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3 The court has the power and duty to correct the erroneous error
4 upon it's discovery, even where the parties not only failed to
5 object, but agreed with the sentencing Judge. See, State v.
6 Moen, 129 Wn 2d 545, 919 P 2d 69: and State v. Roche, 75 Wn. App.
7 500, 513, 878 P. 2d (1993).

8 Appellant Gugger submits that he was not informed about a
9 direct consequence of his Alford-Plea to a Ambiguous
10 enhancement under RCW 9.94A.435. See, State v. Jacobs 154 Wn.
11 2d 596, 195 P. 3d 281.

12 Appellant therefore contends that his Alford-Plea is
13 involuntary. The court may look to the case of PERS.RESTRAINT
14 OF BRADLEY, 165 Wn.2d 934, 205 P.3d 123, where on page 939, the
15 court held, "DUE-PROCESS", requires that a defendant's guilty
16 plea be knowingly, voluntary, intelligent. In re pers. Isadore,
17 151 Wn.2d 294, 297, 88 P.3d 390 (2004), (citing Boykin v. Alabama,
18 395 U.S. 238, 242, 89 S.Ct. 1709, 23 LED.2d 274 (1969)). If a
19 defendant is not apprised of a direct consequence of his plea,
20 the plea is considered involuntary.

21 State v. Ross, 129 Wn.2d 279, 284, 916 P2d 405 (1996). A direct
22 consequence is one that has a "definite," immediate and largely
23 automatic effect on the range of the defendant's punishment. Id
24 . The length of a sentence is a direct consequence of a guilty
25 plea. State v. Mendoza, 157 Wn.2d 582, 590, 141, P. 3d 49 (2006);
26 State v. Moon, 108 Wn. App. 59, 63, 29 P.3d 734 (2001).

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2 Therefore, misinformation about the length of a sentence
3 "renders a plea involuntary", even where the correct sentence
4 may be less than the erroneous sentence included in the plea,
5 Isadore, 151 Wn. 2d at 302.

6 In the case at bar, appellant submits that a direct
7 consequence of the consecutive 24-month enhancement under
8 RCW 9.94A.435 and RCW 9.94A.533(6), caused a definite immediate
9 and largely effect on his standard range of his sentence.
10 The Bradely court further addresses the remedy when such a
11 circumstance exists on page 941. supra. That court said,
12 "where a plea is entered into involuntary, a defendant may
13 specifically-enforce the agreement or "withdraw" the plea".
14 the prosecutor bears the burden of showing that the defendants
15 choice would result in an injustice. Id.

16 ADDITIONAL GROUND 2.

17 Appellant contends that his judgment and sentence entered on
18 August 23rd, 2010, is "invalid on its face" and this
19 can be establish by the fact that this sentence contains a
20 "Ambiguous 24-month enhancement" under RCW 9.94A.435 and
21 RCW 9.94A.533(6). The invalidity of a petitioners judgment and
22 sentence is cleary shown by related document's, i.e, charging
23 instrument's of guilty pleas, jury instruction's, and the
24 judgment and sentences themselves. See, In re Pers. Hemenway, 147
25 Wn. 2d 529, 532, 55 P.3d, 615 (2002) (quoted from Pers. Restraint of
26 Hinton, 152 Wn. 2d 853, 858, 100 P.3d 801).

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ANALYSIS

The court in State v. Jacobs 154 Wn.2d 596,115 P 3d 881,asked asked to interpret RCW 9.94A.533., sateing that "Statutory Interpretation involves questions of law that is de novo". Dep't of Ecology v. Cambell and Gwinn,L.L.C.,146, Wn.2d 1,9,43, P.3d 4 (2002). Appellant Gugger submits that in constuing a statute, the court's object is to determine the Legislature's intent.Id. "[I]f the statute's meaning is plain on it's face, then the court must give effect to that plain meaning as an expression of legislative intent".Id.at 9-10. the "plain - meaning" of a Statutory Provision is to be discerned from the ordinary meaning of the language at issue, as wellfrom the context of the statute in which that provision is found,related provisions, and the statutory scheme as a whole. See, Wash.Pub. Ports Ass"n v. Dept of Revenue,148 Wn.2d 637,645,62 P.3d 462 (2003); Cambell v. Gwinn, 146 Wn.2d at 10-12. "If after examination the provision is still subject to more than one reasonable interpretation, it is Ambiguous".Id. If a statute is ambiguous,"THE RULE OF LENITY"requires us to interpret the statute in favor of the defendant absent Legislative Intent to contrary. See, In re Post Sentence Rview of Charles,135 Wn.2d 239,249,955,P.2d 798 (1998); State v. Roberts,117,Wn.2d 576,585 817, P.2d 855 (1991).

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2 RCW 9.94A.533(6) states: "24-months" shall be added to the standard
3 range for any ranked offense involving a violation of chapter 69.50.RCW
4 [The Uniformed Controlled Substance Act], if the offense was also a
5 violation of RCW 69.50.435(1). At least one 24-month enhancement, applies
6 to this fact situation. However, we need not to decide whether two 24-month
7 enhancements may be imposed, where both RCW 69.50.435 and RCW 9.94A.605 are
8 violated; because according to "THE RULE OF LENITY", even if both may be
9 imposed, they must run concurrently.

