

No. 42851-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

EDWARD C. HALSTEN,

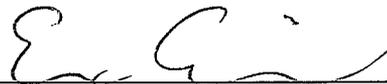
Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. STATEMENT OF THE ISSUES

- A. Did the trial court correctly refuse to allow the defendant to withdraw his knowing, voluntary, and intelligent plea if the defendant failed to show a manifest injustice?
- B. Was the trial court sufficiently impartial when denying the defendant's motion to withdraw his plea and when sentencing?

II. INTRODUCTION

Edward Halsten appeals his convictions for delivery of methamphetamine. He pleaded guilty to two counts of delivery in exchange for dismissal of a third count and an agreement that his attorney could argue for a prison-based Drug Offender Sentencing Alternative (DOSA). After Halsten's DOSA evaluator opined that his chance of success was minimal, Halsten moved to withdraw his plea, arguing that he had been coerced into it by his former attorney. The trial court denied the motion after a hearing. It denied Halsten's DOSA request and sentenced him above the parties' recommendation, but within the standard range. Halsten appeals the denial of his motion to withdraw his plea and his sentence. The Court should affirm.

III. STATEMENT OF THE CASE

On June 14 and July 27, 2011 and within Lewis County, Washington, Lewis County Sheriff's Office Detective Humphrey supervised a confidential informant's controlled buys of methamphetamine from Edward Halsten. Supplemental Clerk's Papers (Supp. CP) at 105-07. On August 12, 2011, the Sheriff's office arrested Halsten for the deliveries in Centralia, Washington. *Id.* at 107. The search incident to arrest revealed scales, around \$340 in cash, and two baggies containing a substance that tested positive for methamphetamine. *Id.* The State charged Halsten with two counts of delivery of methamphetamine and one count of possession with intent to deliver. Clerk's Papers (CP) at 1-4.

Attorney Christopher Baum was appointed to represent Halsten.¹ CP at 27. When Mr. Baum began work, the State's offer was to recommend 75 months if Halsten pled to all three counts as separate criminal conduct. Verbatim Report of Proceedings (VRP) (Nov. 30, 2011) at 25. If Halsten rejected the offer, the State suggested it would add school-zone enhancements. *Id.* at 25-26. Halsten could not ask for a DOSA under this offer. *Id.* at 32.

¹ Halsten's first appointed attorney had to withdraw because of a conflict. Verbatim Report of Proceedings (VRP) (Nov. 30, 2011) at 9, 25.

Weighing the evidence against Halsten, Mr. Baum explored the possibility that Halsten might enter Drug Court, work down his charges as a confidential informant, or obtain a parenting sentencing alternative. *Id.* at 29. The prosecutor's office refused the first two options and Halsten did not qualify for the third. *Id.*

However, Mr. Baum noticed that the third count was vulnerable to a motion to suppress. *Id.* at 26. That count involved a quantity of methamphetamine that might statutorily disqualify Halsten from seeking a Drug Offender Sentencing Alternative (DOSA). *Id.* at 29. Without the third count, Halsten could seek a DOSA—he might not get it, but at least he would be eligible. *Id.*

Using the suppression issue as leverage, Mr. Baum negotiated a new deal in which Halsten would plead to the two controlled buys in exchange for dismissal of the third count. *Id.* at 26, 29. The prosecutor would continue to recommend 75 months, from a standard range of 60–120 months on an agreed-upon offender score of 7.² *Id.* at 28; CP at 10, 78-79. Mr. Baum would be allowed to ask for a prison-based DOSA instead of agreeing with that recommendation. VRP (Nov. 30, 2011) at 32.

² Halsten had six points from crimes prior to these charges. VRP (Nov. 30, 2011) at 28. Because each count was separate conduct, each count counted against the other, leading to an offender score of 7 points. See CP at 78-79 (showing the stipulation).

Mr. Baum discussed these matters with his client. He reviewed the police reports with Halsten. *Id.* at 27-28. Halsten was familiar with the system; he was more concerned about the amount of time he would serve than the allegations against him. *Id.* at 28. He and Mr. Baum discussed the different sentencing alternatives and possibilities, including the likelihood of conviction after trial. *Id.* at 30. They discussed how the third count was weaker than the other two, but if Halsten went to trial and lost, given his points, he would be likely to go to prison for 120 months, with some possibility of prison for up to 240 months. *Id.* at 30-31. Nevertheless, Mr. Baum told Halsten that he was free to go to trial if he wanted. *Id.* at 32. At no time did he tell Halsten that he could not go to trial or otherwise coerce Halsten into pleading guilty. *Id.* at 33.

