

No. 39779-0-II  
THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**BRAD CHRIS BROWER**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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COURT OF APPEALS  
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STATE OF WASHINGTON  
BY

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**RESPONSE BRIEF**

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P.M. 6-19-2010

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## STATEMENT OF THE CASE

Except as otherwise cited below, and without waiving the right to challenge any facts, the Appellant's statement of the case is adequate for purposes of responding to this appeal.

## ARGUMENT

### **A. THE TRIAL COURT DID NOT ERR WHEN IT DENIED BROWER'S MOTION TO WITHDRAW HIS PLEA BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL OR ANY OTHER REASON.**

Brower first claims the trial court erred in denying his motion to withdraw his plea because his trial counsel was ineffective for failing to inform him that he was pleading to a "strike" offense. This argument is without merit because Brower cannot meet either prong of the Strickland test, as further discussed below.

#### ***General Rules for Withdrawal of a Plea***

A trial court's denial of a motion to withdraw a guilty plea is reviewed for an abuse of discretion. State v. Olmsted, 70 Wn.2d 116, 118, 422 P.2d 312 (1966). A court abuses its discretion if its decision is based on clearly untenable or manifestly unreasonable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12,26, 482 P.2d 775 (1971). "A defendant does not have a constitutional right to withdraw a plea of guilty and to enter a plea of not guilty. Such a

motion is addressed to the sound discretion of the court. When the trial court has exercised its discretion in this regard, [an appellate court] will set it aside only upon a clear showing of abuse of discretion ....” Olmsted, 70 Wn.2d at 118.

Defendants must meet a demanding standard to accomplish withdrawal of a guilty plea. State v. Saas, 118 Wash.2d 37, 42, 820 P.2d 505(1991). "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." CrR 4.2(f). A manifest injustice is "an injustice that is obvious, directly observable, overt, {and} not obscure." State v. Smith, 74 Wash.App. 844, 847, 875 P.2d 1249 (1994) (quoting Saas, 118 Wash.2d at, 42(1991)). "Because of the many safeguards surrounding a plea of guilty, the manifest injustice standard is a demanding one." State v. Arnold, 81 Wn. App. 379, 385, 914 P.2d 762, 766 (1996), *review denied*, 130 Wn.2d 1003, 925 P.2d 989. The defendant has the burden of proving a manifest injustice. State v. Ross, 129 Wash.2d 279, 283-84, 916 P.2d 405 (1996). An involuntary plea creates a manifest injustice. In re Pers. Restraint of Isadore, 151 Wash.2d 294, 298, 88 P.3d 390 (2004). A manifest injustice exists where counsel is

ineffective in guiding the defendant through the plea process. State v. Moon, 108 Wash.App. 59, 62, 29 P.3d 734 (2001).

1. **Brower Has Not Shown His Counsel Was Ineffective.**

Brower claims he should have been allowed to withdraw his plea because his counsel did not tell him he was pleading to a "strike" offense. This argument is without merit because Brower cannot meet the rigorous standard required to show ineffective assistance of counsel.

To demonstrate that counsel was ineffective, Brower must show that: (1) defense counsel's representation was deficient, and (2) the deficient representation prejudiced him. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). If Brower cannot satisfy *both parts* of this test, his ineffective assistance claim fails. State v. Hendrickson, 129 Wn. 2d 61, 78, 917 P.2d 563 (1996)(*citing* State v. Lord, 117 Wn.2d 829, 894, 822 P.2d 177 (1991)). If either part of the test is not satisfied, the inquiry need go no further. *Id.* "Counsel is presumed to properly represent a defendant. Performance is deficient when it falls "below an objective standard of reasonableness" under prevailing professional norms. Counsel's performance is evaluated against the entire record." *Id.* at 275 (citations omitted).

In the context of a guilty plea, Brower must show that his counsel failed to "actually and substantially [assist him] in deciding whether to plead guilty." State v. McCollum, 88 Wn.App. 977, 982, 947 P.2d 1235 (1997)(quoting State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984)). Additionally, to establish prejudice, Brower must demonstrate that "but for counsel's failure to adequately advise him, *he would not have pleaded guilty.*" McCollum, 88 Wn.App. at 982(emphasis added) (citing Hill v. Lockhart, 747 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)).

