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WASHINGTON STATE
SUPREME COURT

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COURT OF APPEALS
DIVISION II
2016 AUG 18 AM 11:43
STATE OF WASHINGTON
BY _____
DEPUTY

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No. 416967-7-II

Division 2 APPELLATE COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,
v.

BRIAN WALLACE BUCKMAN, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

Brian W. Buckman
[Name of petitioner]

Imu/north - A110
Washington Corr. Center
P.O. Box 900
Shelton, WA 98584
[Address]

A. Identity of Petitioner

Brian Wallace Buckman [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

On ~~January~~ July 26, 2010 the Division 2 Court of Appeals AFFIRMED the trial court's order denying my motion to withdraw guilty plea, reversed the indeterminate, and remands for resentencing.

I want this court to review the order that AFFIRMED the trial court's decision to withdraw my guilty plea as I believe it has overlooked valuable information that caused the error in judgment.

Please See brief attached.

A copy of the decision [and trial court memorandum opinion] is in the Appendix.

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

I've listed (2) issues in the brief attached. The Division 2 Court of Appeals seems to reason that "I was correctly informed of my sentencing consequences" on January 26, 2012 and "was not informed I could be subject to indeterminate sentencing."

My (1st) issue will establish that I was in fact advised of the indeterminate sentencing, and (and) issue will establish the consistencies of the indeterminate sentence consequence I was advised of on January 26, 2012 when I plead guilty as a result.

Please See brief attached.

I also file AFFIDAVIT w/ this petition.

D. Statement of the Case.

[The statement should be brief and contain only material relevant to the motion.]

January 26, 2012 I plead guilty to 2nd° Rape of a child. My attorney advised me of the indeterminate sentencing consequences so pleading guilty I could petition for a lighter sentence under SSOSA.

On March 7, 2012 I was sentenced to 114 months min. w/ the statutory max. of life, and community custody of life, pursuant to RCW 9.94A.507. I was granted SSOSA.

October 11, 2012 SSOSA was revoked due to condition violations and I appealed. During appeal I discovered I was misinformed of my sentencing consequences, specifically, RCW 9.94A.507(2) excludes me from an indeterminate sentence and filed CrR 4.8 to withdraw plea. Trial court denied motion due to being "over the age of 17" and "17 years of age or younger" would only apply under 17 until 17th b-day. Appellate court ruled against that decision, but AFFIRMED trial court's order denying my plea withdrawal. I appeal that AFFIRM.

E. Argument Why Review Should Be Accepted

[The argument should be short and concise and supported by authority.]

The argument provided in brief is concise and easy for this court to follow. The paragraphs in the January 26, 2012 plea form will establish that the court overlooked I was 17 at the time of the alleged offense and believed I was subject to indeterminate sentencing. Marking my community custody as (life) supports this claim along with additional authority to prove I was misinformed of the sentencing consequence. My (2) arguments are not frivolous and should be accepted for review.

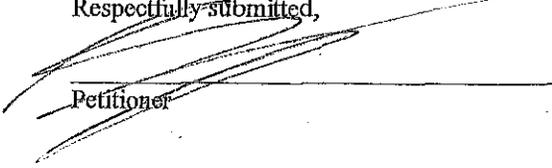
F. Conclusion

[State the relief sought if review is granted.]