10 In the present case at barr, appellant was sentenced to two consecutive
11 24-month enhancements under RCW 69.50.435 and RCW 9.94A.605, RCW 9.94A.827.
12 RCW 9.94A.533 is silent on whether enhancements under RCW 69.50.435 and
13 RCW 9.94A.605 should be imposed consecutively, or concurrently to one
14 another or to other enhancements. Appellant Gugger submits that the
15 "Statutory Authority for imposing the enhancements consecutively is
16 Ambiguous, and under the rule of lenity the statute must be interpreted
17 to require concurrent enhancements!" See, State v. Jacobs 154 Wn. 2d 596, 115
18 p. 3d 281.

19 Although sentencing courts generally enjoy discretion in tailoring
20 sentences, for the most part discretion does not extend to deciding
21 whether to apply sentences concurrently or consecutively. Where a person is
22 sentenced for two or more current offenses, the Legislative has specified
23 that if those sentences stem from the same criminal conduct, the sentences
24 shall be served concurrently; consecutive sentences can be imposed only as
25 exceptional sentence under RCW 9.94A.535, RCW 9.94A.589 (1)(a).

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2 Appellant Gugger contends that he was sentenced to RCW 9.94A.435 and
3 RCW 9.94A.533(6),RCW 9.94A.605, RCW 9.94A.827, with a enhancement type
4 school zone/ child endagerment, which added two consecutive 24-months to
5 his standard sentencing range to 100-120 months which gave him a total of
6 148-168 months. The sentence enhancements in counts (VII),shall run
7 consecutive to eachother. See, EXHIBIT (1). page 5 Of 11.

8 A sentence of 158 months,was imposed to validate the "Ambiguous"
9 consecutive two 24-months enhancements for counts VII.

10 In contrast,sentences for two or more serious violent offenses arising
11 from seperate and distinct criminal conduct, must be applied consecutively
12 to eachother, RCW 9.94A.589(1)(b).In RCW 9.94A.589, the legislative also
13 specified that courts must imposed consecutive sentences for certain firearm
14 related offenses,RCW 9.94A.589(1)(c). Appellant Gugger submits that RCW
15 9.94A.589 pertains to sentencing for multiple offenses,"not enhancements,"
16 therefore it does not demonstrate the Legislatures presumption in favor of
17 concurrently or consecutivly sentences. Furthermore, the legislature has
18 chosen to specify that in the case of deadly weapon and firearm sentencing
19 enhancements,"sentencing courts must apply them consecutively,
20 RCW 9.94A.533(3)(e),(4)(e). Thus, the legislature clearly knows how to
21 require consecutive application of sentence enhancements and chose to do so
22 only for firearms and other deadly weapons. See, Roberts,117,Wn. 2d at 586,
23 " ' [W]here the legislature uses certain statutory language in one instance
24 and different language in another, there is a difference in Legislative
25 intent'" . (alteration in original)(Quoting inre Dept. of Swanson,115 Wn.2d
26 21,27,804 P.2d 1 (1))).

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2 If anything, the statutory language and context seem to weigh in favor of
3 intending "Concurrent Sentences." However, the Legislature's silence on the
4 issue is far from "plain," and the legislative intent gleaned elsewhere in
5 the statute does not conclusively resolve the issue...Thus, RCW 9.94A.533(6)
6 appears ambiguous. Under "THE RULE OF LENITY," where a statute is ambiguous,
7 we must interpret it in favor of the defendant, See, Roberts, 117 Wn.2d at
8 585. We must interpret RCW 9.94A.533(6), to require sentencing courts to
9 apply enhancements for violation of RCW 69.50.435 and RCW 9.94A.605
10 concurrently to each other. See, State v. Jacobs 154 Wn. 2d 596, 115 P.3d
11 281 at 281-284. Whether two concurrent 24-month enhancements or a single
12 24-month enhancement is imposed, the most either petitioner should serve for
13 the relative enhancements is 24-months.

14 CONCLUSION

15 Appellant Gugger contends that misinformation about the length of his
16 sentence rendered his Alford-Plea entered on August 23rd, 2010,
17 to be involuntary, even when the correct sentence may be less than the
18 erroneous sentence included in his plea. See, Isadore, 151 Wn. 2d at 302.

19 Appellant also submits that Pursuant to State v. Jacobs 154 Wn. 2d 596
20 , 115 P.3d 281, the Court Of Appeals decision was reversed, the sentences were
21 vacated, and the cases were remanded for re-sentencing to include not more
22 than one single 24-month of sentence enhancements. Therefore, because the
23 court in State v. Jacobs, reached the same result by requiring concurrent
24 application of the sentence enhancements, we need not to address whether the
25 legislative actually intends RCW 9.94A.533(6) to allow imposition of two
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3 24-month enhancements under RCW 9.94A.435. Appellant further contends
4 that his alford Plea was involuntary due to the "Ambiguous"consecutive 24-
5 enhancement that he was sentenced to on August 23, 2010, which
6 made this sentence "invalid on its face." Appellant asserts that his
7 "Due-Process" rights were violated, which require that a defendant's guilty
8 plea be knowingly, voluntary, intelligent. In re pers. Isadore, 151 Wn.2d 294,
9 297,88 P.3d 390 (2004), (citing Boykin v. Alabama, 395 U.S. 238,242,89 S.Ct.
10 1709,23 LED. 2d 274 (1969)). If a defendant is not apprised of a direct
11 consequence of his plea, the plea is considered involuntary.

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14 RESPECTFULLY SUBMITTED,

15
16 Ernest Gugger

17 ERNEST GUGGER APPELLANT,
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19 DATED: 6 15th 2011.
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