

FILED
Jul 14, 2016
Court of Appeals
Division III
State of Washington

No. 33854-1-III
Consolidated with 34493-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

JUSTIN WILLIAM HOYT,

Appellant

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

NO. 08-1-00421-3

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

- A. Was the defendant's guilty plea valid?
 - 1. What is the standard on review?
 - 2. Was he informed of the Deadly Weapon Enhancement and did he plead guilty to that Enhancement?
- B. Are there scrivener's errors?
- C. Should this Court remand the case for a determination of the defendant's ability to pay legal financial obligations or find that he has waived an objection to those fines?
- D. Regarding the defendant's Personal Restraint Petition, was he denied effective assistance of counsel?

II. STATEMENT OF FACTS

The key times are as follows:

- April 25, 2008: An Information is filed, charging the defendant with Robbery in the First Degree with a Deadly Weapon Allegation, Burglary in the First Degree, and Theft in the Second Degree. CP 1-3.
- July 8, 2008: The defendant is found guilty as charged of the three counts and the Deadly Weapon allegation. CP 6.
- July 17, 2008: The defendant is sentenced on the Robbery charge to 171 months, plus 24 months for the Deadly Weapon

enhancement, for a total of 195 months. CP 6-15. The other counts run concurrently. *Id.*

- October 15, 2009: The convictions are reversed by this Court. CP 19-28.
- December 9, 2009: Mandate is issued. CP 18.
- July 12, 2010: The defendant pleads guilty as charged. CP 41-49. He initials section 6(cc) of the Statement on Plea of Guilty, acknowledging that he was aware that he pleaded guilty to a Deadly Weapon enhancement, which would be served in total confinement. CP 47. He further states facts in the written plea applicable to the enhancement. CP 48. The Court sentences the defendant to 171 months. CP 50-58.

III. APPEAL ARGUMENT

A. The defendant's plea was voluntary.

1. **The standard on appeal: The written plea is prima facie verification of the plea's voluntariness.**

Due process requires that a defendant knowingly, intelligently, and voluntarily enter a guilty plea. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges he has read and understands it and its contents are true, the

written statement provides prima facie verification of the plea's voluntariness. *In re Pers. Restraint of Keene*, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980); *In re Pers. Restraint of Teems*, 28 Wn. App. 631, 633, 626 P.2d 13 (1981); *State v. Ridgley*, 28 Wn. App. 351, 355, 623 P.2d 717 (1981). When the court goes on to inquire orally of the defendant and satisfies itself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is irrefutable. *State v. Perez*, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982); *State v. Hystad*, 36 Wn. App. 42, 45, 671 P.2d 793 (1983).

For a plea to be voluntary and knowledgeable, not only must a defendant be apprised of the nature of the charges, he must also be aware that the facts support his guilt under those charges. *Keene*, 95 Wn.2d at 207, 209. But, apprising the defendant does not necessarily mean describing every element orally on the record at the plea hearing. *Id.* at 207. If the colloquy at the plea hearing does not include every word necessary to ensure the voluntariness of the plea, clear and convincing written evidence can remedy the defendant. *Id.* at 208.

A written statement on the plea of guilty in the form provided by CrR 4.2(g) establishes knowledge of the nature of the charge. *Keene*, 95 Wn.2d at 206-07. The court is justified in relying on facts admitted in the plea statement. *Id.* at 206-07. A correct statement of the charge in the

Information is also evidence the defendant was informed of the nature of the charge. *Id.* at 208.

2. The defendant was informed of the deadly weapon enhancement, acknowledged the enhancement in his plea statement, admitted the facts for the enhancement, and confirmed he was pleading guilty to the enhancement in the plea colloquy, and the trial court correctly stated the standard range.

a. Correct statement of the charge in the Information.

See CP 1-3. The Information charged that the defendant was armed with a deadly weapon when he committed the crime of Robbery in the First Degree crime. CP 2. The defendant then went through a trial on that Information, was found guilty of all counts and the deadly weapon enhancement on July 8, 2008, and was sentenced to 24 months on that enhancement on July 17, 2008. CP 6-14. Those convictions were reversed on appeal. CP 18-28. But, the Information was never amended. The defendant pleaded guilty as originally charged. RP 07/12/2010 at 10.

This court should not only consider the correct statement of the charges in the Information, under *Keene*, but also that the defendant was sentenced previously under that same Information to a deadly weapon enhancement. It is not reasonable to believe that the defendant, after being charged with a deadly weapon enhancement, hearing a jury verdict finding

that enhancement, and being sentenced to 24 additional months on that enhancement, only found out years later about this enhancement.

b. The plea statement.

Please note the following:

- CP 41, item 4(b), showing the defendant acknowledged he was charged with Robbery in the First Degree with a deadly weapon—meaning deadly weapon enhancement.