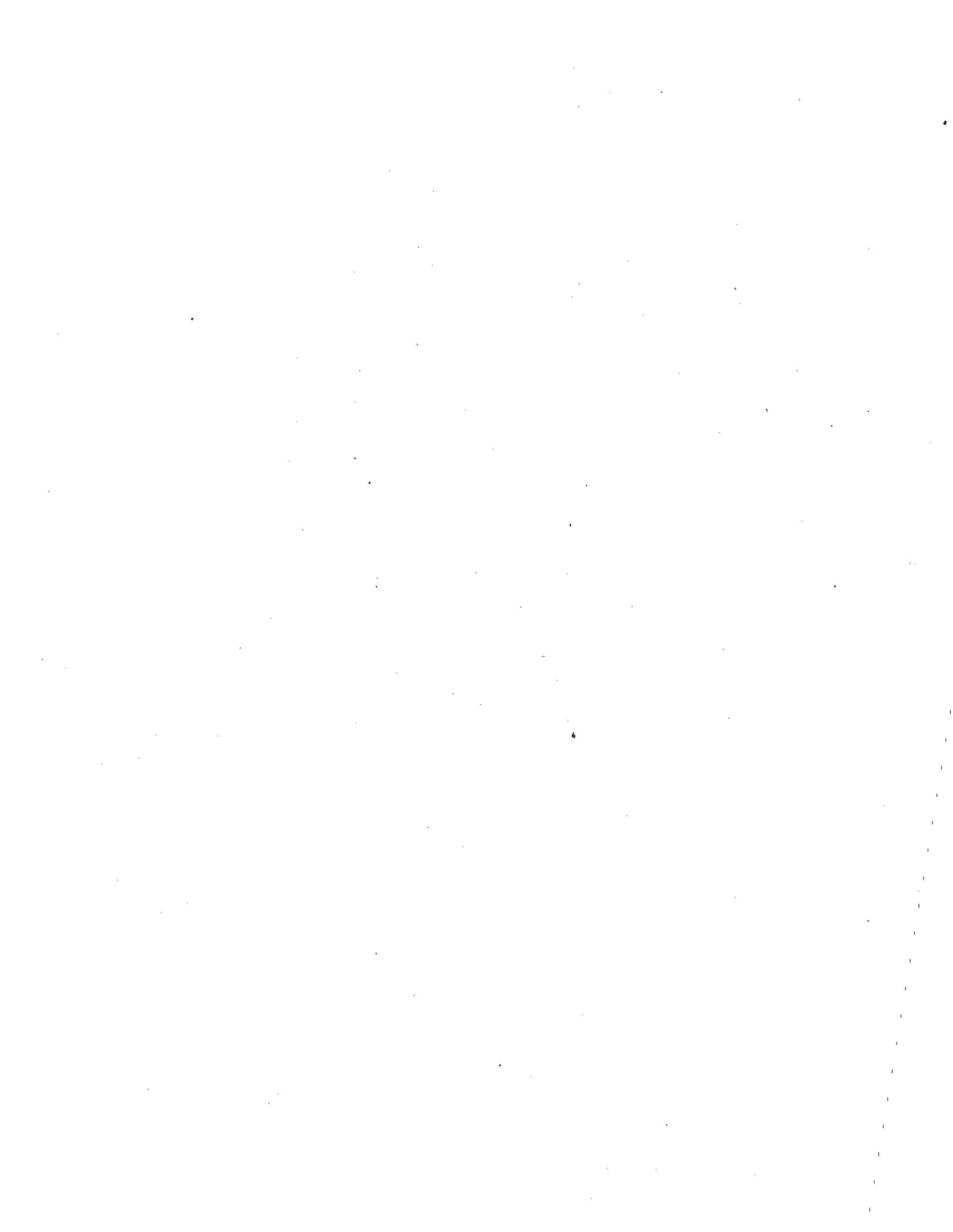
The Division 2 Court of Appeals has overlooked factual information that supports my claim that I was misinformed of my sentencing consequence before I plead guilty on Jan. 26, 2012, specifically, I was advised that I was subject to indeterminate sentencing under RCW 9.94A.507.

DATED this 16 day of August, 2016.

Respectfully submitted,


Petitioner

APPENDIX



AFFIDAVIT

Pursuant to 28 U.S.C. § 1746 No Notary Required

On January 26, 2012 I pleaded guilty to 2nd^o Rape of a child, pursuant to RCW 9A.44.076 from an alleged incident that occurred when I was 17 and my girlfriend was 13. According to the state's charging window they believe the incident occurred sometime between June 1 - Sept. 30, 2010. My girlfriend would had turned 14 in the beginning of November 2010 and our age difference is w/in the mandatory 48 months required by RCW 9A.44.079. That's (1) month that determines whether a crime was committed or not. Due to a miscalculation in our age difference it was believed that I would be guilty of 3rd^o Rape of a child, which I was first informed of.

I had turned 18 by the time the prosecutor filed charge. Before entering the plead of guilty on January 26, 2012 my attorney David Brown had reviewed the plea agreement and its sentencing consequences to me and my mother. He informed me that I was subject to indeterminate sentencing under paragraph (f)(i) and specified that my standard range of 86 to 114 months was my minimum term, the maximum penalty of life was to be the statutory maximum of the sentence, and my community custody was to be up to the statutory maximum of the offense.

Mr. Brown had further informed me that if I was to plead guilty "today" we can petition for a lighter sentence under S505A, or I could not plead guilty, go to trial, and face the possibility of spending the rest of my life in prison. My mother told me to

plead guilty and get it over with so I don't go prison for the rest of my life.

Mr. Brown gave me an ultimatum on January 26, 2012. Plead guilty and ask for SSOSA, or spend the rest of my life in prison. I ultimately plead guilty.

I was misinformed of my sentencing consequences that forced me to plead guilty as RCW 9.94A.507(a) excludes me from indeterminate sentencing, which I was advised, plead guilty as a result, and received at sentencing on March 7, 2012.

I should be entitled to withdraw my guilty plea as it was not knowing, voluntary, and intelligently made when based on misinformation.

I, BRIAN WALLACE BUCKMAN, am over the age of majority and competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth.

Affidavit pursuant to 28 U.S.C. § 1746 and DICKINSON V. WAINWRIGHT, 626 F. 2d 1184 (1980) sworn as true and correct under penalty of perjury has full force of and does not have to be verified by notary public.

Respectfully submitted on this 10 day of August, 2016.


