made, based upon the error in calculating his standard range.

On appeal, the Court of Appeals affirmed, finding that since the defendant did not move to withdraw his guilty plea at the time of sentencing when the correct standard range was determined, he waived his right to object to the acceptance of his plea. On further review, the Washington Supreme Court reversed, finding that (1) a claim that a plea was not voluntarily made constituted a claim of constitutional magnitude that could be raised for the

first time on appeal, (2) that the record did not support a conclusion that the defendant waived his right to claim his plea was involuntarily, and (3) a plea entered upon a mistaken calculation of the standard range is not knowingly and voluntarily made. The court stated the following on the final two holdings:

Walsh has established that his guilty plea was involuntary based upon the mutual mistake about the standard range sentence. Where a plea agreement is based on misinformation, as in this case, generally the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea. The defendant's choice of remedy does not control, however, if there are compelling reasons not to allow that remedy. Walsh has chosen to withdraw his plea. The State has not argued it would be prejudiced by withdrawal of the plea.

The State suggests, however, that Walsh implicitly elected to specifically enforce the agreement by proceeding with sentencing with the prosecutor recommending the low end of the standard range. The record does not support this contention. Nothing affirmatively shows any such election, and on this record Walsh clearly was not advised either of the misunderstanding or of available remedies.

*State v. Walsh*, 143 Wn.2d at 8-9. *See also, State v. Kisse*, 88 Wn.App. 817, 947 P.2d 262 (1997) (Mistaken belief that the defendant qualifies for a SOSSA sentence is a basis upon which to withdraw a guilty plea).

In the case at bar, the defendant did not voluntarily and knowingly enter his plea because errors in the written statement of defendant on plea of guilty and the trial court's inadequate colloquy did not properly inform the defendant of the direct effects of his guilty plea. The following sets out this argument.

When a defendant enters a plea of guilty to a criminal charge, he or she waives a series of fundamental constitutional rights, including the right to jury trial, the right to the presumption of innocence, the right to confront the state's witnesses, the right to testify, the right to call exculpatory witnesses, the right to compel witnesses to appear, and the right to present exculpatory evidence, among other rights. *Boykin v. Alabama, supra*; *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980). This is why a defendant who does not enter a guilty plea knowingly or voluntarily is allowed to withdraw that plea, and to present the issue for the first time on appeal. *Id.* Indeed, the purpose of the court mandated guilty plea form and mandated guilty plea colloquy is to assure that a defendant who gives up so many fundamental constitutional rights is acting knowingly and voluntarily. *State v. James*, 138 Wn.App. 628, 158 P.3d 102 (2007). As with all constitutional rights, waivers will not be implied and will only be sustained if knowingly, voluntarily, and intelligently entered. *State v. Riley*, 19 Wn.App. 289, 294, 576 P.2d 1311 (1978).

In the case at bar, the written statement of defendant on plea of guilty included the following statements:

The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

CP 72.

This language as part of a statement of defendant on plea of guilty is mandated by the Washington Supreme Court under CrR 4.2(g). The problem with this language is that it has failed to keep pace with the new determinate sentencing scheme under RCW 9.94A.712 and those cases interpreting the United States Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Under this decision, any aggravating factor which is used to enhance punishment above the top of the standard range for a determinate sentence, other than criminal history, must

be alleged in the charging document or by separate notice, and must be proven to a judge or jury beyond a reasonable doubt. Under this decision, the Washington Supreme Court adopted subsection (iv), which states:

(iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

CrR 4.2(g) subsection (h)(iv).

The problem with the adoption of this subsection is that it does not apply to the imposition of indeterminate sentences under RCW 9.94A.712 because the decision in *Blakely, supra*, does not apply to indeterminate sentences. *See State v. Clarke*, 156 Wn.2d 880, 892, 134 P.3d 188 (2006) (*Blakely* does not apply to an exceptional minimum sentence imposed under RCW 9.94A.712 that does not exceed the statutory maximum sentence imposed). Thus, this subsection misinformed the defendant of the effects of his guilty plea by stating that any aggravating factors would have to be proven beyond a reasonable doubt when in *Blakely*, the decision imposing that standard, does not apply.

In addition, in this case, the written statement of defendant on plea of guilty also included the following language from CrR 4.2(g).

I understand that if a standard range sentence is imposed, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

CP 72.

As the second argument in this brief points out, the claim that standard range sentences “cannot be appealed by anyone” is a misstatement of law. The reason is that while the trial court has discretion to impose any sentence within the standard ranges, the court can abuse that discretion by basing its decision on untenable grounds or for untenable reasons. *See* Argument II, *infra*.