"[Defense] [c]ounsel has an obligation to inform a defendant of all 'direct' consequences of a guilty plea"; defense counsel does not have an obligation to inform his client of *all possible collateral consequences* of a guilty plea." State v. Stowe, 71 Wn. App. 182, 187, 858 P.2d 267, 269 (1992)(emphasis added). Furthermore, the voluntary nature of a defendant's guilty plea is not automatically destroyed because of erroneous advice by counsel. Id. at 188.

"A plea is not knowing, voluntary or intelligent unless the defendant correctly understands its direct sentencing consequences. A sentencing consequence is 'direct' if it will have "a definite, immediate and largely automatic effect on the range of the defendant's punishment." State v. Barton, 93 Wn.2d

301,305,609 P.2d 1353 (1980). A sentencing consequence is 'indirect' or 'collateral' if it 'flows not from the guilty plea itself but from additional proceedings.'" Ross, 129 Wn.2d at 284)(*quoting Barton*, 93 Wn.2d at 305; State v. Kisse, 88 Wn. App. 817, 821, 947 P.2d 262, 264-5 (1997) (citations omitted).

Importantly, whether a crime is a "strike" offense is not considered a "direct sentencing consequence." Rather, whether a crime is a "strike" offense is a collateral consequence:

[A] plea of guilty to a "most serious crime" neither increases the punishment for that crime nor automatically subjects a defendant to a future sentence of life without parole. The potential for the crime to count as a strike at some later time rests only on the *possibility* that that defendant will commit future crimes. See *e.g.*, *Abolafya v. State*, 114 Wn.App. 137, 147, 56 P.3d 608 (2002)(because later civil commitment proceedings are a possibility, a defendant need not be aware of this potential when entering a guilty plea.), *review denied*, 149 Wn.2d 1020, 72 P.3d 761 (2003). Thus, the possibility of future POAA statuts is not a direct consequence of a guilty plea about which a defendant must be informed before pleading guilty.

State v. Lewis, 141 Wn.App. 367, 395-397, 166 P.3d 786 (2007).

In the present case, Brower cannot meet the high burden to show that his trial counsel was ineffective for failing to advise him that he was pleading to a "strike" offense. First of all, as just noted, whether an offense is a "strike" offense is not considered a "direct consequence" of a plea. Lewis, supra. Therefore, Brower's counsel

had no obligation to advise him that he was pleading to a "strike" offense. This is because whether a crime is a "strike" offense is considered a "collateral consequence" of a plea. Id. Stowe, 71 Wn. App. at 187. The voluntary nature of a defendant's guilty plea is not automatically destroyed because of erroneous advice by counsel. *Id.* at 188.

In a case analogous to the current situation, the Washington Supreme Court determined that neither constitutional due process nor CrR 4.2(d) requires that a defendant, upon entering a plea of guilty, be advised of the possibility of a sentence enhancement under the habitual criminal statute RCW 9.92.090:

We hold that an habitual criminal proceeding is a collateral consequence of a guilty plea. An habitual proceeding is not automatically imposed after a defendant has entered a plea of guilty even if the defendant has two or more prior felonies. Rather, the prosecuting attorney has discretion on whether to file habitual proceedings conditioned on the requirement that prosecutorial discretion "must be tempered by procedural due process". Moreover, defendant's status as an habitual offender is determined in a subsequent independent trial in which defendant has the right to counsel, the right to subpoena and cross examine witnesses, the right to discovery, and the right to a trial by jury. Any enhancement of defendant's sentence is a collateral rather than a direct result of defendant's guilty plea. Therefore, defendant need not be advised of the possibility of an habitual criminal proceeding.

Barton, 93 Wn.2d at 305-6. The sentencing enhancement based on prior convictions codified in RCW 9.92.090 is analogous to the

“three strikes” effect of RCW 9.94A.520. As a result, the possibility that the current conviction may contribute to Brower's being sentenced as a “persistent offender” for a subsequent crime is an indirect, collateral consequence of the current conviction. Consequently, Brower's counsel had no duty to tell Brower the current offense was a "strike" offense.