Signature

Brian Wallace Buckman
Print or Type Name

Washington Corrections Center
Institution

1111 / North - 1111 P.O. Box 900
Address

Shelton WA 98584
City State Zip

TABLE OF AUTHORITIES

WASHINGTON CASES

- State v. Knotek, 136 wn. app. 412, 423, 149 676 (2006)
- State v. Miller, 48 wn. app. 622, 742, P. ad 723 (1987)
- State v. Miller, 110 wn. app. ad 528, 536, 756 P. ad 122 (1988)
- State v. Mendoza, 157 wn. ad 582, 590 (2006)
- State v. Ross, 129 wn. ad 279, 284, 916 P. ad 405 (1996)
- State v. Weyrich, 163 wn. ad 554, 182 P.3d 965 (2008)
- State v. Moon, 108 wn. app. 59, 63 (2001)
- State v. Walsh, 143 wn. ad 1, 8, 17 P.3d 591 (2001)
- In re Pers. Restraint of Isadore, 151 wn. ad 294, 297, 88 P.3d 390 (2004)
- In re Pers. Restraint of Bradley, 165 wash. ad 934, 205 P.3d 123 (2009)
- In re murillo, 134 wn. app. 521, 142 P.3d 615 (2006)
- In re Stockwell, 161 wn. app. 329, 335, 254 P.3d 899 (2011)

UNITED STATES CASES

- Boyer v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)

REVISED CODE OF WASHINGTON

- RCW 9.94A.507
- RCW 9.94A.507(2)
- RCW 9.94A.507(5)
- RCW 9.94A.712
- RCW 9A.44.076

RCW 9A.44.076 (2)

RCW 9.94A.701

RCW 9.94A.701 (1)

RCW 9.94A.701 (1) (a)

RCW 9.94A.701 (8)

RCW 9.94A.670

RCW 9.94A.670 (5) (b)

RCW 9A.20.021 (1) (a)

RCW 9.94A.120 (8)

COURT RULES

U.S. Const. Amend. 5

U.S. Const. Amend. 14

Const. Art. 1 sec. 3

CrR 4.2 (f)

CrR 7.8

APPROPRIATE RECORDS FOR REVIEW

Jan. 26, 2012 Statement of Defendant on Plead of Guilty to Sex offense

Judgment and Sentence

Judgment and Sentence Appendix H community / placement, custody

March 7, 2012 Stipulation on Prior Criminal Record

March 7, 2012 Reporters Verbatim Report of Proceedings (pg. 8)

October 3, 2014 Memorandum of Law in Support of Motion to Withdraw Guilty Plea

July 26, 2016 Division 2 Court of Appeals Published opinion

ARGUMENTS PRESENTED

1.) The Defendants Review of Guilty Plea w/ Defense Attorney David Brown on January 26, 2012. (pg. 2)

- (This issue will provide a sufficient amount of information and authority to support that I was advised of the indeterminate sentencing consequences under RCW 9.94A.507 and not the correct determinate sentence).

2.) March 7, 2012's Sentencing Is Consistent w/ The Sentencing Consequences of Paragraph 6(f)(i). (pg. 10)

- (This 2nd issue will prove consistencies of the indeterminate sentencing consequences under RCW 9.94A.507 that I was advised of on January 26, 2012 before entering my plead of guilty and will show that Mr. Brown did not object to the imposition request as to indeterminate sentencing because he believed I was subject to those consequences,

Conclusion (pg. 14)

Reverse the order that AFFIRMED the trial court's decision to ~~w/withdraw~~ deny my motion to w/draw guilty plea on grounds info. was overlooked and I should be entitled to w/draw my guilty plea due to being misinformed of my sentencing consequences,

STATEMENT OF PETITION FOR REVIEW

On July 26, 2016, Division 2 Court of Appeals published their opinion and held that the trial court properly denied my motion to withdraw my guilty plea, pursuant to CrR 7.8 on the grounds "I was correctly informed about the consequences of the plea." But holds that the trial court imposed an improper sentence because I was under the age of 18 when the crime 2nd^o Rape of a Child was committed, pursuant to RCW 9A.44.076 and RCW 9.94A.507(2) excludes me from indeterminate sentencing. The court AFFIRMS the trial court's order denying my motion to withdraw my guilty plea, reverses my indeterminate sentence, and remands for resentencing.

Acting pro se, I, the defendant herein, BRIAN WALLACE BUCKMAN, files this petition for Discretionary Review, specifically, against the Division 2 Court of Appeals order to AFFIRM the trial court's decision to deny my motion to withdraw my guilty. This court reasons that "I was correctly informed of my sentencing consequences" on the grounds that during my plea colloquy on January 26, 2012 I told the trial court that I understood the maximum penalty was life in prison, and that my standard range was 86 to 114 months in prison, and that the judge did not say "I could be sentenced to an indeterminate sentence." The court has overlooked some factual information that supports my claim that I was misinformed of the sentencing consequences, specifically, that my attorney, the prosecutor, and the judge had overlooked the fact that the current offense was committed as a juvenile and the sentencing consequences in the January 26, 2012 guilty plea form were advised under RCW 9.94A.507 for offenders subject to indeterminate sentencing. All other records support this.

