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COA No. 24027-4-III  
COA No. 24289-7-III

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**FILED**  
SEP 18 2006  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

No. 79127-9

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN SHANNON CODIGA,

Appellant.

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PETITION FOR REVIEW

RESPONDENT'S BRIEF

*Answer to PW*

Respectfully submitted:  
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## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the conviction of the Appellant.

## **III. ISSUES**

1. Where the plea statement informs the defendant of the nature of the charges and the consequences of the plea, the defendant signs the statement affirming that he has read every paragraph of the statement, and the defendant informs the court that he has read the plea statement thoroughly and has no further questions for his counsel or the court, is there any merit to the claim that the plea statement must be read aloud and the defendant quizzed on the definition of legal terms already defined in that statement in order to satisfy the requirements of CrR 4.2?
2. Where the defendant affirmed that he had thoroughly read the statement, where the statement informs that the discovery of

additional crimes resulting in an increased standard sentencing range will not be a valid basis to withdraw the plea, and when additional crimes are discovered resulting in an extra point in the offender score, may the defendant seeking to void his contract with the state credibly claim that he was unaware of the consequences of the plea contrary to earlier representations?

#### **IV. STATEMENT OF THE CASE**

On April 12, 2004, the Appellant John Shannon Codiga was charged with five counts of child molestation in the first degree in connection with two victims. CP 1-2.

The two victims reported that their “uncle” Mr. Codiga licked their vaginas on multiple occasions. CP 4, 17-18. Mr. Codiga confessed to police that he had sexual contact with the six year old on three occasions and with the nine year old on two occasions. CP 5, 18.

On November 30, 2004, after the court found the statements of the Defendant and child victims admissible (CP 70-77), Mr. Codiga pled guilty to three counts of first degree child molestation. CP 6-16. The prosecutor explained that the State was willing to dismiss two of the counts in exchange

for the plea in order to spare the children the trauma of testifying, to avoid an appeal, and to hasten closure for the victims. RP November 30, 2004 at 6-7. One of the victim's representatives explained that the "plea bargain was made [] to save the courts money and to ensure that no mistakes may take place that would possibly let him go free." RP February 8, 2005 at 25. In his plea, Mr. Codiga stipulated to the probable cause statement. CP 14.

The Defendant's criminal history known to the prosecutor at the time of plea was a single count of manufacturing marijuana by complicity. CP 9.

MR. KNODELL: ... Mr. Codiga has one prior -- we believe one prior felony out of this court in '97, it's a B felony, so we believe that he has one point. There may be another Class C felony that predates that by one year, but that one we believe would wash out.

MR. EARL: That's correct.

MR. KNODELL: So that is not included on the statement. With that, your Honor, there is an offender score of seven. He's very close to the top end of the range. It's 108 to 144 months.

RP November 30, 2004 at 4-5.

The Defendant's plea statement explains that:

... 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 upon 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.

CP 9.

The court informed Mr. Codiga that the hearing involved counts one, two, and four -- all counts of first degree child molestation. RP November 30, 2004 at 11. The court ascertained that Mr. Codiga read the plea statement carefully before signing and had a full opportunity to discuss the plea with his attorney. RP November 30, 2004 at 11. The court reviewed the various rights Mr. Codiga was giving up by pleading guilty. RP November 30, 2004 at 12-13. Mr. Codiga stated that he did not need any more time to consult with his counsel or have any questions for the court. RP November 30, 2004 at 13-14. And the court assured itself that the plea was voluntary. RP November 30, 2004 at 10-11, 13-15.

The Defendant signed the plea statement directly under the following language:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A." I understand them all. I have been given a copy of the "Statement of Defendant on Plea of Guilty." I have no further questions to

ask of the judge.

CP 14.

After inquiring of the Defendant, the judge indicated that:

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant had previously read the entire statement above and that the defendant understood it in full.

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

CP 14-15.

The Presentence Investigation revealed that the class C felony conviction (attempting to elude) was followed by a long history of misdemeanor convictions. CP 20-25. Because of the intervening crimes, the eluding crime did not wash out, but resulted in an offender score of 8. CP 25, 44-45.