Finally, in this case, the legal errors in the statement of defendant on plea of guilty were exacerbated by the fact that at the time the defendant entered his *Alford* plea, he was unaware of the fact that the father of the complaining witness might well have acted in a manner so as to have his daughter fabricate the charges against the defendant. Once the defendant discovered the evidence to support this claim, he promptly moved to withdraw his guilty plea, arguing that had he been aware of this evidence, he would not have entered a guilty plea in his case. This, coupled with the legal errors in the guilty plea form concerning the effects of pleading guilty constitute grounds under which the trial court could have granted the defendant’s motion to withdraw his guilty plea. As a result, this court should vacate the defendant’s sentence, and remand the case with instructions to grant the defendant’s motion to withdraw his guilty plea.

**II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED A MINIMUM, MANDATORY TIME AT THE TOP OF THE RANGE IN ORDER TO PUNISH THE DEFENDANT FOR HAVING ENTERED AN ALFORD PLEA AND HAVING MOVED TO WITHDRAW HIS GUILTY PLEA.**

Generally, under RCW 9.94A.585(a), a party cannot appeal a sentence within the standard range. *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). This statute states:

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

RCW 9.94A.585(1).

The belief that a standard range sentence generally cannot be appealed “arises from the notion that, so long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence’s length.” *State v. Williams*, 149 Wn.2d at 146-47 (citing *State v. Ammons*, 105 Wn.2d 175, 183, 713 P.2d 719 (1986)).

However, this rule is not as absolute as the statute might make it sound. For example, under RAP 2.2(b)(6), a party may appeal a sentence under an argument that the trial court miscalculated the standard range, even if that miscalculation yielded a sentence that would have been in the range the appellant claims is correct. *State v. Rodriguez*, 61 Wn.App. 812, 812 P.2d

868 (1991). In addition, while the decision where within the standard range the court will sentence a defendant lies within the discretion of the trial court, a defendant may appeal if the sentencing court failed to comply with procedural requirements of the SRA or constitutional requirements. *State v. Mail*, 121 Wn.2d 707, 711-13, 854 P.2d 1042 (1993).

For example, in *State v. Grayson*, 154 Wn.2d 333, 111 P.3d 1183 (2005), a defendant sentenced within the standard range appealed the trial court's decision denying him a DOSA sentence. The defendant argued that the trial court had abused its discretion when it stated that it would not give DOSA sentences in any cases. The state responded that the defendant, having been sentenced within the standard range, was not entitled to appeal. The Washington Supreme Court disagreed with the state's argument, holding as follows:

Next, we consider whether, as Grayson contends, the trial judge abused his discretion by categorically refusing to consider a DOSA sentence. Again, while trial judges have considerable discretion under the SRA, they are still required to act within its strictures and principles of due process of law. While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered. A trial court abuses discretion when "it refuses categorically to impose an exceptional sentence below the standard range under any circumstances." The failure to consider an exceptional sentence is reversible error. Similarly, where a defendant has requested a sentencing alternative authorized by statute, the categorical refusal to consider the sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal.

*State v. Grayson*, 154 Wn.2d at 341-342. (citations omitted).

In the case at bar, the trial court essentially did what the trial court did in *Grayson*: it simply refused to consider a particular sentence for a named class of offenders. The court's specific language when imposing the sentence in this case was as follows:

THE COURT: All right. The sentence in this case will be, under 9.94A.712, minimum term would be 207.75, maximum term will be life. I'm going to the top end of that range. I understand this was a plea agreement. Given I'm not satisfied that there has been any acceptance of responsibility here, that coupled with the motion to withdraw the guilty plea tells me that he's not entitled to a sentence at the low end of the range. That's why I'm going to the top end of 207.75 months.

RP 7-23-08 4-5.

Under the decision in *North Carolina v. Alford*, *supra*, the United State's Supreme Court held that a defendant who denies guilt may nonetheless enter a guilty plea if the court finds a factual basis for the plea. In *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976), specifically recognized the validity of *Alford* pleas. Thus, under these decisions, a defendant has the right to enter the type of plea the defendant entered in this case. In addition, under CrR 4.2(f), a defendant has a specific right and mechanism whereby he or she may seek to withdraw a guilty plea.