I believe the court has overlooked valuable information that lead to an error in the decision to AFFIRM the trial court's order to deny motion to withdraw guilty plea and the ruling is in conflict with the Washington State Supreme Court.

1.) The Defendant's Review of Guilty Plea With Defense Attorney David Brown Before Entering Plead of Guilty On January 26, 2012.

On January 26, 2012 before entering a plead of guilty to one count of 2nd^o Rape of a Child, pursuant to RCW ~~9A.44.070~~ 9A.44.076, my former attorney David Brown had reviewed the plea agreement to me with the presence of my mother. He advised me of the sentencing consequences, specifically, that I'm facing "life in prison with a minimum term in the standard range and life for community custody if I were ever released on the minimum term, due to being subject to an indeterminate sentencing consequence." He further advised me that if I was to plead guilty "today" we could petition for a SSOSA under RCW 9.94A.670 or I could go trial and face the possibility of spending a life sentence in prison.

(Memorandum of Law in Support of motion to Withdraw Guilty plea filed by Samuel Groberg on October 3, 2014 makes a factual statement on pg. 2 regarding the last sentence in the paragraph above. On remand back in 2014 Mr. Groberg was appointed as counsel and he discussed the sentencing consequences I was advised of with Mr. Brown for confirmation that he informed me of the indeterminate sentencing).

At no time during the plea agreements review, plea colloquy or any other proceedings was I advised that I only faced a determinate sentence of 86 to 114 months with 36 months for community custody and could not be given the statutory maximum of life in prison nor community custody for life. No evidence supports that I was informed of the correct sentencing consequences, but sufficient evidence supports that I was misinformed of the incorrect sentencing consequences.

Due process guarentees that Federal and State constitutions both require that a guilty plea be made intelligently, knowingly, and voluntarily. U.S. Const. Amend. 5 § 14; Const. Art.

Standard range (Min. of 86-114 months and max, of life)

Max term (life)

(See March 7, 2012 Stipulation on Prior Criminal Record and Offender Score. Even though this recorded is dated March 7, 2012 and the guilty plea form is dated Jan. 26, 2012, the sentencing consequences remain consistent with the information Mr. Brown had advised on January 26, 2012. It's only in the Jan. 26, 2012 record on pg. 2' paragraph 6(a) and during plea colloquy that bluntly mentions 86 to 114 months as the standard range and life as the maximum term. That simply don't mean "I was correctly informed of the sentencing consequences." The following paragraphs will show that I was advised of the indeterminate sentencing and not the determinate sentencing. Additionally in hypothetical terms, "if" I was advised that I was subject to a determinate sentence and plead guilty as a result, but later inform that I was subject to indeterminate sentencing and the defendant had no knowledge of the change nor counsel, the defendant was still incorrectly informed of his sentencing consequences).

pg. 3' paragraph 6(f) has (a) sentencing consequences, which are both crossed out. The dates at the beginning are important to remember as they'll be mentioned again on pg. 6' paragraph (g).

- For sex offenses committed prior to July 1, 2000
- For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001

These (a) paragraphs discuss "community custody" conditions and sentences that are consistent with paragraph 6(f)(ii) on pg. 4 and RCW 9A.94A.701. pg. 4' paragraph 6(f)(ii) provides :

" If this offense is a sex offense that is not listed in paragraph ~~(f)~~ 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to (1) year of community custody if the total period of confinement ordered is not more than (12)

months. If the period of confinement is over (1) year, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for (36) months..."

paragraph (c) and paragraph (f)(ii) apply to offenders subject to "community custody" under RCW 9.94A.701. RCW 9.94A.701 (1) provides:

"If an offender is sentenced to the custody of the Dept. for one of the following crimes, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for (3) years."

RCW 9.94A.701 ^{(1) (a)} ~~provides~~ provides:

"A sex offense not sentenced under RCW 9.94A.507."

RCW 9.94A.701 (5) provides:

"If an offender is sentenced under SSOSA, the court shall impose community custody as provided in RCW 9.94A.670."

pg. 6' paragraph (q) is for "SSOSA" where my initials, (BB), are labeled. In order to petition for SSOSA I had to admit that I committed all of the elements of the crime which I was pleading guilty. The (2nd) paragraph under (q) provides:

"For offenses committed before Sept. 1, 2001; The judge may suspend execution of the standard range term of confinement under SSOSA if I qualify under former RCW 9.94A.120(B) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001)..."

The (2nd) paragraph under (q) provides sentencing consequences under paragraph (f) on pg. 3, which are consistent with paragraph (f)(ii) on pg. 4 and RCW 9.94A.701 (1). The (2) crossed out sentencing consequences under paragraph (f) and labeling my "community custody" as (life) serves as sufficient evidence that the court believed I was an offender subject to indeterminate sentencing under RCW 9.94A.507 and ~~RCW~~ paragraph (f)(ii) did not apply to me.