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: Robbery I - deadly
The elements are: gun I upon

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

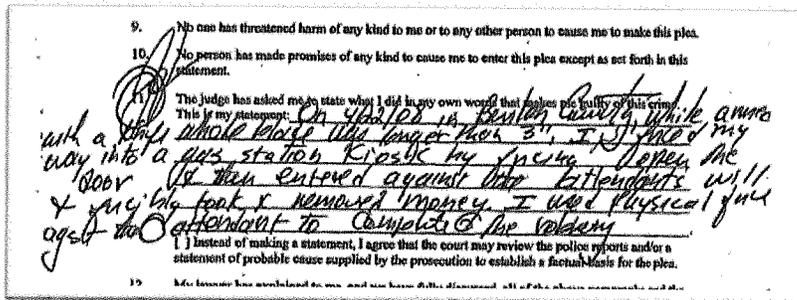
- Item (cc) of Section 6 of the plea statement indicates the defendant acknowledged with his initials (JH) and the lack of a strikethrough that he knew he was pleading guilty to an enhancement and knew the consequences of that enhancement. CP 47. (See photocopy on next page.)

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.

- (c) 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 (b).
- (aa) 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.
- (bb) 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 on the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- (cc) 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.
- (dd) 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.
- (ee) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.33, an adjustment of sentence 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.
- (ff) The judge may sentence me to 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 am not 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.

The defendant admits initialing this section in his brief. See Am. Br. Appellant at 9. His contention that he was never informed that the deadly weapon enhancement must be served in total confinement and consecutive to all other aspects of the sentence is incorrect.

- Note item 11 of the written guilty plea statement. CP 48.



The handwriting is difficult to read, but the plea colloquy helps.

RP 07/12/2010 at 5. The plea statement states:

On 4/22/08 in Benton County, while armed with a knife, whose blade was longer than 3 [inches], I forced my way into a gas station kiosk by forcing open the door and then entered against the attendant's will and forcibly took and removed money. I used physical force against the attendant to complete the robbery.

CP 48 (emphasis added).

In this statement, the defendant admits that he was armed with a knife when he committed the robbery. That is sufficient for Robbery in the First Degree. *See* RCW 9A.56.200(1)(a)(i). There was no reason for the defendant to include the information about the length of the blade of the knife unless it was to admit the deadly weapon enhancement. *See* RCW 9.94A.825.

c. The plea colloquy.

The Court informed the defendant that he was charged with “Robbery in the First Degree with a deadly weapon.” RP 07/12/2010 at 4.

The Court asked the defendant how he pleaded to the charge of “Robbery in the First Degree with a deadly weapon.” *Id.* at 6.

It would have been more complete for the Court to advise the defendant that he was charged with “Robbery in the First Degree with a deadly weapon enhancement.” But, apprising the defendant of every element of a crime or enhancement is not necessary; the trial court can also consider the written record. *Keene*, 95 Wn.2d at 207. Given that the defendant was charged in the Information with the enhancement, given that he checked the written guilty plea form acknowledging that he knew he was so charged, given that he admitted the facts for the enhancement, this is unimportant.

The trial court was satisfied that the defendant knew what he was doing and that his plea was knowing and voluntary. RP 07/12/2010 at 6. There is nothing in the Information, the defendant’s written guilty plea statement, or the plea colloquy which is inconsistent with the trial court’s conclusion.

d. The standard range was correct.

The defendant argues that while he acknowledged that he was pleading guilty to a deadly weapon enhancement, he was not aware that it provided for 24 months. Am. Br. Appellant at 9. First, with the unusual procedural history where the defendant went to trial, was convicted on all

counts and on the enhancement, was sentenced properly for Robbery in the First Degree, plus a 24-month enhancement, it is difficult to see how he would not have been aware of the enhancement after his convictions were reversed.

Second, *State v. Kinnaman*, 180 Wn.2d 197, 322 P.3d 1217 (2014), disposes of this argument. In *Kinnaman*, the defendant pleaded guilty to Eluding with an “Endangerment by eluding” enhancement. *Id.* at 199. He argued to the trial court that he should be allowed to withdraw his plea because he was told that this enhancement carried a 12-month sentence, although it actually called for an additional 12 months and one day. *Id.* The trial court denied the motion. *Id.* The Court of Appeals reversed the trial court. *Id.* at 199-200.

The Washington State Supreme Court reversed the Court of Appeals and held that the defendant was not allowed to withdraw his plea. *Id.* at 200. The Court noted that the trial court added 12 months and one day to the Eluding sentence. *Id.* Therefore, the trial court did not impose a sentence in excess of its statutory authority.

In this case, the defendant was informed of the correct standard range. RP 07/12/2010 at 4. Including the enhancement, it is 153-195 months. CP 42, 52; RP 07/12/2010 at 4. The defendant’s reliance on *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006), is misplaced because

Mr. Mendoza was advised of an incorrect standard range. The defendant herein would be allowed to withdraw his plea if the trial court misinformed the defendant of that range—but it did not.