Thus, if Brower's counsel had no duty to inform Brower he was pleading to a strike offense (because it is not a "direct" consequence of the plea), then Brower's counsel was not deficient, and the first prong of the Strickland test is not met. Both parts of the Strickland test must be met, or an ineffective assistance claim fails. Hendrickson, 129 Wn.2d at 78.

Also important is that use of the written form set out in CrR 4.2(g) is sufficient to show that a defendant is aware of the sentencing consequences of his plea. See In re Vensel, 88 Wash.2d 552, 555, 564 P.2d 326 (1977). When a defendant fills out a written plea statement under CrR 4.2(g) and acknowledges that he has read and understands it and that its contents are true, the reviewing court will presume that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Here, Brower completed a written plea statement under CrR 4.2(g), and

acknowledged that he read and understood it and that its contents were true--thus, a reviewing court will presume that the plea is voluntary. Smith, supra.; CP 106-118.

Also, the plea paperwork, paragraph 6(q) of the Statement of Defendant on Plea of Guilty to Sex Offense contains the following language: "This offense is a most serious offense or strike as defined by RCW 9.94A.030 ...." (emphasis added). Then, in paragraph 12 of the guilty plea statement, Brower acknowledged that he reviewed all paragraphs of the guilty plea form and that he did not have further questions. "[A] defendant's signature on a plea statement is strong evidence of a plea's voluntariness ...." State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228, 1242 (1996). Finally, the Defense Lawyer signed the plea form and indicated that he read and discussed the plea form with the Defendant. CP 106-118 (Statement of Defendant on Plea of Guilty).

In addition, "when the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is *well nigh irrefutable.*" State v. Perez, 33 Wn.App. 258, 262, 654 P.2d 708 (1983)(emphasis added). The judge in this case did just that..

Here, the trial court conducted an in-depth colloquy with Brower at the plea hearing, and the trial court was satisfied that Brower was pleading guilty knowingly, intelligently and voluntarily. The trial court's colloquy was as follows:

COURT: Do you agree with what [the State and defense counsel] just told me?

BROWER: Yes, Your Honor.

COURT: Did you review the statement of defendant on plea of guilty?

BROWER: Yes, Your Honor.

COURT: Do you understand that statement?

BROWER: Yes.

COURT: Do you understand the elements, and those are the things each of which the State is required to prove beyond a reasonable doubt in order to convict you of this charge?

BROWER: Yes, Your Honor.

COURT: You understand that the maximum penalty for this is five years in prison and a \$10,000 fine?

BROWER: Yes, Your Honor.

COURT: You understand that the range is 23 and a quarter months to 30 and three-quarter months in prison?

BROWER: Yes, Your Honor.

COURT: You understand that that range is based on your criminal history and that if there's some

additional criminal history located that could increase your range but it would not be a basis for your to withdraw your plea?

BROWER: Yes, Your Honor.

COURT: Do you understand that?

BROWER: I understand that.

COURT: You understand that if you are not a U.S. citizen this could be grounds for deportation?

BROWER: Yes, Your Honor.

COURT: You understand the rights you have that are listed at the bottom of page one and the top of page two fo this statement?

BROWER: Yes, Your Honor.

COURT: You understand that if you plead guilty you give up those rights, there will be no trial, no witnesses, no appeal, and the only thing left will be sentencing?

BROWER: Yes, Your Honor.

COURT: Understanding those things, you still want to plead guilty today?

BROWER: Yes, Your Honor.

COURT: . . . To the second amended information then charging you with the crime of attempted indecent liberties, what is your plea, guilty or not guilty?

BROWER: Guilty, Your Honor.

COURT: Are you making that plea freely and voluntarily?

BROWER: Yes, Your Honor.

COURT: Has anyone made any threats or promises to you to make you plead guilty?

BROWER: No, Your Honor.

\* \* \*

COURT: And are you pleading guilty to take advantage of the plea agreement?

BROWER: Yes, Your Honor.

COURT: . . . I have previously reviewed the affidavit of probable cause. Based on that and the *Alford* plea here today I will accept the plea, make a finding that the plea has been made voluntarily, competently, with an understanding of the nature of the charge and the consequences of the plea, I'm satisfied that there is a factual basis for the plea, and find the defendant guilty of the crime of attempted indecent liberties as charged in the second amended information.