The (3rd) paragraph under (q) provides:

"For offenses committed on or after Sept. 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the SSOSA if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph (f)(i), I will be placed on community custody for the length of the suspended sentence or 3 years, whichever is greater. If the judge suspends execution of min. term of confinement for a sex offense listed in paragraph (f)(i), I will be placed on community custody for the length of the statutory max. sentence of the offense."

I've established significant grounds so far to support my claim that I was misinformed of the sentencing consequences by being advised that I was subject to indeterminate sentencing under RCW 9.94A.507. RCW 9.94A.701(8) provides:

"If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section."

pg. 3' paragraph (f)(i) explains the indeterminate sentencing consequences for offenders subject to RCW 9.94A.507. paragraph (f)(i) provides:

"The judge will impose a maximum term of confinement consisting of the statutory

maximum sentence of the offense and a minimum term of confinement."

(RCW 9A.44.076(2) 2nd° Rape of a child is a class A felony; RCW 9A.20.021(1)(a) max. sentence for a class A felony is life in prison).

paragraph 6(f)(i) further provides:

"in addition to confinement, the defendant will be sentenced to community custody for any period of time s/he is released from total confinement before the expiration of the max. sentence,"

RCW 9.94A.507(5) provides:

"When a court sentences a person to the custody of the dept. under this section, the court shall, in addition to other terms of the sentence, sentence the offender to community custody under the supervision of the dept. and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence."

paragraph 6(a) on pg. 2 specifies both community custody and the max. term as life.

The J&S (Felony) Appendix H Community Placement/custody provides:

"Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after Sept. 1, 2001 to include up to life community custody."

(RCW 9.94A.712 was recodified to RCW 9.94A.507 and the phrase "committed on or after Sept. 1, 2001 is consistent with Paragraph 6(f)(i) on pg. 3 for indeterminate sentencing).

It was overlooked long before the imposition of the indeterminate sentence that I was 17 at the time of the alleged offense and could not be sentenced under RCW 9.94A.507 as RCW 9.94A.507(2) excludes me from such sentencing consequences and on appeal the State had denied that RCW 9.94A.507 does not apply to me. These paragraphs I've previously explained are evidence to support my claim that without any reasonable doubt I was in fact misinformed of my sentencing consequences, specifically, that I was advised I'm subject to indeterminate sentencing under RCW 9.94A.507 and marking "life" under my community custody further validates this fact, and that my attorney, the prosecutor, and the judge also agreed I was subject to RCW 9.94A.507 because they had all signed the plea agreement on pg. 8 & 9.

A plea is involuntary if the plea is entered without knowledge of the "direct sentencing consequences." A "direct consequence" is one that has a definite, immediate, and largely automatic effect on the range of the defendant's punishment. *In re Pers. Restraint of Bradley*, 165 Wash. 2d 934, 205 P.3d 123 (2009).

The total length of a sentence is a direct consequence of a guilty plea. *State v. Moon*, 108 Wn. app. 59, 63 (2001) ; *In re Murillo*, 134 Wn. app. 521, 142 P.3d 615 (2006). The statutory maximum of the sentence and community custody is a sentencing consequence that the defendant must be properly informed. *In re Stockwell*, 161 Wn. app. 329, 335, 254 P.3d 899 (2011). Therefore, any misinformation about the length of the sentence renders a plea involuntary, even when the correct sentence may be less than the erroneous sentence included in the plea. *State v. Mendoza*, 157 Wn. 2d 582, 590 (2006) ; *State v. Moon*, 108 Wn. app. 59, 63 (2001).

An involuntary plea produces a "manifest injustice" and the court must allow a defendant to withdraw a guilty plea to correct that manifest injustice. CrR 4.2(f) ; *State v. Walsh*, 143 Wn. 2d 1, 8, 17 P.3d 591 (2001).

The Division 2 Court of Appeals claims that the plea form I signed set forth the correct

sentencing consequences, specifically, my standard range was (86 to 114) months and the maximum penalty was life in prison for the crime "2nd° Rape of a child." They also specified that indeterminate sentencing under RCW 9.94A.507 applied if I were convicted of "2nd° Rape of a child committed when I was at least 18 y.o.", and that I wasn't informed "I could be subject to indeterminate sentencing." It also claimed that the court improperly sentenced me to an indeterminate sentence of (114 months min. to the maximum of life under RCW 9.94A.507.

What the court had overlooked was the facts that I've provided during the explanations of the paragraphs in my plea agreement, which explained that the Superior Court overlooked the part that I was 17 at the time of the alleged offense, therefore could not be subject to sentencing under RCW 9.94A.507. I was informed of the indeterminate sentencing consequence, plead guilty as a result to escape the harsh consequences by petitioning for a SSOSA sentence under RCW 9.94A.670, and as the paragraphs provide in the plea form :

"the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement within the standard range." (pg. 3' paragraph 6(f)(i)).