B. There are two scrivener’s errors.

The defendant is correct that there is a scrivener’s error in section 2.1 of the Judgment and Sentence:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 07-08-08
by plea jury-verdict bench trial of:

CP 50.

The State will agree to change this to, “The defendant was found guilty on 7-8-08 by plea.”

The boilerplate language in section 2.5 of the Judgment and Sentence is also incorrect. CP 52. There was no consideration about the defendant’s ability to pay legal financial obligations (LFOs). The effect of this is discussed below.

The defendant states there is a scrivener’s error in “the failure to clearly indicate that 24 months of the 171-month sentence are the result of a deadly weapon sentence enhancement.” *See* Am. Br. Appellant at 12. The State is willing to listen to ways to improve on the language below from CP 54, but it appears to properly set out the sentence and the enhancement.

4.4 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>171</u>	Months on Count	<u>I</u>	_____	months on Count	_____
<u>87</u>	Months on Count	<u>II</u>	_____	months on Count	_____
<u>22</u>	Months on Count	<u>III</u>	_____	months on Count	_____

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

The confinement time on Count 1 includes 24 months as enhancement for firearm deadly weapon VUCSA in a protected zone manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 171 MONTHS

C. Any objection to legal financial obligations should be deemed waived.

Review the timeline of events:

- July 17, 2008: After a trial, the defendant is sentenced. The sentence includes \$1,243.14 in costs, victim assessment fine of \$500, and DNA fee of \$100. CP 6-15. No objection is made to these costs and fines. App. A.
- December 9, 2009: Mandate is received, reversing the conviction. CP 18-28. The defendant did not claim as error imposition of LFOs. CP 18-28.
- July 12, 2010: The defendant pleads guilty and is sentenced. Sentence again imposes LFOs. CP 50-58. The defendant did not object to the imposition of the LFOs. RP 07/12/2010.

- October 18, 2015: The defendant writes Motion to Enlarge Time to File Appeal. He does not mention any problem with the imposition of the LFOs.

Given that the defendant has never expressed any objection to the imposition of LFOs prior to filing his opening brief and personal restraint petition, and the sentence herein was imposed well before *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), this Court should decline to review the trial court's imposition of LFOs.

IV. PERSONAL RESTRAINT PETITION ARGUMENT

A. The defendant was not denied effective assistance of counsel.

As shown above, the defendant initialed a section of the Statement on Plea of Guilty that he knew he was charged with a deadly weapon enhancement. CP 47. He knew that this enhancement would be served in total confinement. He stated facts in his written plea that would only be applicable for a deadly weapon enhancement. CP 48. He knew he was previously convicted of the deadly weapon enhancement. He knew that he received a 24-month enhancement on the Robbery charge. He knew that there was no amendment of that charge. It is simply unreasonable to believe that the defendant was taken by surprise by the fact that he was found guilty of a deadly weapon enhancement.

On this point, please see the *Declaration of Defendant's Attorney, Larry Zeigler*, his defense attorney. App. B.

In any event, the defendant's argument would fail pursuant to *State v. Conley*, 121 Wn. App. 280, 87 P.3d 1221 (2004). In that case, the defense attorney admitted that he misinformed the defendant about how much earned early release time an inmate would receive on a deadly weapon enhancement. 121 Wn. App. 285. The defendant claimed that he would not have pleaded guilty if he was correctly advised. *Id.* at 283.

The Court found that the defense attorney performance was below acceptable standards but that the defendant failed to show that the misinformation materially affected his decision to plead guilty. *Id.* at 287-88. The defendant's self-serving statement about earned early release credits is generally not sufficient alone to sustain the burden of proof as to prejudice. *Id.* at 287. The defendant's statement "must be corroborated independently by objective evidence, if possible." *Id.*

Here, after the convictions were reversed, the State reduced its recommendation by two years to induce the defendant to plead guilty. RP 07/12/2010 at 9-10. Also, the State could have asked that the three counts be served consecutively under the "free crimes" aggravating factor, RCW 9.94A.535(2)(c); by requesting that the Burglary in the First Degree and Theft in the Second Degree be concurrent with the Robbery in the First

Degree charge, the State basically requested that he receive no punishment for either of those two felonies.

B. Any objection to legal financial obligations should be deemed waived.

Please see subsection C under Appeal Argument above.

V. CONCLUSION

The defendant knew he was charged with a Deadly Weapon enhancement. The defendant's convictions were reversed, but he would have been aware of the previous jury verdict on the Deadly Weapon enhancement, and the previous Judgment and Sentence imposing an additional two years for that enhancement.

The defendant pleaded guilty after the convictions were reversed and initialed in his written guilty plea statement that he was also pleading guilty to a Deadly Weapon enhancement. The defendant included in his guilty plea a statement that made him guilty of the enhancement. The plea colloquy included questions from the trial court asking if the defendant was pleading guilty to Robbery in the First Degree with a Deadly Weapon.

The trial court advised the defendant of the correct standard range and the defendant acknowledged that the Deadly Weapon enhancement would run consecutively and must be served in total confinement.