5/22/09 RP 16-20. The trial court's acceptance of the plea as being knowing, competent, and voluntarily should be upheld.

The written plea paperwork plus the trial court's questioning of Brower, in addition to the law that says the fact that an offense is a "strike" is not a direct consequence of a plea, shows that Brower's trial counsel was not ineffective, and that Brower entered his plea voluntarily. Lewis, supra. Because Brower's counsel was not required to inform Brower it was a "strike" offense, this was not deficient performance by Brower's trial counsel. Id. Thus, Brower cannot meet the first prong of the Strickland test and his ineffective assistance claim fails.

But *even if* Brower's counsel should have informed him that he was pleading to a "strike" offense, Brower cannot show that "but for counsel's failure to adequately advise him, he would not have pleaded guilty." Hill v. Lockhart, 474 U.S. 52,57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). Brower cannot show that but for the alleged ineffectiveness, that Brower would not have pled guilty. This is shown by the written plea paperwork, plus the trial court's detailed colloquy with Brower at the plea hearing, where Brower acknowledged that he read and understood the plea form, as fully set out above. CP ; 5/12/09 RP 16-19.

The plea in the present case was an Alford plea. "An *Alford* plea is valid when it 'represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" *Id.* And Brower's trial counsel *did* explain the "alternative courses of action" that Brower could chose from in this case. Brower's trial counsel, Don Blair, has been an attorney for 15 years. 8/21/09 RP 62. Mr. Blair said he met with Brower in the jail "quite a few times and . . . talked with him on the phone several times." 8/21/09 63. Mr. Blair testified at the hearing to withdraw the plea, and he explained that at first he thought they had a very good case, that witnesses were not reliable and that they should to go trial. 8/21/09

63-65. However, Mr. Blair said when an additional witness came forward, a friend of Brower's, and told the police that Brower had also forced himself on her. 8/21/09. Mr. Blair thought this witness would be very damaging to Brower's case. 8/1/09RP 65.

Mr. Blair explained that at the time he went over the plea form with Brower in the jail, they still weren't positive that Brower would plead guilty. 8/21/09 RP 67. They were waiting to see if Brower's mother knew anything more as far as the new witness's story. 8/21/09 RP 68. When they got up to the courtroom, Mr. Blair spoke with Brower's mother in the hallway, and found out that she had not been able to speak with the witness. 8/21/09 RP 68. Mr. Blair explained that to Brower when they were in court for the plea hearing. Id. Mr. Blair said that he had gone over the plea form with Brower in the jail and that Brower had initialed the form in the spots indicated by Blair. Id. Mr. Blair said that when he went over the form with Brower, he told Brower it was a sex offense. 8/21/09 RP 68. When Mr. Blair heard Brower say at the hearing to withdraw the plea that Brower thought the crime was "without sexual motivation," Mr. Blair said, "I don't remember sexual motivation being a part of any of the conversations we had because this wasn't a sexual motivation crime." 8/21/09 RP 68. Mr. Blair said he

explained to Brower that the original crime charged was a Class A felony and would carry a very long sentence versus the relatively short prison term he would have to serve for the crime of attempted indecent liberties. 8/21/09 70. Mr. Blair also told Brower that he would still have to register as a sex offender if he pled to the crime of attempted indecent liberties. 8/21/09 72. Mr. Blair said that when he discussed the plea paperwork with Brower, he did not believe that attempted indecent liberties was a "strike" offense, so he told Brower that it was not a "strike." 8/21/09 RP 75. Mr. Blair said that in the sections of the plea form that were initialed by Brower, that mean that Mr. Blair had gone over those sections of the plea form with Brower. 8/21/09 RP 76.

The record here shows that the issue of whether the offense was a "strike" was not the main concern Brower had about pleading guilty. His counsel explained the various options Brower had to choose from, including a huge disparity in the prison time Brower would face if he was found guilty as originally charged. All the the facts show that Brower would have pled guilty anyway--whether the offense was a "strike" or not because, essentially, Brower would get the benefit of his bargain. So, Brower cannot show that he was prejudiced by his attorney's incorrect statement that the plea

offense was not a "strike." Thus, he cannot meet either prong of Strickland.