The problem in the case at bar is that the trial court based its sentencing decision solely upon the fact that the defendant was within the

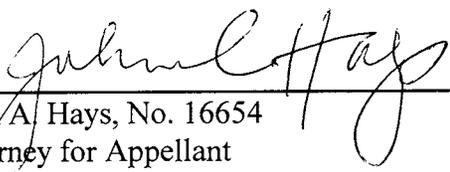
class of defendant's who had entered an *Alford* plea and then later moved to withdraw that plea. It did not base its decision upon the facts of the case. In so doing, the trial court made the same error as did the trial court in *Grayson*. Thus, in the case at bar, the defendant is entitled to a new sentencing hearing in which the trial court does not base its sentencing decision on improper grounds.

**CONCLUSION**

This court should vacate the defendant's conviction and remand with instructions to grant the defendant's motion with withdraw his guilty plea. In the alternative, this court should vacate the sentence and remand for resentencing.

DATED this 26th day of January, 2009.

Respectfully submitted,

  
\_\_\_\_\_  
John A. Hays, No. 16654  
Attorney for Appellant

## APPENDIX

### RCW 9.94A.585

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual

knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

#### **CrR 4.2**

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity, or guilty.

(b) Multiple Offenses. Where the indictment or information charges two or more offenses in separate counts the defendant shall plead separately to each.

(c) Pleading Insanity. Written notice of an intent to rely on the insanity defense, and/or a claim of present incompetency to stand trial, must be filed at the time of arraignment or within 10 days thereafter, or at such later time as the court may for good cause permit. All procedures concerning the defense of insanity or the competence of the defendant to stand trial are governed by RCW 10.77.

(d) Voluntariness. 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. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(e) Agreements. If the defendant intends to plead guilty pursuant to an agreement with the prosecuting attorney, both the defendant and the prosecuting attorney shall, before the plea is entered, file with the court their understanding of the defendant's criminal history, as defined in RCW 9.94A.030. The nature of the agreement and the reasons for the agreement shall be made a part of the record at the time the plea is entered. The validity of the agreement under RCW 9.94A.090 may be determined at the same hearing at which the plea is accepted.

(f) Withdrawal of Plea. 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. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of

justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

(g) Written Statement. A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty: ...

## **RAP 2.2**

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(2) [Reserved.]

(3) Decision Determining Action. Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

(4) Order of Public Use and Necessity. An order of public use and necessity in a condemnation case.

(5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) Termination of All Parental Rights. A decision terminating all of a person's parental rights with respect to a child.

(7) Order of Incompetency. A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) Order of Commitment. A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.

(9) Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment.

(10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

(11) Order on Motion for Arrest of Judgment. An order arresting or denying arrest of a judgment in a criminal case.

(12) Order Denying Motion to Vacate Order of Arrest of a Person. An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) Final Order After Judgment. Any final order made after judgment that affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information.

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(5) Disposition in Juvenile Offense Proceeding. A disposition in a juvenile offense proceeding that is below the standard range of disposition for the offense or that the state or local government believes involves a miscalculation of the standard range.

(6) Sentence in Criminal Case. A sentence in a criminal case that is

outside the standard range for the offense or that the state or local government believes involves a miscalculation of the standard range.

(c) Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. If the superior court decision has been entered after a proceeding to review a decision of a court of limited jurisdiction, a party may appeal only if the review proceeding was a trial de novo and the final judgment is not a finding that a traffic infraction has been committed.

(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

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DIVISION II

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

STATE OF WASHINGTON,  
Respondent,

LEWIS CO. NO. 07-1-00738-0  
APPEAL NO: 38126-5-II

vs.

DAVID LEE ROY GOODWIN,  
Appellant.

AFFIDAVIT OF MAILING

12 STATE OF WASHINGTON )  
13 COUNTY OF LEWIS ) vs.

14 CATHY RUSSELL, being duly sworn on oath, states that on the 26th day of JANUARY,  
15 2009, affiant deposited into the mails of the United States of America, a properly stamped  
16 envelope directed to:

16 MICHAEL GOLDEN  
17 LEWIS COUNTY PROSECUTING ATTY  
345 W. MAIN STREET  
CHEHALIS, WA 98532

DAVID GOODWIN - #307356  
CLALLAM BAY CORR CTR.  
1830 EAGLE CREST WAY  
CLALLUM BAY, WA 98326

18 and that said envelope contained the following:

- 19 1. BRIEF OF APPELLANT
- 20 2. AFFIDAVIT OF MAILING

21 DATED this 26th day of JANUARY, 2009..

Cathy Russell  
CATHY RUSSELL

23 SUBSCRIBED AND SWORN to before me this 26<sup>th</sup> day of JANUARY, 2009..



Heather Chittock  
NOTARY PUBLIC in and for the  
State of Washington,  
Residing at: KELSO/LONGVIEW  
Commission expires: 11-04-2009