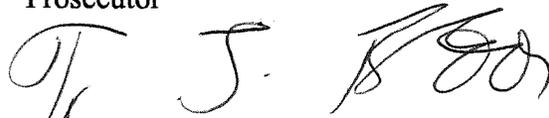
The State will agree to amend the Judgment and Sentence to reflect that the defendant pleaded guilty and did not go to trial.

Regarding the LFOs, the defendant did not in his previous appeal raise an issue about legal financial obligations. Nor did he raise that issue in his initial correspondence with this Court. The Court should decline to hear his objection to legal financial obligations at this point.

Finally, regarding the PRP, the defendant's self-serving statement is not supported by the record, which shows that he initialed in his written plea that he knew he was pleading guilty to a Deadly Weapon enhancement and knew that his time on that would be served in total confinement. He also received a very good offer from the State, a reduction from his original sentence by two years. He has not sustained his burden to prove his attorney's performance fell below reasonable standards or that he would not have pleaded guilty in any event.

RESPECTFULLY SUBMITTED this 13th day of July, 2016.

ANDY MILLER
Prosecutor



Terry J Bloor, Deputy
Prosecuting Attorney
Bar No. 9044
OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

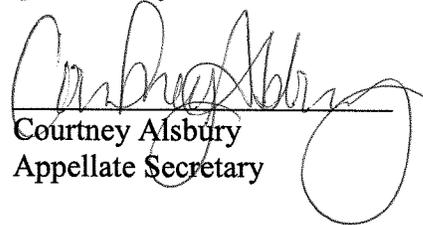
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Prepaid

Signed at Kennewick, Washington on July 13, 2016.


Courtney Alsbury
Appellate Secretary

APPENDICES

APPENDIX A - Verbatim Report of Proceedings July 17, 2008

Appendix B – Declaration of Defendant's Attorney, Larry
Zeigler

APPENDIX A

Verbatim Report of Proceedings July 17, 2008

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF BENTON

COPY

8 STATE OF WASHINGTON,) COA# 273091
9 Plaintiff,) BC# 08-1-00421-3
10 v.) VERBATIM REPORT
11 JUSTIN WILLIAM HOYT,) OF PROCEEDINGS
12 Defendant.) JULY 17, 2008

13 Proceedings before the HONORABLE CARRIE L. RUNGE,
14 Benton County Superior Court, Kennewick, Washington

15 APPEARANCES:

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Richland, Washington 99352

22
23
24 REPORTED BY: Patricia L. Adams, Official Court Reporter,
25 Benton-Franklin Counties Superior Court

1 July 17, 2008

2 Kennewick, Washington

3
4 P-R-O-C-E-E-D-I-N-G-S

5
6 (WHEREUPON, court convened at 9:05 AM, proceedings were had as
7 follows:)

8
9 MR. JOHNSON: Good morning, Your Honor. Sorry to
10 keep you waiting, I was in a hearing next door. Mr. Miller was
11 in the same courtroom.

12 The three Counts are set forth on pages three and four.
13 The bottom of page three is Count One, the first degree robbery
14 conviction. The standard range on that is 129 to 171 months.
15 There is a 24-month enhancement, so it gives the Court a 153 to
16 195 month range on that count.

17 Count Two is a Burglary in the First Degree Count. That
18 carries the 87 to 116 month sentence. And then, finally, Count
19 Three is the theft count, which is 22 to 29 months.

20 There are the normal fines, costs and fees as set forth in
21 the Judgment and Sentence. There is community placement in
22 section 4.5, and we did hand up a no contact order.

23 Your Honor heard the trial, so I'm not gonna go on at much
24 length. The sad part of this is I think away from the drugs,
25 Mr. Hoyt -- He is a likable fellow. He has been affable and

1 respectful in court.

2 But that said, I wasn't at the business end of the knife at
3 the Safeway. And, clearly, that scared to death the victim in
4 the case -- for understandable reasons. I don't think that Mr.
5 Hoyt was going to use the knife on the victim, but that doesn't
6 change the fact that it was pulled and, again, scared that man
7 to death.

8 The other problem, Mr. Hoyt has amassed a criminal history
9 that's really, really bad. And that's an understatement. He's
10 got twelve priors, including a couple of kidnapping charges.
11 And he also has to face some additional robbery charges in
12 Oregon, once this sentence is completed. So he's got a long
13 haul in front of him. His history has caught up with him.

14 The State is gonna ask the Court to impose 195 months,
15 which is the top of the range on Count One. Everything else
16 runs concurrent, so I would just defer to the Court on Counts
17 Two and Three. It's not gonna make a whole lot of difference.
18 But I think with the criminal history and the potentially
19 violent nature of this offense, that it probably does warrant
20 the 195 months. So that's what the State would ask the Court to
21 give.