The prosecutor asked defense counsel if he agreed with the criminal history as set forth in the Presentence Investigation. RP February 8, 2005 at 14-15. Counsel answered that the Defendant did not deny the conviction, but had originally believed it washed out. RP February 8, 2005 at 15. The court explained that due to Mr. Codiga's continuous criminal history, there was no

wash-out. RP February 8, 2005 at 15-17.

## V. ARGUMENT

The Petition for Review is identical to the Appellant's Brief except for a few additional paragraphs. A paragraph describing the Court of Appeals' decision is added at the end of the Statement of the Case. A paragraph is added at the beginning of the argument alleging, but not explaining, that the Appellant believes review to be proper under RAP 13.4(b). And two and a half paragraphs are added to the very end of the last argument claiming that there was a mutual mistake rather than the discovery of the misdemeanor. Because the factual claim which is added to this petition is simply incorrect, there is no ground for review.

Rather than repeat the entire brief as the Petitioner has done here, the State relies on the argument in its Response to the Appellant's Brief and responds to the elaborated claim that there was a mutual mistake rather than the discovery of a new crime.

THE PLEA WAS MADE VOLUNTARILY WITH THE UNDERSTANDING THAT THE DISCOVERY OF ADDITIONAL CRIMINAL HISTORY COULD CHANGE THE OFFENDER SCORE AND BE BINDING ON THE DEFENDANT.

The Petitioner argued on appeal that his plea was not voluntary because he expected an offender score of seven. At the time of the plea hearing, the parties had investigated Mr. Codiga's Washington felony history. They were aware that Mr. Codiga had a class C felony from 1996. Such a crime would "wash out" if there were no intervening crimes. Seeing no *felony* conviction in the five years after the felony eluding conviction, the parties assumed this crime would wash out. However, this did not preclude the possibility of an intervening misdemeanor conviction.

In fact, the state discovered multiple misdemeanor convictions. In December 2002, Mr. Codiga was sentenced on a DUI to 365 days of confinement with 360 days suspended, on DWLS-1 to 365 days with 355 suspended, and on DWLS-3 to 90 days with 89 suspended. CP 21. While the misdemeanors would not individually count in the offender score, they had the effect of preventing the "wash out."

In reading and signing his plea, Mr. Codiga knew and agreed that additional criminal history (not just felony history) could affect his offender score and be binding on him.

[I]f 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 upon 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.

CP 9. This is what happened. Accordingly, the plea was voluntary.

The Petitioner argues that "both parties were aware of the prior conviction, but were mistaken as to its effect on the offender score." Petition for Review at 12. Both parties were aware of the prior felony. But they were unaware of the misdemeanors. The parties were mistaken as to the *effect* of the felony, because its effect was dependent on the existence or non-existence of *additional intervening criminal history*.

The Appellant claims that his case is similar to that in State v. Walsh, 143 Wn.2d 1, 17 P.3d 591 (2001), and that the Court of Appeals' decision represents a conflict. He is wrong. Walsh is eminently distinguishable.

In Walsh, the parties mistakenly agreed that the prior conviction for vehicular assault was worth one point. It was worth two. No additional criminal history was discovered. Walsh pled guilty to second degree rape, a violent offense. RCW 9.94A.030(45). When the present offense is a violent

offense, prior felony convictions receive two points. RCW 9.94A.525(8). The mistake was a legal error, not the result of the discovery of additional criminal history.

In the instant matter, additional criminal history *was* discovered. This possibility is specifically discussed in the plea statement and Mr. Codiga specifically agreed that the discovery of additional crimes could not be a reason for him to withdraw his plea.

This appeal asks that the Appellant be permitted to break his contract with the State. This must not be allowed. The Appellant affirmatively, knowingly, and voluntarily accepted this provision and it is binding on him.

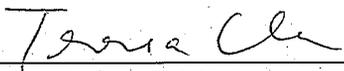
## **VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court deny the petition.

DATED: Sept. 14, 2006.

Respectfully submitted:

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\_\_\_\_\_  
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