As suspected, I received such sentencing consequences at the March 7, 2012 sentencing, If Mr. Brown had informed me of the correct sentencing consequences he would've marked (3) years for community custody and not "life", and would've crossed out paragraph 6(f)(i) and not 6(f) that's consistent with paragraph 6(f)(ii) and RCW 9.94A.701. To further validate this, Mr. Brown would had objected all records that show sentencing consequences for indeterminate sentencing and the States recommendation of sentence on March 7, 2012. With the new information provided it would be unreasonable to belief that I was not informed that I was subject to sentencing under RCW 9.94A.507 and that the trial court accidentally imposed the indeterminate sentence of 114 months min. with the statutory max. of life in prison, and community custody up to the statutory maximum.

My guilty plea to 2nd° Rape of a child was involuntarily made because I was misinformed of the sentencing consequences. I chose to enter a plea of guilty and seeh SSOSA as the notification that I'm facing life in prison under RCW 9.94A.507. It is actual and substantial prejudice to accept a plea deal upon the mistaken belief that if you don't take that plea deal you may serve your entire adult life in prison.

Remedy is to reverse the order that AFFIRMED the trial court's decision to deny my motion to withdraw my guilty plea, and find that valuable information was overlooked that caused an error in judgment, and that I, the defendant, was in fact incorrectly informed of the sentencing consequences and should be entitled to withdraw his guilty plea.

2.) March 7, 2012's Sentencing Is Consistent With The Sentencing Consequences of Paragraph 6(f)(i)

Previously mentioned, "if" Mr. Brown correctly informed me of the sentencing consequences in the plea form that I was subject only to a determinate sentence of (86 to 114) months in prison with (36) months of community custody and couldn't be sentence to life under RCW 9.94A.507, any competent attorney would had objected to life on the plea form for community custody, every single record that advises the indeterminate sentencing and marks that I'm subject to indeterminate sentencing, and to the states recommendation of sentence.

However, that is not the present case. Mr. Brown did not mark my community custody down as (36) months, object to every record that mentions sentencing nor objected to the state's sentencing recommendation because he, the prosecutor, and the judge sincerely believed I was an offender subject to indeterminate sentencing under RCW 9.94A.507. The March 7, 2012 sentencing provides evidence that's consistent with the sentencing consequences I was advised on Jan. 26, 2012.

The State prosecutor at the March 7, 2012 sentencing hearing provided the court with the RCW 9.94A.507 sentencing consequences that can be found on pg. 3' paragraph 6(f)(i) on the plea form. The prosecutor requested:

MR. O'Rourke: We're asking the court to impose a middle of the standard range sentence, which in this case would be -- ranges 86 to 114 months to life. The middle of the standard range would be 100 months minimum with the maximum of life. That would be our request based on the standard range.

We are asking that he have community custody for a period up to the statutory maximum, which would be life in this case.

(March 7, 2012 Verbatim Report of Proceedings, RP. 8:6-14).

(To briefly mention that during the Jan. 26, 2012 plea colloquy the judge did not specify orally that I can be subject to an indeterminate sentence. That does not mean I was correctly informed of the sentencing consequences when I plead guilty, because Mr. Brown had informed me of the indeterminate sentence and even specified my community custody as life, which is governed on pg. 3' paragraph 6(f)(i) on the plea form and RCW 9.94A.507(5). Therefore, Mr. Brown, the prosecutor, and the judge acknowledged the indeterminate sentencing under RCW 9.94A.507 because they had all signed the plea form).

Due to my status as 17 years of age at the time of the alleged offense the correct sentencing consequences would be (86 to 114) months as it's within the standard range and the maximum penalty would be any sentence other than life. Community custody would be (36) months, pursuant to RCW 9.94A.701 (1) and not life under RCW 9.94A.712 as specified in JES Appendix H. None of this was brought to the courts attention because it was believed I was subject to RCW 9.94A.507.

In re Murillo, 134 wn.app. 521, 142 P.3d 615 (2006), the court had concluded that Murillo's guilty plea was not knowingly, intelligently, and voluntarily made to 1st° Child Molestation as he was informed of a standard range sentence of 51-68 months instead of the correct range of 51-68 months with the statutory maximum of life. Murillo contends that had he known he faces a life sentence he would not have pleaded guilty and the Court of Appeals agrees that he is entitled to withdraw his guilty plea.