22 THE COURT: Thank you. Mr. Swaby.

23 MR. SWABY: Your Honor, I ask the Court to take a
24 look at page three, and the prior history in particular. When
25 we talk about prior history, we're talking about in relation to

1 what we expect to be future behavior. And if the Court looks,
2 you see that most of these charges can be grouped together. 11
3 and 12 appear to have occurred at the same time. 8, 9 and 10
4 appear to have occurred at the same time. 3 through 7 appear to
5 have occurred at the same time.

6 What we would probably have called crime sprees. And note
7 that they are twelve years old. Clearly, my client was a young
8 person who went on several crime sprees. Not separated by much
9 time.

10 That gives him this criminal history. And we're not trying
11 to walk away from it, we're trying to put it in perspective.
12 When you talk about his adult behavior, I mean after having
13 become what we would typically consider to be an adult, he's got
14 the two charges which are drug charges from 2002 and 2003. And
15 then it appears that he goes a number of years before he comes
16 into contact with the criminal justice system again.

17 I'm not trying to diminish what's happened before, but I
18 want to put it in perspective because even 153 months is a great
19 deal of time out of somebody's life. 153 months is a signifi-
20 cant punishment for Mr. Hoyt, who is a father, who is recently
21 married. Who has been fighting, albeit a losing battle --
22 fighting a battle with his addiction.

23 I'm a little familiar with the Oregon cases because I know
24 his Oregon lawyer, who is actually a neighbor of mine. So I
25 know something about those cases and I know he faces some

1 serious charges there, as well.

2 I've talked to Mr. Hoyt on a number of occasions in
3 preparing for this case and I've found him to be remarkably
4 circumspect about what he has done, the things that he has done
5 that have brought him to this point. And we went to trial in
6 part, Your Honor, because there wasn't a viable resolution for
7 either side short of trial. So trial seemed to be the best
8 place to try to resolve these issues.

9 But it wasn't that my client was in any way trying to be
10 disrespectful to the Court or put on some sort of sham. I
11 mean, we had some sense on how this would probably work out.

12 I don't believe my client is irredeemable. Some defendants
13 are. Some defendants are just a release date away from going
14 back and doing what it was they've done before -- time and
15 again. I don't think that that's Mr. Hoyt. I'm not saying that
16 he's gonna become a lawyer one day or a doctor or somehow
17 provide a cure for cancer, but I do think he has the ability to
18 be a law-abiding, respectful person. I think he can be
19 employed, pay taxes, raise his children. I think he has all of
20 those -- I think he has that capacity. And in 153 months, he
21 gets out, chastened, older -- and statistics suggest that people
22 who are older, people who are middle age, just are less likely
23 to be committing crimes than those who are younger. And at 153
24 months, I think that puts my client out someplace in his 40's.

25 I don't ask that lightly because I know you heard the

1 evidence, and I can only imagine what it would have been like to
2 be Mr. Coronado. I've worked retail. I put myself through law
3 school working retail. I remember a time or two when somebody
4 came into the store late at night looking kind of hinkey and
5 being sort are scared. So I can only imagine if someone might
6 have done something.

7 But he had a knife and he could have used it in a
8 threatening way. He could have actually taken this a step
9 further. And he didn't. He didn't physically harm Mr. Coronado
10 and he didn't attempt to. And it's clear that the behavior was
11 behavior driven by drug addiction. This is something -- And,
12 again, that's not to excuse it, but to explain it. He didn't
13 come in with an evil heart. He's coming in, stealing what he
14 has to know can't be a significant amount of money. He leaves
15 with three hundred and some change.

16 I think this Court can send a message to Mr. Hoyt, can
17 honor what happened to Mr. Coronado, can protect the community,
18 and not give my client the maximum.

19 I'm gonna ask for 153 months on Count One and that the
20 others be run concurrent.

21 THE COURT: Thank you. Mr. Hoyt, sir, you have
22 the opportunity to address me before I impose sentence, if there
23 is anything that you would like to say.

24 DEFENDANT HOYT: There is a couple things, Your
25 Honor. Umm, first of all, I had this big thing about how I

1 hated Mr. Johnson and how he was out to get me. But he stole
2 all that from me --

3 THE COURT: You can sit, if you would like.

4 DEFENDANT HOYT: Anyway, I didn't expect any kind
5 words from him. Anyway, I want to apologize to the State of
6 Washington. If Mr. Coronado was here, I would apologize to him,
7 too.

8 I don't want to, umm, play the poor me role or that I'm the
9 victim, but there is a couple things in my life I would like the
10 Court to know. I've been under custody of the State since I was
11 about six months old. Lived in foster homes until I was four.

12 And I was abused in every way you could think of until the age
13 of four. And then I finally got adopted at the age of four. And
14 then, that stable household with good people broke up when I was
15 ten. So I was kicked back into the State custody at the age of
16 ten.

17 There is a couple points, now that I'm on a roll here, that
18 I want to tell the Court and then I have a little written thing.