Again, the law does not require defense counsel to inform a defendant of every collateral consequence of a plea, and because whether a crime is a "strike" is a collateral consequence, Brower cannot show that his counsel's performance was deficient. Nor can he show he was prejudiced by his counsel's advice. When viewing the entire record, Brower's counsel did his job and informed Brower of the various options available to him, and in the end Brower decided he did not want to risk getting 16 years in prison (for the original crime charged). Brower's counsel was not ineffective, and this Court should affirm the trial court's ruling denying Brower's motion to withdraw his plea.

**2. *Brower's Alleged Reading Deficiency Did Not Affect the Validity of His Guilty Plea.***

Brown further claims that his plea was not voluntary because he has a "reading deficiency" that "prevented him from understanding the consequences of the plea, and prevented him from reading the form in the time allocated." Brief of Appellant 17. Brower says that he is a "slow reader who has difficulty with big words." Id. Brower then goes on to claim that his reading deficiency rendered him "incompetent" to enter the plea. But these

claims are not supported by any on-point authority, nor does the record show that Brower's reading difficulty was so severe that it rendered him "incompetent."

A defendant must present some evidence of involuntariness beyond his self-serving allegations. Osborne, 102 Wn.2d at 97. Brower's claims that he cannot read "big words" and is a "slow reader" are conclusory and self-serving. Brief of Appellant 17. Brower does not cite a single case where a defendant was allowed to withdraw his plea because he was a "slow reader who has difficulty with big words--"or any case that equates being a slow reader with incompetency. Brief of Appellant. Brower instead makes sweeping generalizations about the complexity of the SRA and the time constraints at the plea hearing and that it is "unlikely" that he would be able to understand the nature of the charge against him. Brief of Appellant 18. These claims do not justify withdrawing a plea.

If Brower did not understand the plea paperwork or what he was pleading guilty to, or the penalty for the crime, why didn't he say so at the plea hearing? He was given the opportunity to do so. 5/22/09 RP 16-19 (colloquy set out in detail above). The trial court questioned Brower in detail about the decision to plead guilty, and

whether he had reviewed the paperwork with his attorney and whether he understood it. Id. 16,17. Furthermore, Brower is not new to the criminal justice system--he has a previous felony sex offense, and already had to register as a sex offender. CP 23-36; 5/22/09RP 36.

At the hearing to withdraw the plea, Brower himself agreed that he could read and write the English language--although he said, "I have problems. . .but yes, I can do it." 8/21/09 RP 50. Brower also admitted that he had been told that the offense would have a sentence of about 20 to 30 months. 8/21/09 RP 52. Brower also admitted that his attorney had told him that if he was found guilty of the original charge that he could be looking at a sentence of at least 16 years. 8/21/09 RP 54. At that hearing Brower's mother said (begrudgingly) that Brower's counsel laid out the pros and cons of pleading guilty--mainly that it would avoid the possibility of a much harsher sentence. 8/21/09 RP 34, 35. Brower also agreed that his attorney met with him twice on the day he pled guilty. 8/21/09 RP 46, 60. Brower's reading deficiency did not affect his decision to plead guilty.

The State is not aware of any Washington case stating that having a reading disability renders a defendant unable to enter a

voluntary and knowing plea. And, although the "SRA is complicated," a defendant is not required to read and understand the Sentencing Reform Act before he can enter a valid guilty plea. Brower's argument that his reading deficiency rendered him unable to make a knowing and voluntary plea is not persuasive, and the trial court's decision should be affirmed.

**3. *Brower Understood the Elements of the Crime and the Plea Should Not Be Overturned Based On a Mere Technical Error in the Plea Form.***

Brower further claims that because the statement on defendant on plea of guilty incorrectly set out the elements of the crime, that his plea was not voluntary. Brief of Appellant 19. This argument is not persuasive either.