State v. Weyrich, 163 wn.ad 554, 182 P.3d 905 (2008), the defendant argued that he was misinformed of a direct consequence of his plea - the statutory max. he faced for his theft convictions - and that the trial court wrongly denied his motion to withdraw his guilty plea. The Supreme Court agreed. The State conceded that the defendant was misinformed that the statutory max. was 5 years, rather than the correct (10) years under RCW 9A, 20.021 (1)(b) and RCW 9A, 56.030 (2). Defendant did not waive the error but timely moved to withdraw his pleas before sentencing. The State's argument that the error did not actually affect defendant's decision to plead guilty required a subject hindsight inquiry into defendant's decision which has been previously disapproved by the Supreme Court. Accordingly, the Supreme Court adhered to precedent establishing that a guilty plea could be deemed involuntarily made when based on misinformation regarding a direct consequence of the plea. Because defendant was misinformed that the statutory max. sentence was 5 years, he should be entitled to withdraw his plea pursuant to CrR 4.2.

The court's decision in State v. Mendoza, 157 wn.ad 582, 590 (2006), states that when a guilty plea is based on misinformation, including but not limited to a miscalculated offender score that resulted in an incorrect higher standard range, the defendant may move to withdraw the plea on them grounds based on involuntariness. However, if the defendant was clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and defendant does not object

or move to withdraw the plea on those basis before he is sentenced, the defendant waives his right to challenge the voluntariness of his plea.

Either case of murillo, Weyrich and Mendoza shows that I should be able to withdraw my guilty plea, due to the scenarios that both show I was misinformed of the sentencing consequences.

1.) If I plead guilty pursuant to a determinate sentence where I was informed that I only faced a standard range term and community custody under that section, but after pleading guilty the trial court began expressing sentencing consequences under Indeterminate Sentencing where I was subject to a statutory maximum of life with a min. term of (86 to 114) months and the defense was not properly informed of the change in sentencing consequences, that guilty plea is involuntary. Specially when imposing the indeterminate sentence was not authorized by law and when the defendant learns of the illegally imposition of the sentence and files a motion to withdraw the guilty plea on them grounds he should be able to because the plea was involuntary. And while on remand, the trial court and the prosecutor deny that imposition of the indeterminate sentence was unlawful and that I was legally subject to those sentencing consequences and not the former.

2.) If I plead guilty as a result of being subject to indeterminate sentencing and the information of a (life) community custody supports the information of sentencing under RCW 9.94A.507, and all records are consistent with those consequences, including the state's recommendation of sentence and nobody objects to those sentencing consequences before sentencing because everybody believed the defendant was subject to RCW 9.94A.507 does not waive the defendant's right to challenge the voluntariness of his plea. Specially when the defendant discovers the illegal sentencing at a later date and files a motion to withdraw his guilty plea right after discovery on the grounds that had he been ^{im}properly informed of the sentencing consequences

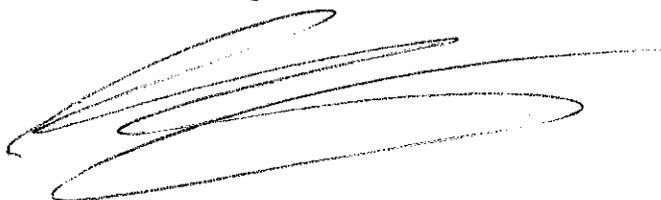
he would never had plead guilty he should be entitled to withdraw his guilty plea. Even more so that while on remand the trial court orders he was correctly informed of the indeterminate sentencing and properly sentenced under them consequences, but the Appellate court rules that the defendant was not correctly sentenced under that section,

CONCLUSION

I believe the Division 2 Court of Appeals may have overlooked some valuable information that dictates I was misinformed of the sentencing consequences, Further believe that the order to AFFIRM the trial court's decision that denied my motion to withdraw my guilty plea is contradicting to the ruling that I was incorrectly sentenced to a indeterminate sentence and is in conflict with previous Supreme Court rulings,

The appropriate remedy is to reverse the order to AFFIRM the trial court's decision that denied my motion to withdraw guilty plea. This remedy should be granted on the grounds that the overlooked information in this petition dictates that I was misinformed of the sentencing consequences, and to avoid conflict with prior Supreme Court decisions I, the defendant, BRIAN WALLACE BUCKMAN, should be able to withdraw my guilty plea.

Sincerely,



Brian Wallace Buckman

July 26, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRIAN WALLACE BUCKMAN,

Appellant.

No. 46967-7-II

PUBLISHED OPINION

JOHANSON, P.J. — Brian Buckman pleaded guilty to one count of second degree child rape. He appeals the trial court's ruling denying his motion to withdraw his guilty plea and, in the alternative, he appeals his sentence. We hold that the trial court properly denied Buckman's motion to withdraw his guilty plea because Buckman was correctly informed about the consequences of his plea. But we hold that the trial court imposed an improper sentence because Buckman was under 18 years old at the time of the offense and RCW 9.94A.507(2) excludes him from indeterminate sentencing. We affirm the trial court's order denying Buckman's motion to withdraw his plea, reverse Buckman's indeterminate sentence, and remand for resentencing.

FACTS

K.B.S.¹ was 13 years old and Buckman was 17 years and 7 months old when they had sexual intercourse. On November 1, 2011, when Buckman was 18, the State charged Buckman as an adult with second degree child rape.² He pleaded guilty. During the plea hearing, the trial court engaged in a colloquy with Buckman to establish whether he understood the consequences of his guilty plea and whether he entered the plea voluntarily.