19 I'm a good person when I'm not on drugs. I care about my
20 wife and my kids. And that's why it makes it so hard that I've
21 made decisions in my life to take me from them. And I wouldn't
22 have made those decisions if I wasn't on drugs.

23 I agree with Mr. Johnson that I need a good amount of time
24 in prison. I'm not trying to skirt from my responsibilities or
25 from the consequences of my responsibilities, but 191 months --

1 or 195 months is -- My son will be all grown. And he's not
2 even born yet.

3 I want to have some chance -- I'm not asking for another
4 chance. I've never had intense mental health evaluation and
5 treatment. I've never had intense alcohol and drug treatment.
6 I'm not asking for another chance, I'm just asking for the Court
7 to give me a chance, period.

8 And if you want to sentence me to 195 months, please maybe
9 suspend some of that time until I get off parole, so I can prove
10 to the Court that I'm not just up here, umm, selling crap to
11 you. I mean just, umm, I just want to, umm -- I'm not --

12 If you give me the max sentence, I really only ask that you
13 suspend some of that time that until I get off parole, so I can
14 prove to you that I really mean what I say today. That's all.

15 And, please, if there is any kind of treatment you can make
16 them give me or put in the sentencing or -- or give me a
17 halfway house or any -- any alternative sentencing to the max.
18 I'll sign up for a three-year treatment program or something and
19 live in -- You know what I'm saying? Because that's what I
20 need.

21 I've got six and a half years in prison in Oregon, when I
22 was 18 or 19 years old, and so I went from foster homes straight
23 to prison. And that's where I learned to be a man. And that's
24 not the place to learn to be a man.

25 I've never had a real job in my life. I've never had a

1 driver's license. Never registered to vote. You know what I'm
2 saying? I don't have the normal living skills that most people
3 have because I've never lived in a normal situation. I didn't
4 know how to act when I got married. I didn't know how to act
5 when I got kids because I don't -- I've never been in a real
6 home long enough to get those kinds of skills.

7 And, umm, so I'm gonna read a little speech I wrote. It's
8 going over the stuff I've already said a little bit, but --

9 It says Romans 7:15, "The good that I will to do, I do not
10 do. The evil I will not do, that I practice. Now if I do what
11 I will not do, it is no longer I who do it, but someone that
12 dwells in me."

13 That scripture out of the Bible is how, when I get on meth,
14 that's how -- I don't will to do the evil, but just sometimes I
15 can't help it because I'm on drugs.

16 Umm, I'm a good person when I'm not on meth. I have a wife
17 a son and one on the way, who I deeply care for and love. It is
18 so painful for me that I chose to do the things that would put
19 me in a position that would keep me from them. I would not make
20 those kinds of decisions if I was not under the influence of
21 meth. I am another person when I am high. I never really
22 realized that until recently. I'm not asking for another
23 chance. I'm asking for a chance, period. I have never been
24 through a mental health evaluation of any or any intensive
25 treatment. I need help with my many issues. I have been

1 through a lot in my life. Some of my issues manifest in a
2 hateful or violent manner when I use drugs.

3 I was taken away from my biological parents when I was six
4 months old. I was abused by my foster parents until I was four.
5 At that age of four, I was finally adopted. That stable house-
6 hold ended when I was ten. I was, at that point, kicked back
7 into the foster homes and group homes because my adopted parents
8 got a divorce and neither parent possessed the skills -- the
9 tools to deal with an angry child that had serious issues with
10 authority.

11 This is just a brief and incomplete run down of my problems
12 in my life. I do not want to play the poor me card. All I want
13 is a chance at being a productive citizen of society. You have
14 the power to make sure that this is in the realm of possibility.

15 No matter your decision on the length of my prison
16 sentence, I implore you to make sure there is an order from
17 mental health and drug treatment. I do not care how long or
18 intense it is. If you would suspend some of the sentence until
19 I can complete parole, I will not let you down or make you look
20 stupid for making that decision.

21 Ephesians 4:31 says, "Get rid of bitterness, rage and
22 anger. Clammer and evil speaking be put away from you with all
23 malice. And be kind to one another, tender hearted, and forgive
24 one another even as God in Christ forgave you."

25 That's all, Your Honor.

1 THE COURT: Thank you, Mr. Hoyt. Mr. Hoyt, it
2 looks, sir, when I look at your criminal history, that
3 essentially your entire adult life has been filled with crime.