A technical deficiency in the plea form, does not amount to a manifest injustice under CrR 4.2(f). "Failure to adhere to the technical requirements of CrR 4.2(g) does not in itself result in a constitutional violation or amount to a manifest injustice." Branch, 129 Wn.2d at 642. "[A] defendant's signature on a plea statement is strong evidence of a plea's voluntariness ...." Branch, 129 Wn.2d 635, 642, 919 P.2d 1228, 1242 (1996). "The law places a heavy burden on defendants if they are to satisfy the requirements of CrR 4.2(f) permitting withdrawal of a plea of guilty." The burden

cannot be met by showing what, at most, was a technical error in taking of the plea.” State v. Osborne, 35 Wn. App 751, 759, 669 P.2d 905 (1983), *review granted, aff’d*, 102 Wn.2d 87, 684 P.2d 683 (1984). Indeed,

[t]he constitution does not require that the defendant admit to every element of the charged crime. An information which notifies a defendant of the nature of the crime to which he pleads guilty creates a presumption that the plea was knowing, voluntary and intelligent. A defendant is adequately informed of the nature of the charges if the information details the acts and the state of mind necessary to constitute the crime. In addition, a court may examine written statements to ascertain the defendant's understanding of the charges and may rely on the defendant's plea statement.

In re Personal Restraint of Ness, 70 Wn. App. 817, 821, 855 P.2d 1191, 1194 (1993).

For example, in the Osborne case supra, the Washington Supreme Court upheld a denial of a motion to withdraw a guilty plea and ruled that the Defendants were made sufficiently aware of the nature of the charge against them despite the fact that the Defendants were not specifically apprised of an element of the crime to which they plead:

Petitioners argue that they were unaware at the time their pleas were taken that the State had to prove the “knowledge” element common to these alternative methods of proving the underlying felony. It is true that petitioners were not specifically advised during the plea proceedings that knowledge is an essential element of the underlying

felony of second degree assault. Nevertheless, we are not convinced that petitioners' pleas were made absent an understanding of the nature of the charge. It is clear from the record that petitioners were, at the time their pleas were taken, aware of facts gathered by the State from which a trier of fact could easily find the requisite "knowledge".

Osborne, 102 Wn.2d at 93-5.

In the instant case, the amended charging document accurately set out the elements of attempted indecent liberties, and set out the elements that it was a vulnerable adult or frail elder that the perpetrator had a significant relationship with. CP 119-120. Additionally, the trial Court conducted a thorough colloquy with Brower regarding the guilty plea. 5/22/09 16-18. Brower indicated that he understood the charges in the Second Amended Information to which he was pleading. Id. Further, in the plea form, Brower acknowledged that he was pleading to the sole count in the Second Amended Information and that he had received a copy of that Information. CP 106-118.

At the plea hearing the trial court asked Brower: "Do you understand the elements, and those are the things each of which the State is required to prove beyond a reasonable doubt in order to convict you of this charge?" and Brower responded, "Yes, Your Honor." 5/22/09 RP 16. Brower's plea should not be overturned because of a technical misstatement of the elements of the crime in

the plea statement, where the plea agreement says Brower was pleading to the charge in the second amended information--which contained all of the elements of the crime. CP 119,120. This, together with the colloquy at the plea hearing, and the evidence of the discussions Brower's attorney had with him before the plea, shows that Brower knew what he was pleading guilty to. His guilty plea should be upheld.

CONCLUSION

The trial court did not abuse its discretion when it denied Brower's motion to withdraw his guilty plea. For the reasons set out above, this Court should affirm the trial court's decision.

RESPECTFULLY SUBMITTED this 18th day of June 2010.

MICHAEL GOLDEN  
LEWIS COUNTY PROSECUTING ATTORNEY

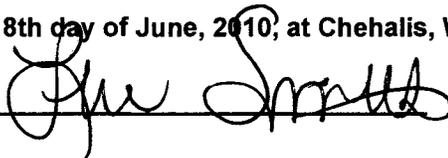
by:   
Lori Smith, WSBA 27961  
Deputy Prosecuting Attorney

Declaration of Service

The undersigned certifies that on this date a copy of the document to which this certificate is attached was served upon the Appellant by U.S. mail, addressed to Appellant's attorney as follows:

Peter Tiller, Attorney at Law  
P.O. Box 58  
Centralia, WA 98531

Dated this 18th day of June, 2010, at Chehalis, Washington.



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COURT OF APPEALS  
10 JUN 21 PM 12:35  
STATE OF WASHINGTON  
CLERK OF COURT