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**FILED**  
AUG 29 2006  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court No. \_\_\_\_\_  
Court of Appeals No. 24027-4-III  
Consolidated with 24289-7-III  
In re John Shannon Codiga

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AUG 24 2006

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

In the Office of the Clerk of Court  
Washington Court of Appeals, Division Three  
By \_\_\_\_\_

STATE OF WASHINGTON,

Respondent,

vs.

JOHN SHANNON CODIGA

Defendant/Petitioner.

PETITION FOR REVIEW

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**I. IDENTITY OF PETITIONER.**

Petitioner, John Shannon Codiga, asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part II of this petition.

**II. COURT OF APPEALS DECISION.**

The Petitioner seeks review of the Court of Appeals decision filed June 27, 2006, which affirmed his conviction. A copy of the Court's unpublished opinion is attached as Appendix A. A copy of the Court's Order Denying Motion for Reconsideration, filed August 17, 2006, is attached as Appendix B. This petition for review is timely.

**III. ISSUES PRESENTED FOR REVIEW.**

1. Did the trial court violate Mr. Codiga's right to due process when it accepted his plea without determining that he understood the nature of the charges and the law in relation to the facts of those charges?
2. Did the trial court violate Mr. Codiga's right to due process when it accepted his plea without adequately informing him of the consequences of the plea?
3. Was the guilty plea involuntary based upon the mutual mistake about the standard range?

**IV. STATEMENT OF THE CASE.**

Mr. Codiga pled guilty to three counts of first-degree child molestation in exchange for having two counts dismissed. (11/30 RP 2)  
The prosecutor informed the trial court that Mr. Codiga had one prior

Class B felony that would count one point toward his offender score, and one prior Class C felony that “we believe would wash out,” resulting in an offender score of seven, and a standard range of 108-144 months. (11/30 RP 4-5)

The trial court found Mr. Codiga’s plea to be knowing, intelligent, and voluntary. (11/30 RP 14-15) However, the court did not inform Mr. Codiga or ask him if he understood or agreed with his criminal history, his offender score, his standard range, the statutory maximum, and the period of community supervision. The court also failed to inform Mr. Codiga that should the court find additional criminal history, his standard range would increase but his plea would still be binding. (11/30 RP 10-15)

The trial court also found there was a factual basis for the plea based on Mr. Codiga’s adoption of the probable cause statement and his stipulation that there was a sufficient factual basis in the probable cause statement to support his plea. (11/30 RP 14-15)

At the sentencing hearing, the prosecutor noted that the Presentence Investigation Report counted the prior Class C felony, for which Mr. Codiga received a six month sentence and 12 months community supervision in August 1997. This resulted in an offender score of 8 with a standard range of 129-171 months. Mr. Codiga argued that the

prior Class C felony washed out, but the court found misdemeanor convictions in 2001 and 2002 tolled the washout period. (2/8 RP 14-16)

The court imposed a minimum term sentence of 150 months. (2/8 RP 36-37) Mr. Codiga later filed a motion to withdraw his guilty plea based on the discrepancy in his offender score between the guilty plea and sentencing hearings. The trial court transferred this motion to the court of appeals as a personal restraint petition pursuant to CrR 7.8(c)(2). (6/9 RP 3-9) The PRP was consolidated with the direct appeal.

The Court of Appeals distinguished the Washington Supreme Court's holding in State v. Walsh, 143 Wn.2d 1, 17 P.3d 591(2001) by categorizing the mistake regarding the washout of a prior conviction in Mr. Codiga's case as "the discovery of additional criminal history." (Slip Opinion p. 8) The Court reasoned that since Mr. Codiga was aware his sentence could increase with the discovery of additional criminal history, his plea was voluntary. Id.