Halsten chose to plead guilty. On the day of the plea, Mr. Baum went over the change of plea form with Halsten in the jail. *Id.* Mr. Baum believed that Halsten fully understood it: he was savvy about the system, having been around it for a while. *Id.* He had no questions other than making sure that he would be able to ask for a DOSA. Mr. Baum explained the DOSA process. *Id.*

Mr. Baum appeared with Halsten in court on September 29, 2011, explained the plea agreement to the judge, and submitted the

plea form. VRP (Sept. 29, 2011) at 5, 7. Mr. Baum indicated that he and Halsten had gone over the form together. *Id.* at 7. The second page of the plea form listed the rights Halsten waived by pleading guilty.³ CP at 10. Halsten initialed by several paragraphs throughout the document and signed on the final page. *Id.* at 9-18.

The judge engaged in a colloquy with Halsten regarding his change of plea. VRP (Sep. 29, 2011) at 7-11. Halsten indicated that he had heard, understood, and agreed with everything his attorney said. *Id.* at 7. He acknowledged that he was pleading guilty to two counts of delivery of a controlled substance. *Id.* at 7-8. He said he had gone over each and every line of the plea form with his attorney and understood it completely. *Id.* at 8. He said he had reviewed the elements of each count with his attorney and understood them. *Id.* He had also reviewed the rights on the second page and understood that he was giving them up by pleading guilty. *Id.* He indicated that he had read and understood the prosecutor's sentencing recommendation, but also understood that the judge did not have to follow the recommendation. *Id.* at 9. He acknowledged that the judge would not have to accept his DOSA proposal. *Id.* Halsten said that no one was forcing him to

³ For reference, a full copy of the plea form is attached and incorporated herein as Ex. 1.

plead guilty, nor had anyone threatened him with harm or promised him anything (other than a sentencing recommendation) to do so. *Id.* at 10. Halsten adopted the statement on the plea form that he had knowingly delivered methamphetamine, clarifying that he knew it was methamphetamine he was delivering. *Id.* at 10-11. He represented that this statement was true. *Id.* at 11. Only at that point did he plead guilty to each count. The Court found his pleas knowing, voluntary, and intelligent. *Id.*

Halsten requested a DOSA evaluation, which the Court granted. *Id.* at 12-13; CP at 19. A DOC representative interviewed Halsten regarding his current and prior drug use. CP at 20-25. Halsten reported that he used methamphetamine daily, sometimes multiple times a day. *Id.* at 21. He represented that his alcohol and drug problems were extremely serious and he had an extreme need for treatment. *Id.* at 25. He explained that he dealt methamphetamine because the money was too good to pass up. *Id.* at 21. Because of his history of dealing, the evaluator opined that Halsten's chance of success on a DOSA was "very minimal." *Id.* at 22. The report was filed on October 11, 2011. *Id.* at 20.

That day, Halsten contacted his attorney to withdraw his plea. *Id.* at 27-28. Mr. Baum withdrew as counsel and Donald

Blair was appointed. *Id.* at 29-30. Through Mr. Blair, Halsten moved to withdraw his plea, arguing that Mr. Baum coerced him into pleading guilty through lack of representation. Supp. CP at 109-12. In a letter attached to the motion, Halsten denied that the statement he made to the trial court when pleading guilty was his statement and denied that it was true. *Id.* at 111-12.

At the hearing on the motion, Halsten testified that Mr. Baum had not answered his questions or represented his interests in the case other than to advise him to plead guilty. VRP (Nov. 30, 2011) at 7-8. Halsten claimed that Mr. Baum's lack of preparation coerced him into pleading guilty, but in fact he was not guilty. *Id.* at 7-10. On cross, he admitted that he knew he had the right to trial and Mr. Baum had told him so; there was no confusion on that point. *Id.* at 20. When asked if he had a drug problem, Halsten said he no longer had one because he had been clean for almost a year. *Id.* The trial court asked Halsten if he had lied during the plea colloquy when he indicated that he was not being coerced into pleading guilty. *Id.* at 21-22. Halsten admitted he lied. *Id.* Mr. Baum also testified, describing the plea deal, the strategy behind it, and his discussions with Halsten. *Id.* at 24-37.