4 DEFENDANT HOYT: Except the last five years,
5 Ma'am. I'm sorry.

6 THE COURT: When did you start using methamphet-
7 amine?

8 DEFENDANT HOYT: At the age of thirteen, Ma'am.

9 THE COURT: Have you ever sought any treatment
10 for that?

11 DEFENDANT HOYT: Nobody has ever gave me -- No,
12 I haven't.

13 THE COURT: For twenty years, you've been using
14 methamphetamine?

15 DEFENDANT HOYT: (Nods head up and down).

16 THE COURT: And as I understand, you're now 33?

17 DEFENDANT HOYT: 32, Ma'am.

18 THE COURT: How old is your oldest child?

19 DEFENDANT HOYT: One year old in a couple
20 months.

21 THE COURT: And you have another one on the way?

22 DEFENDANT HOYT: Yes, Ma'am.

23 THE COURT: How long have you been married?

24 DEFENDANT HOYT: A year, Ma'am.

25 THE COURT: Mr. Hoyt, what you say and what

1 you've told me about your history is, frankly, appalling. I
2 know you say you're not trying to play the woe is me or the
3 victim card, but that is appalling to hear about your circum-
4 stances. I'm sorry for that. Of course, there is nothing that
5 I can do to change that history.

6 On the other hand, I also have to, of course, weigh what is
7 justice in your particular case. And I have to look at this
8 history. And this history is really horrendous. And this
9 history is your entire adult life. Looks like in '94 was your
10 first crime, so to speak. Of course, I don't know what your
11 juvenile history was, and that's not really relevant and before
12 me at this point, but your entire adult life has been marked by
13 crime.

14 And I recognize that you say the last five years that you
15 have been crime-free. I wonder to myself, what does that mean?
16 Does that mean that you truly have been crime free? Or does it
17 mean that you just haven't been caught? I don't know. And,
18 again, I don't expect you to answer. But the history, itself,
19 and that which marks your entire adult life, I have to ask
20 myself how can Mr. Hoyt assure me that by giving him a break
21 that he is going to change.

22 I'm certain that Mr. Swaby, being as good of a lawyer as he
23 is, has told you that here in Washington we are limited in what
24 we can do as far as sentences. I can't suspend any of this
25 time. That's not within my power. Our State has set out a

1 sentencing guideline and I'm limited. There is really only very
2 few instances where I can go up or below a given sentence. So
3 it's not within my power to suspend the time. It's not within
4 my power to be able to order you to drug treatment under these
5 circumstances. I would dearly love to do that. I would love to
6 give you the help that it appears you so desperately need.

7 I can't tell, from the sentence, whether you've ever asked
8 for that help before and whether it was available to you. Of
9 course, I have to look at that history. And for some reason,
10 while Mr. Swaby is right and these appear to be crime sprees --
11 and I don't know how long you might have spent in prison in
12 Oregon for those crime sprees that occurred in '95 and '96,
13 before the next 2002 conviction.

14 But, of course, you have to know that I look at this top
15 paper and I think, what can we possibly do? Because I've got to
16 also weigh the societal interests of being protected from people
17 such as yourself that commit, frankly, horrendous crimes.

18 And this particular crime, really, I can't say anything
19 more other than it was horrendous. I can't imagine being Mr.
20 Coronado. I really can't. I've never had that happen to me. I
21 don't want it to happen to me.

22 Mr. Swaby talked about working in retail and how he had
23 concerns about a couple of people. And while no one believes
24 that you were going to use that knife, I have to ask myself --
25 what you said is you just can't help yourself when you're on

1 drugs. Would you even know what you are actually and truly
2 capable of while on drugs? I think that's what scares society
3 about meth is how it really impacts and affects one's brain, and
4 that no one can truly know what someone is capable of while on
5 methamphetamine. I think that's the scourge of it is the
6 unpredictable nature that it can bring out in people. Even
7 someone, as Mr. Johnson says, who has been respectful and even
8 affable, likable in the horrendous type of situation.

9 What happens to you when you are under the influence? What
10 would it have taken for you to use that knife? I don't think
11 any of us can truly answer that. I guess we're all thankful
12 that you're not before this Court on a murder charge because you
13 chose to use that knife. I mean, the bottom line is you had the
14 knife with you and you certainly, clearly, displayed it to Mr.
15 Coronado and he was scared -- and justifiably so.

16 So, those are the competing interests that I deal with, Mr.
17 Hoyt. And they're not easy interests at all.

18 Sir, based on the jury verdicts, the Court finds that you
19 are guilty of the crimes of Robbery in the First Degree,
20 burglary in the First Degree, and Theft in the Second Degree.

21 The other thing that I think of in weighing this sentence
22 is you've got a family. You've got a wife. You've got a one-
23 year old. And you've got one on the way. What could have ever
24 possessed you to go out and commit these horrendous crimes?

25 Because it wasn't just one crime, it was two different

1 locations. And while the second one was a theft, apparently it
2 was a theft to continue drug use. You certainly don't want your
3 children leading that lifestyle, Mr. Hoyt.

4 DEFENDANT HOYT: (Shakes head from side to
5 side).

6 THE COURT: That weighs heavily on me because,
7 as you say, your children will be virtually grown by the time
8 you are released, and they need their dad. But I can't change
9 the sentence that you're looking at.

10 Sir, based on the history as set out on page three, Count
11 One carries a standard sentencing range of 129 months to 171
12 months. And the enhancement raises it to 153 to 195 months.
13 I'm going to impose the 195 months on Count One, 116 months on
14 Count Two, 29 months on Count Three, all to run concurrent with
15 each other, for a total sentence of 195 months.