**V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.**

The considerations which govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes this Court should accept review of these issues because the decision of the Court of Appeals is in conflict with other decisions of this court, the U.S. Supreme Court and the

Court of Appeals (RAP 13.4(b)(1) and (2)), and involves a significant question of law under the Constitution of the United States and state constitution (RAP 13.4(b)(3)), and involves issues of substantial public interest that should be determined by the Supreme Court (RAP 13.4(b)(4)).

**Issue No. 1. The trial court violated Mr. Codiga's right to due process when it accepted his plea without determining that he understood the nature of the charges and the law in relation to the facts of those charges.**

Under CrR 4.2(d) the court "shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." State v. Walsh, 143 Wn.2d 1, 5-6, 17 P.3d 591 (2001); State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980). "[F]ailure to comply fully with CrR 4.2 requires that the defendant's guilty plea be set aside and his case remanded so that he may plead anew." State v. S.M., 100 Wn.App. 401, 413, 996 P.2d 1111, (2000) (*citing* Wood v. Morris, 87 Wn.2d 501, 511, 554 P.2d 1032 (1976)).

When a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption

that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). But a guilty plea is not truly voluntary " 'unless the defendant possesses an understanding of the law in relation to the facts.' " In re PRP of Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1981) (quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)).

The judge must determine " 'that the conduct which the defendant admits constitutes the offense charged in the indictment or information.' " Keene, 95 Wn.2d at 209, 622 P.2d 360 (quoting McCarthy, 394 U.S. at 467, 89 S.Ct. 1166). Requiring this examination protects a defendant " 'who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.' " Keene, 95 Wn.2d at 209, 622 P.2d 360 (quoting McCarthy, 394 U.S. at 467, 89 S.Ct. 1166)).

To satisfy the CrR 4.2(d) factual basis requirement, there must be sufficient evidence for a jury to conclude that the defendant is guilty and this evidence must be developed on the record at the time the plea is taken; it may not be deferred until sentencing. Keene, 95 Wn.2d at 210, 622 P.2d 360.

[T]he factual basis [requirement] may be satisfied by a recitation of facts the prosecutor would prove at trial. Where the prosecutor's factual statement is orally acknowledged by the defendant or where

the court orally interrogates the defendant concerning his conduct, the constitutional requirements are satisfied and both society and the defendant are better served. Where, however, the court relies only on the written statement of the defendant on the guilty plea form, it must insure the facts admitted amount to the violation charged. Anything less endangers the finality of the plea.

In re PRP of Taylor, 31 Wn.App. 254, 259, 640 P.2d 737 (1982).

Here, the record does not show that Mr. Codiga understood the law in relation to the facts. At the plea hearing, the Court did not ask Mr. Codiga anything about the facts. It did not ask Mr. Codiga whether he knew the meaning of "molestation" in a legal sense or inquire into his understanding of the nature of the charges. Instead, the Court relied solely on Mr. Codiga's adoption of the probable cause statement and his stipulation that there was a sufficient factual basis in the probable cause statement to support his plea.

The factual basis requirement of CrR 4.2(d) was clearly not satisfied. There was no recitation of the facts by the prosecutor as to what he would prove at trial. Nor did Mr. Codiga orally acknowledge any factual statement submitted by the prosecutor. The Court also failed to determine on the record whether the facts in the probable cause statement amounted to the violation charged. *See Taylor, supra.*

Because the record does not affirmatively show that Mr. Codiga understood the law in relation to the facts or entered the plea intelligently and voluntarily, the court violated his right to due process when it accepted the plea. Consequently, the plea should be set aside.

**Issue No. 2. The trial court violated Mr. Codiga's right to due process when it accepted his plea without adequately informing him of the consequences of the plea.**

A plea is also involuntary if it is not made with an understanding of all the direct consequences of the plea. CrR 4.2(d); State v. Paul, 103 Wn.App. 487, 494-95, 12 P.3d 1036 (2000). "An involuntary plea constitutes a manifest injustice." Paul, 103 Wn.App. at 494, 12 P.3d 1036. One direct consequence of a plea is the sentencing range. Paul, 103 Wn.App. at 495, 12 P.3d 1036. "A defendant must understand the sentencing consequences for a guilty plea to be valid." State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122(1988).