The trial court denied Halsten's motion to withdraw his guilty plea. *Id.* at 38. It found that Halsten's testimony regarding coercion was not credible in light of the fact that he lied during his one-on-one plea colloquy with the judge. *Id.* at 38-39. The trial court found Mr. Baum's account credible, and accordingly found no basis on which Halsten could withdraw his plea. *Id.*; CP at 80.

The parties continued to sentencing. The State opposed a DOSA and recommended 75 months. VRP (Nov. 30, 2011) at 40-41. The defense asked for a prison-based DOSA or in the alternative 75 months. *Id.* at 42. The trial court sentenced the defendant to 96 months' incarceration because the defendant was a for-profit drug dealer and because he lied to the court and the Department of Corrections during the plea and DOSA process. *Id.* This sentence was within the standard range of 60–120 months. CP at 78-79. Halsten appealed. CP at 93.

IV. ARGUMENT

A. THE TRIAL COURT CORRECTLY REFUSED TO ALLOW THE DEFENDANT TO WITHDRAW HIS KNOWING, VOLUNTARY, AND INTELLIGENT GUILTY PLEA.

The trial court correctly denied the defendant's motion to withdraw his knowing, voluntary, and intelligent guilty plea because the defendant failed to demonstrate a manifest injustice. A trial

court will allow a defendant to withdraw a plea of guilty when necessary to correct a manifest injustice. CrR 4.2(f). This right is statutory, not constitutional, and the trial court's denial of a motion to withdraw will be reversed only for a clear abuse of discretion. *State v. Olmsted*, 70 Wn.2d 116, 118, 422 P.2d 312 (1966). The defendant bears the burden of proving manifest injustice. *State v. Ross*, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996).

“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 (Div. 1 1996). A manifest injustice is one that is “obvious, directly observable, overt, not obscure.” *Id.* Four circumstances create a manifest injustice: (1) denial of effective counsel, (2) a defendant’s failure to ratify the plea, (3) an involuntary plea, or (4) the prosecution’s failure to honor the plea agreement. *State v. McCollum*, 88 Wn. App. 977, 981, 947 P.2d 1235 (Div. 2 1997). Halsten failed to show any of these circumstances.

Halsten did not demonstrate ineffective assistance. Mr. Baum negotiated a better deal than his predecessor based on a legal challenge to certain evidence. VRP (Nov. 30, 2011) at 25-29. A plea to the two smaller counts, based on the strong evidence of

controlled buys, made strategic sense because it positioned Halsten to ask for a DOSA and in any event obtained a low-range recommendation from the prosecutor. *Id.* at 29. These strategic decisions do not fall below the standard for effective counsel. See *Strickland v. Washington*, 466 U.S. 668, 688-89, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (deficient performance must be worse than reasonable trial strategy); *State v. Kylo*, 166 Wn.2d 856, 863, 215 P.3d 177 (2009) (legitimate trial strategy is not deficient performance). Separately, the record reveals no prejudice to Halsten from his plea: the evidence against Halsten was strong, and he would likely have served 120 months or more if he proceeded to trial. VRP (Nov. 30, 2011) at 34-36. Without prejudice, Halsten cannot demonstrate ineffective assistance.⁴ *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011).

Moreover, Halsten ratified the plea and demonstrated that it was knowing, voluntary, and intelligent. His plea colloquy with the trial court reviewed the nature of the plea and the extent to which he would give up rights by pleading guilty. VRP (Sep. 29, 2011) at 7-11. He affirmatively represented that he understood what he was

⁴ The same reasoning defeats the claims raised in Halsten's pro se statement of additional grounds for review. Halsten fails to cite facts in the record that demonstrate both deficient performance and prejudice. Therefore, his claims fail.

doing and was pleading voluntarily. *Id.* Mr. Baum testified to the same. VRP (Nov. 30, 2011) at 33. The only evidence to the contrary was Halsten's testimony at his motion to withdraw. In light of his numerous inconsistent representations to the court and to the DOSA evaluator, the court trial was entitled to find Halsten's testimony incredible and to give it little weight.

Finally, the State followed the plea agreement to the letter. It dismissed the count it agreed to dismiss and sought a sentence of 75 months out of a 60–120 month range based on an offender score of 7. CP at 81-90; VRP (Nov. 30, 2011) at 41. Defense counsel was allowed to and did ask for a prison-based DOSA. VRP (Nov. 30, 2011) at 42. The trial court's decision not to follow the agreed-upon recommendation is irrelevant: Halsten was fully aware that the trial court had this prerogative. See VRP (Sept. 29, 2011) at 9. Therefore, Halsten got everything he bargained for. The Court should affirm his convictions.