16 There is community placement or community custody on Counts
17 One and Two for a term of 18 to 36 months. You need to abide by
18 the terms and conditions outlined by your community Corrections
19 Officer.

20 There is restitution. A \$500 crime victim assessment.
21 \$100 felony DNA collection fee. Court costs and attorney's fees
22 will be added.

23 I'm signing your Judgment and Sentence, as well as the no
24 contact order, sir, which prohibits you from having contact with
25 Mr. Coronado or the Safeway store.

1 Sir, because this was a verdict, a jury verdict, you do, of
2 course, have the right to appeal. If you do choose to appeal,
3 you must file your Notice of Appeal within 30 days of today's
4 date. You also would have the right to be represented by
5 counsel. And if you could not afford counsel then, of course,
6 the Court would appoint someone to represent you at no cost to
7 you. You would also have the right to transcripts being
8 provided to you at no cost to you.

9 I've signed your Judgment and Sentence, as well as the no
10 contact order, sir. We'll need to get your signature and
11 fingerprints.

12 In imposing that sentence, I do not mean to say in any way
13 that you are not salvageable or that I have given up on you, but
14 I am weighing society's interest in protection.

15 MR. SWABY: Notice of Appeal will be filed in the
16 morning.

17 THE COURT: Thank you.
18 (WHEREUPON, proceedings in this matter concluded, court
19 adjourned at 9:35 AM, end of requested transcript).

20 -----
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

STATE OF WASHINGTON)

: SS.

COUNTY OF BENTON)

I, Patricia L. Adams, Official Court Reporter, do hereby certify that I was present and reported in Stenotypy the proceedings had in the above-entitled cause; and

That said Stenotype notes have been reduced to typewritten form by me, with the attached pages representing a true and correct transcription; and

That I am certified to report Superior Court Proceedings in the State of Washington;

WHEREUPON, I have affixed my official signature this 27th day of October, 2008.

PLA
PATRICIA L. ADAMS

Official Court Reporter

Benton-Franklin Counties

Superior Court

///

APPENDIX B

Declaration of Defendant's Attorney, Larry
Zeigler

IN THE COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

RECEIVED
JUL 13 2016
BENTON COUNTY PROSECUTOR

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN WILLIAM HOYT,

Defendant.

COURT OF APPEALS NO.

338541

BENTON COUNTY NO.

08-1-00421-3

DECLARATION OF
DEFENDANT'S ATTORNEY,
LARRY ZEIGLER

I, Larry W. Zeigler, state under penalty of perjury the following:

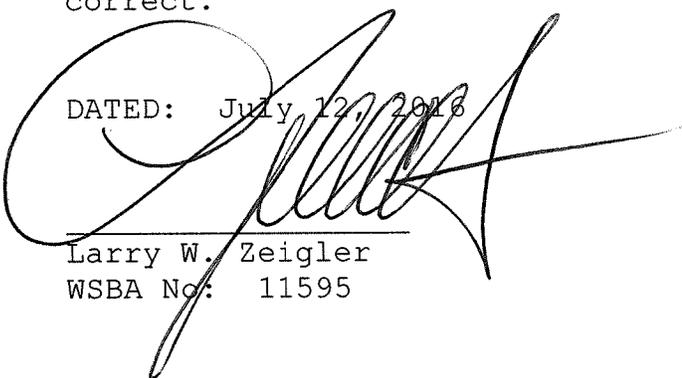
1. I have been an attorney since 1981 and spent a significant amount of my practice defending indigent citizens accused of felonies in the Benton County Superior Court.
2. I remember Mr. Hoyt. I have reviewed the Statement on Plea of Guilty and Judgment and Sentence. I do remember discussing the charges with him, including a Deadly Weapon enhancement associated with Count I, Robbery in the First Degree.
3. I told Mr. Hoyt the possible sentence, should he plead guilty and the State's recommendation. I told him that the charges included the Deadly Weapon enhancement and the consequences of pleading guilty to that enhancement. I discussed this with him in the context of his substantial criminal history and potential sentencing consequences should he proceed to trial as charged and be convicted.

4. Mr. Hoyt made the choice to plead guilty, given the State's offer. We completed the Statement on Plea of Guilty. I informed him again that he was charged with Robbery in the First Degree with a Deadly Weapon enhancement. Mr. Hoyt initialed a box on the Plea form acknowledging this. I drafted the language in the plea for him regarding the enhancement ("while armed with a knife whose blade was longer than 3 inches") and went over it with him and had him initial same. All of the initialing on the plea form is Mr. Hoyt's.

5. Mr. Hoyt's claim that I did not inform him that he was pleading guilty to a Deadly Weapon enhancement which carried a two year consecutive sentence is incorrect.

I state under penalty of perjury that the above is true and correct.

DATED: July 12, 2016



Larry W. Zeigler
WSBA No: 11595