Here, the Court did not inform Mr. Codiga or ask him if he understood his standard range, the maximum sentence, his offender score, his criminal history, or period of community custody/placement. The Court also failed to inform Mr. Codiga that if the court found there was additional criminal history, his offender score and standard range would

change but his guilty plea would still be binding. Since the Court failed to assure that Mr. Codiga fully understood the sentencing consequences, the guilty plea was invalid.

**Issue No. 3. The guilty plea was involuntary, based upon the mutual mistake about the standard range.**

A guilty plea entered into with an erroneous belief about a lower standard range is invalid. State v. Walsh, 143 Wn.2d 1, 17 P.3d 591(2001). A challenge to the validity of the guilty plea based on mutual mistake may be raised for the first time on appeal. Walsh, 143 Wn.2d at 6, 17 P.3d 591.

In Walsh, the defendant pleaded guilty based on an erroneous standard range that was lower than the correct range. Our Supreme Court held that "Walsh has established that his guilty plea was involuntary based upon the mutual mistake about the standard range sentence." Walsh, 143 Wn.2d at 8-9, 17 P.3d 591.

The situation here is identical to Walsh. Both parties mistakenly believed the offender score was seven at the guilty plea hearing, when in fact it was eight. The court of appeals distinguished Walsh by categorizing the "mistake" regarding the washout of a prior conviction in Mr. Codiga's case as "the discovery of additional criminal history." (Slip Opinion p. 8) The Court reasoned that since Mr. Codiga was aware his

sentence could increase with the discovery of additional criminal history, his plea was voluntary. Id.

However, the court of appeals was incorrect categorizing the mutual mistake regarding the washout of a prior conviction in this manner. The discovery of additional criminal history clearly implies that *neither* party was aware of the existence of the additional prior conviction at the time the guilty plea was entered and accepted by the court. In such a situation, a defendant would still be bound by his guilty plea, when the additional criminal history was later discovered at or prior to sentencing.

By contrast, in the instant case *both parties were aware* of the prior conviction, but were mistaken as to its effect on the offender score. This is clearly a mutual mistake—not the discovery of additional criminal history as the court of appeals suggests. Therefore, Walsh is applicable, the guilty plea was involuntary, and Mr. Codiga should be allowed to either enforce the plea agreement or withdraw his plea. State v. Moon, 108 Wn.App. 59, 63, 29 P.3d 734 (2001).

**VI. CONCLUSION.**

For the reasons stated herein, this Court should grant the petition for review, reverse the decision of the Court of Appeals, set aside the plea and remand the case for further proceedings.

Respectfully submitted August 24, 2006.

A handwritten signature in cursive script, appearing to read "D. N. Gasch", is written over a horizontal line.

David N. Gasch  
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WSBA #18270

**FILED**

JUN 27 2006

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	No. 24027-4-III
	)	No. 24289-7-III
Respondent,	)	
	)	
v.	)	
	)	
JOHN SHANNON CODIGA,	)	
	)	Division Three
Appellant.	)	
<hr/>		
In re the Personal Restraint of:	)	
	)	
JOHN SHANNON CODIGA,	)	
	)	
Petitioner.	)	UNPUBLISHED OPINION

KATO, J. – In this consolidated appeal and personal restraint petition (PRP), John Shannon Codiga contends his guilty pleas to three counts of first degree child molestation should not have been accepted. On direct appeal, he contends the court erred by accepting his guilty plea. In his PRP, he seeks to withdraw his guilty plea. We affirm the convictions and dismiss the PRP.

On April 12, 2004, Mr. Codiga was charged with five counts of first degree child molestation. He pleaded guilty to three counts in exchange for dismissal of two.