In reality, Halsten's motion to withdraw his guilty plea was prompted by his realization that a DOSA sentence was unlikely, not by any coercion by defense counsel. Halsten's disappointment does not create a manifest injustice and was not grounds to withdraw his plea. The Court should affirm his convictions.

B. THE TRIAL JUDGE DID NOT UNDERMINE THE APPEARANCE OF FAIRNESS WHEN QUESTIONING AND SENTENCING THE DEFENDANT.

The trial judge did not undermine the appearance of fairness by questioning the defendant about his prior inconsistent representations to the court or by sentencing him above the parties' recommendation. "To prevail under the appearance of fairness doctrine, the claimant must provide some evidence of the judge's . . . actual or potential bias." *State v. Dugan*, 96 Wn. App. 346, 354, 979 P.2d 885 (Div. 2 1999). Prejudice is not presumed; the defendant must establish bias through sufficient evidence. *State v. Dominguez*, 81 Wn. App. 325, 329–30, 914 P.2d 141 (Div. 3 1996). If this threshold is met, the appearance of fairness doctrine requires that a reasonably prudent and disinterested observer would find the proceedings fair, neutral, and impartial. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (Div. 2 1995). Allegedly improper or biased comments are considered in context. *See, e.g., In re Dependency of O.J.*, 88 Wn. App. 690, 697, 947 P.2d 252 (Div. 1 1997).

Halsten points to no evidence in the record to support his claim of bias beyond (1) a short series of questions the judge asked Halsten about his credibility and (2) his sentence. This showing fails to establish the judge's impartiality.

The judge appropriately questioned Halsten about the key issue in his motion to withdraw his plea: his credibility. A judge may question witnesses called by a party. ER 614(b). Halsten's testimony concerning his guilty plea was flatly inconsistent with his former attorney's, so credibility was critical. The evidence raised the question of whether Halsten was lying: he originally represented that he was pleading guilty voluntarily and that the factual basis for the plea was true, but then wrote and testified that his plea was coerced and false. *Compare* VRP (Sept. 29, 2011) at 7-11 *with* Supp. CP at 111-12 (letter) *and* VRP (Nov. 30, 2011) at 7-10. Also, Halsten testified at his motion to withdraw that he did not use drugs despite representing the exact opposite during his DOSA evaluation. *Compare* VRP (Nov. 30, 2011) at 20 *with* CP at 21, 25. The judge's questions regarding Halsten's credibility were appropriate to help the court rule on Halsten's motion.

In addition, the judge's questioning of Halsten was not of a type that undermined the appearance of fairness. At first, the judge merely reminded Halsten of his plea colloquy. VRP (Nov. 30, 2011) at 21. After Halsten admitted he had represented the opposite of his now-under-oath testimony, the judge asked if Halsten had lied previously. *Id.* This question did not demand an affirmative

response: Halsten might have explained why his answer at the plea colloquy was misleading or why he had changed his mind. Instead, he simply admitted to lying. *Id.* The Court followed up with four questions regarding whether the defendant lied during other parts of the plea colloquy. *Id.* at 21-22. This was not a lengthy, partial cross-examination. A judge does not become an advocate merely because his clarifying questions happen to damage the defense.⁵

The only other evidence of bias was the judge's decision to sentence Halsten above the parties' recommendation. The sentence was in the middle of the standard range and was therefore within the court's discretion. RCW 9.94A.530(1) ("The court may impose any sentence within the [standard] range that it deems appropriate."). The judge based the sentence on the fact that Halsten admitted being a drug dealer for money and testified that he had no current drug problem (which would have mitigated his offense). Halsten admitted lying during the plea process and, by attempting to disavow his plea, showed that he had not taken responsibility for his actions. Under the circumstances, the trial

⁵ In Washington, the concern over judges questioning witnesses stems from the state constitution, which prohibits a judge from tainting the jury by commenting on the evidence. *See generally State v. Eisner*, 95 Wn.2d 458, 626 P.2d 10 (1981). Because no jury was present and the judge acted as decisionmaker, this concern is absent and the questioning here was proper.

court could reasonably to depart from the parties' recommended sentence. See RCW 9.94A.431(2) (judge not bound by plea recommendations); RCW 9.94A.530(2) (judge may rely on facts admitted by the defendant when sentencing). Nothing about the imposition of sentence in this case would lead an outside observer to believe the judge was unfair. The Court should affirm.