At the plea hearing, Mr. Codiga told the court he had signed the statement of defendant on plea of guilty. He said he had read the statement carefully and had discussed it with his lawyer. He understood he was giving up his right to a jury trial and no one had pressured him into entering the plea agreement. Mr. Codiga advised the court he did not need to speak with his attorney and he did not have any questions.

The court then asked Mr. Codiga to enter a plea. He said he was pleading guilty. Before accepting Mr. Codiga's plea, the court stated on the record that the plea was knowing, intelligent, and voluntary. It noted Mr. Codiga had adopted the probable cause statement and had further stipulated there were sufficient factual bases to support his plea.

The prosecutor informed the court Mr. Codiga had two prior felony convictions in 1996 and 1997. Both the prosecutor and defense counsel believed the 1996 conviction washed out. The prosecutor calculated Mr. Codiga's offender score as seven with a standard range sentence of 108 to 144 months.

At sentencing, the prosecutor again stated that both he and defense counsel believed Mr. Codiga had one prior felony point and the offender score was seven. The presentence investigation report, however, calculated Mr.

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Codiga's offender score as eight including both prior felony convictions. The report also revealed a number of prior misdemeanors and recommended a standard range sentence of 129 to 171 months. Mr. Codiga argued the 1996 conviction had washed out. But the court determined his misdemeanor convictions in 2001 and 2002 tolled the washout period. The court also denied Mr. Codiga's request for a Special Sex Offender Sentencing Alternative (SSOSA). Mr. Codiga was sentenced to 150 months on each count to run concurrently.

Mr. Codiga subsequently filed a motion to withdraw his guilty plea based on the discrepancy in his offender score between the plea and sentencing hearings. The superior court transferred the motion to this court as a personal restraint petition. The direct appeal and personal restraint petition have been consolidated.

Mr. Codiga contends the court erroneously accepted his guilty plea. 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

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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, review denied, 95 Wn.2d 1020 (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. See *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).

Mr. Codiga argues the court did not inform him on the record at the plea hearing of the nature of the charges for child molestation or the law in relation to the facts of the charges. He also contends the court did not inform him of the consequences of his plea.

All criminal defendants have a constitutional right to know the nature and cause of the accusation against them. U.S. CONST. amend. VI; CONST. art. I, § 22 (amend. 10); *State v. Ford*, 125 Wn.2d 919, 923, 891 P.2d 712 (1995). 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

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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 defect. *Id.* at 208; *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976).

It is well settled that a written statement on 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; *Ridgley*, 28 Wn. App. at 355. The court is justified in relying on facts admitted in the plea statement. *Keene*, 95 Wn.2d 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.

Moreover, in order for a plea to be voluntary, a defendant "must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea." *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). A direct consequence of a plea is one with "a definite, immediate and largely automatic effect on the range of defendant's punishment." *State v. Cameron*, 30 Wn. App. 229, 233, 633 P.2d 901, *review denied*, 96 Wn.2d 1023 (1981). Direct consequences of a conviction include the mandatory minimum sentence for the crime, *Wood*, 87 Wn.2d at 513; "special parole terms or ineligibility for parole," *Id.*; that sentences must be served consecutively, *In re Personal Restraint of*

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*Williams*, 21 Wn. App. 238, 240-41, 583 P.2d 1262 (1978); and the obligation to pay restitution, *Cameron*, 30 Wn. App. at 233.

Here, the court approved Mr. Codiga's statement of defendant on plea of guilty. This document details the elements of the crime and incorporates the statement of probable cause to establish the facts in support of the charges. It indicates the standard range sentence and the maximum penalty the court could impose based on the information known to the parties at the time of the hearing. Mr. Codiga stated the plea was made freely and voluntarily; no one caused him to enter the pleas and no one made any promises, other than in the plea agreement, to cause him to plead guilty. He also told the court he had read the statement carefully, discussed it with his lawyer, and understood he was giving up his right to a jury trial. Finally, before accepting Mr. Codiga's plea, the court indicated it was entered into voluntarily, intelligently, and knowingly. The court also reiterated that Mr. Codiga had adopted the probable cause statement and had additionally stipulated there were sufficient factual bases to support his plea. In these circumstances, the court did not err by accepting Mr. Codiga's plea.

Mr. Codiga also contends his guilty plea was involuntary based on mutual mistake about the standard range sentence. A defendant must understand the direct consequences of his guilty plea for it to be valid. *State v. Ross*, 129 Wn.2d

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279, 284, 916 P.2d 405 (1996). The standard sentencing range is a direct consequence of a guilty plea. *State v. McDermond*, 112 Wn. App. 239, 244, 47 P.3d 600 (2002). “[W]hen a mutual mistake occurs regarding a standard sentence range, a defendant may choose to either specifically enforce the plea agreement, or to withdraw the plea.” *State v. Moon*, 108 Wn. App. 59, 63, 29 P.3d 734 (2001).

Mr. Codiga relies on *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), where the defense and the prosecution believed the standard sentence range was 86 to 114 months based on the defendant’s one prior conviction for vehicular assault. *Id.* at 4. In response to the court’s questioning at the plea hearing, the defendant said he understood that in exchange for his guilty plea he was promised that the prosecutor would only recommend a sentence of 86 months. *Id.*

Prior to sentencing, however, it was revealed in a presentence report that the defendant’s prior conviction counted as two points, resulting in a standard range sentence of 95-125 months. *Id.* At sentencing, the prosecutor told the court the standard range was 95-125 months and recommended 95 months. *Id.* at 5. The defendant was apparently never advised of the error before

sentencing. *Id.* Our Supreme Court found the plea was involuntary and the sentence could not stand. *Id.* at 9.

But the facts here are distinguishable. Although it was determined at the time of the plea hearing that Mr. Codiga's offender score was seven for a standard range sentence of 108 to 144 months, he had also signed the statement of defendant on plea of guilty. The statement provided:

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 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.

Clerks Papers at 9. Mr. Codiga told the court at the time of the plea hearing he had read the statement carefully and had a full opportunity to discuss the statement with his lawyer before signing it. He was aware his sentence could increase based on the discovery of additional criminal history. His plea agreement was therefore voluntary. The court properly accepted his guilty plea.

In his statement of additional grounds for review, Mr. Codiga contends his statements at the time of his arrest were involuntary due to his altered mental state; he signed "something" at the CrR 3.5 and 3.6 hearings that he did not understand due to his mental state; the judge called him a liar in open court; he

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was denied effective assistance of counsel when the court allowed his attorney to withdraw from the case; he should have been granted a change of venue; and the trial court did not follow its court rules.

But there is nothing in the record relating to these contentions. We therefore cannot consider them. *State v. Crane*, 116 Wn.2d 315, 335, 804 P.2d 10, *cert. denied*, 501 U.S. 1237 (1991).

In his PRP, Mr. Codiga also contends he should be allowed to withdraw his guilty plea. He argues he pleaded guilty based on the agreement that his offender score was seven, but the judge sentenced him based on an offender score of eight.

A personal restraint petitioner has the burden of proving constitutional error that results in actual prejudice or nonconstitutional error that results in a miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). If a petition is based on matters outside the appellate record, a petitioner must show that he has "competent, admissible evidence" to support his arguments. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). Also, "a petitioner must show that more likely than not he was prejudiced by the error. Bare allegations unsupported by citation of authority, references to the record, or persuasive reasoning cannot sustain this

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burden of proof.” *State v. Brune*, 45 Wn. App. 354, 363, 725 P.2d 454 (1986),  
*review denied*, 110 Wn.2d 1002 (1988). A petition failing to meet this basic level  
of proof and argument may be dismissed summarily. *Id.*

Due process requires a knowing, voluntary, and intelligent guilty plea.  
*Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969);  
*In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). A  
guilty plea is not knowingly made if based on misinformation as to the sentencing  
consequences. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). A  
defendant must be informed of all direct consequences of the plea. *Isadore*, 151  
Wn.2d at 298.