V. CONCLUSION

Edward Halsten appeals his convictions for delivery of methamphetamine, arguing that the trial court erroneously denied his motion to withdraw his guilty plea and violated the appearance of fairness doctrine. But, the grounds for Halsten's motion to withdraw were spurious. The trial court acted fairly and within its discretion when denying Halsten's motion and when sentencing him. The Court should affirm Halsten's convictions.

RESPECTFULLY submitted this 18 day of May, 2012.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

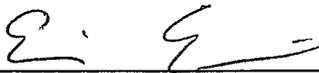
by: 
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EXHIBIT 1

State of Defendant on Plea of Guilty to Non-Sex Offense

Received & Filed
LEWIS COUNTY, WASH
Superior Court

SEP 29 2011

By Kathy A. Brack, Clerk
Deputy

AB

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

State of Washington
Plaintiff
vs.
Edward Halsten
Defendant

No. 11-1-586-5

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

1. My true name is:
Edward Halsten

2. My age is: 39

3. The last level of education I completed was GED

4. I Have Been Informed and Fully Understand That:

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

(b) I am charged with: Delivery of controlled substance
The elements are: Lewis Cty 6-14-11 Delivered controlled substance

I am charged with: Delivery of controlled substance
The elements are: Lewis Cty 7-27-11 Delivered controlled substance

I am charged with: _____
The elements are: _____

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	7	60-120 mos		12 mos	10 yrs \$20,000
2	7	60-120 mos		12 mos	10 yrs \$20,000
3					
4					
5					

* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.
- [] For offenses committed after July 1, 2000 but prior to July 26, 2009, the court may impose a community custody range as follows: for serious violent offenses, 24 to 36 months; for crimes against persons, 9 to 12 months; for offenses under 69.50 and 69.52, 9 to 12 months.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me to 36 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the

community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses	36 months
Violent Offenses	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

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

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

If no DOSA

*Dismiss
CT III*

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

75 mos Agreed OK Prison DOSA
~~\$200, \$500, \$600, \$1000, \$500 \$100 \$100~~
~~12 mos CC \$3000~~

of 100 + 100

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

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless it finds 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.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Government assistance may be suspended during any period of confinement.
- (m) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

Notification Relating to Specific Crimes: *If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.*

- (n) ~~This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~

_____ (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to two years community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

[Handwritten signature] (p)

The judge may sentence me under the Parenting Sentencing Alternative if I qualify under Laws of 2010, ch. 224, §2. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.

_____ (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.

_____ (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

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

[Handwritten signature] (t)

The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical

dependency treatment program for a period of **three to six months**, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

 (u)

If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

 (v)

If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b).

 (w)

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

____ (x)

~~I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.~~

____ (y)

~~If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).~~

- _____ (z) If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.
- _____ (aa) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- _____ (bb) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- _____ (cc) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- _____ (dd) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- _____ (ee) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.
- _____ (ff) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

_____ (gg) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count I Delivery of controlled substance
count II Delivery of controlled substance
count _____
count _____
count _____

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

8. I make this plea freely and voluntarily.

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

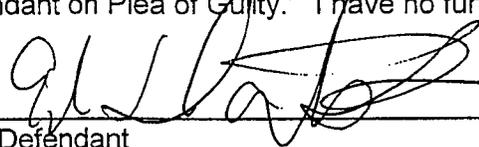
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

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

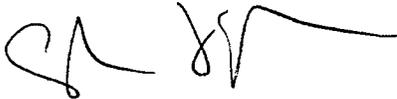
statement: IN Lewis City on June 14, 2011 and July 27, 2011
I knowingly delivered methamphetamine

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

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


Defendant

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.



Deputy Prosecuting Attorney
SHANE ORourke 32927
Print Name WSBA No.


Defendant's Lawyer
Chris [unclear] 32279
Print Name WSBA No.

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

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter Print Name

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

Dated: SEPTEMBER 29, 2011

Judge

LEWIS COUNTY PROSECUTOR

May 21, 2012 - 10:39 AM

Transmittal Letter

Document Uploaded: 428512-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 42851-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Teresa L Bryant - Email: **teri.bryant@lewiscountywa.gov**

A copy of this document has been emailed to the following addresses:

jahayslaw@comcast.net