Under CrR 4.2(f), the court must allow a defendant to withdraw a guilty  
plea if necessary to correct a manifest injustice. An involuntary plea produces a  
manifest injustice. *Walsh*, 143 Wn.2d 1. A direct consequence includes one that  
“represents a definite, immediate and largely automatic effect on the range of the  
defendant’s punishment.” *Ross*, 129 Wn.2d at 284 (quoting *State v. Barton*, 93  
Wn.2d 301, 305, 609 P.2d 1353 (1980)).

Here, however, nothing in the record shows that Mr. Codiga’s plea was  
based on any agreement that his offender score would be a seven. At the plea  
hearing, the State informed the court Mr. Codiga would be pleading guilty to

three of the five charged counts of first degree child molestation in exchange for “nothing more than our agreement to dismiss upon sentencing the other two counts.” Report of Proceedings (RP) (Nov. 30, 2004) at 2. Moreover, Mr. Codiga signed the statement of defendant on plea of guilty, which provided the standard range sentence could increase should any additional criminal history be discovered. He told the court he had read the statement carefully and had the opportunity to discuss the statement with his lawyer before signing it. There is no indication the guilty plea was based on an agreement that his offender score was a seven.

Mr. Codiga also contends the increase in his offender score resulted in the court denying him SSOSA. But this contention is not supported by the record. In considering the request for SSOSA, the court observed it had several concerns. The court stated Mr. Codiga’s evaluation by a certified sex offender treatment provider found him to “present a . . . mixed bag of risks.” RP (Feb. 8, 2005) at 33-34. The court noted Mr. Codiga had established no track record in the community of his ability to sustain a community-based treatment program; he had a substantial and long-term substance abuse history; and his criminal history showed an unmistakable pattern of trying to avoid the requirements of law. The court determined it would not grant Mr. Codiga SSOSA after considering what

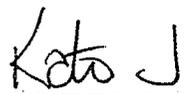
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was revealed in the presentence investigation report, the nature of the offenses, his background, the conduct revealed in Mr. Codiga's polygraph, and review of his amenability to treatment.

Furthermore, RCW 9.94A.670(2)(f) states that a sex offender is SSOSA eligible when the "standard range for the offense includes the possibility of confinement for less than eleven years." Even with an offender score of eight, Mr. Codiga was still eligible to receive SSOSA. Nothing supports the claim that the court's denial of Mr. Codiga's request for SSOSA was based on the increase in the offender score.

The convictions are affirmed and the PRP is dismissed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Kato, J.

WE CONCUR:

  
\_\_\_\_\_  
Brown, J.

  
\_\_\_\_\_  
Kulik, J.

**FILED**

AUG 17 2006

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

**COURT OF APPEALS, DIVISION THREE, STATE OF WASHINGTON**

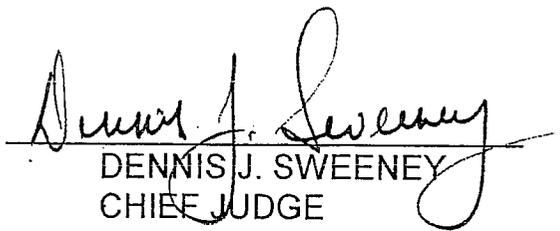
STATE OF WASHINGTON,	)	No. 24027-4-III
	)	No. 24289-7-III
Respondent,	)	
	)	
v.	)	
	)	
JOHN SHANNON CODIGA,	)	
	)	ORDER DENYING
Appellant.	)	MOTION FOR
	)	RECONSIDERATION
<hr/> In re the Personal Restraint of:	)	
	)	
JOHN SHANNON CODIGA,	)	
	)	
Petitioner.	)	

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of June 27, 2006 is hereby denied.

DATED: August 17, 2006

FOR THE COURT:

  
 DENNIS J. SWEENEY  
 CHIEF JUDGE