Included in the discussion was this exchange:

THE COURT: Do you understand that the maximum penalty here is life in prison and a \$50,000 fine?

[BUCKMAN]: Yes.

THE COURT: Do you understand that the standard range is 86 to 114 months in prison?

[BUCKMAN]: Yes.

....

THE COURT: Understanding all those things, do you still want to plead guilty today?

[BUCKMAN]: Yes.

....

THE COURT: Are you making that plea freely and voluntarily?

[BUCKMAN]: Yes.

Report of Proceedings (RP) (Jan. 26, 2012) at 3-4.

¹ See Division Two General Order 2011-1 ("this Court shall use initials or pseudonyms in place of the names of all witnesses known to have been under the age of 18 at the time of any event in the case").

² RCW 9A.44.076 provides,

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

The guilty plea form that Buckman signed set forth the standard range for his offense and the maximum penalty. It also specified that indeterminate sentencing under RCW 9.94A.507 applied if he were convicted of second degree rape of a child committed when he was at least 18 years old. The trial court accepted Buckman's guilty plea.

The trial court imposed a special sex offender sentencing alternative (SSOSA), RCW 9.94A.670, with numerous conditions. Later, in August 2012, the trial court revoked Buckman's SSOSA based on condition violations and sentenced him to an indeterminate sentence of 86 to 114 months minimum to life maximum under RCW 9.94A.507.

In 2014, Buckman filed a motion to withdraw his guilty plea arguing that the trial court had sentenced him to an unlawful indefinite term. The trial court disagreed that RCW 9.94A.507(2) precluded Buckman from being sentenced to an indeterminate sentence because, in its view, Buckman was beyond his 17th birthday at the time of the offense and, therefore, he was not "17 years of age or younger."³ RP (Oct. 31, 2014) at 8. Specifically, RCW 9.94A.507(2) provides,

An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was *seventeen years of age or younger* at the time of the offense shall not be sentenced under this section.

(Emphasis added.)

The trial court was not persuaded that Buckman had been misinformed of the sentencing consequences of his plea, and it denied Buckman's motion to withdraw his guilty plea. Buckman appeals.

³ RCW 9.94A.507(2) provides that indeterminate sentencing does not apply if the offender is "seventeen years of age or younger at the time of the offense."

ANALYSIS

I. WITHDRAWAL OF GUILTY PLEA

Buckman argues that the trial court erred in denying his motion to withdraw his guilty plea. Specifically, Buckman argues that because RCW 9.94A.507(2) exempts him from indeterminate sentencing due to his status as a juvenile at the time of the offense, his plea was rendered involuntary because the trial court misinformed him regarding his maximum punishment of life in prison. Because the trial court properly advised Buckman of the maximum sentence at the plea colloquy, we disagree.

We review a trial court's decision to grant or deny a motion to withdraw a guilty plea for an abuse of discretion. *State v. Forest*, 125 Wn. App. 702, 706, 105 P.3d 1045 (2005). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

A defendant may withdraw a guilty plea under CrR 4.2(f) "whenever it appears that the withdrawal is necessary to correct a manifest injustice."⁴ Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily. *State v. Knotek*, 136 Wn. App. 412, 423, 149 P.3d 676 (2006). "The State bears the burden of proving the validity of a guilty plea," including the defendant's "[k]nowledge of the direct consequences" of the plea, which the State may prove from the record or by clear and convincing extrinsic evidence. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). The length of a sentence is a direct consequence

⁴ We note that neither party acknowledged that Buckman's motion to withdraw his guilty plea should have been governed by CrR 7.8 rather than CrR 4.2(f) because it was a post-sentencing motion. Consequently, in all likelihood, Buckman's motion should have been transferred to us for consideration as a personal restraint petition. Any error in that regard is inconsequential, however, because we hold that Buckman was not misadvised as to the consequences of his guilty plea.

No. 46967-7-II

of a guilty plea and, therefore, misinformation about the length of a sentence renders a plea involuntary, even where the correct sentence may be less than the erroneous sentence included in the plea. *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006).

Here, during the plea colloquy, the trial court informed Buckman that the maximum penalty for his crime was life in prison and that his standard range was 86 to 114 months. The trial court warned Buckman that if the court declined to grant SSOSA, the court would have to sentence Buckman “somewhere within the standard range of 86 to 114 months in prison.” RP (Jan. 26, 2012) at 5. The trial court did not inform Buckman that he could be subject to an indeterminate sentence.

The plea form, in a boilerplate provision, provided that RCW 9.94A.507 applied if the crime is one among several listed, including second degree rape of a child committed when the offender was at least 18 years old. As discussed below, this was a correct interpretation of RCW 9.94A.507(2).

Before accepting a plea, a trial court must inform a defendant of both the applicable standard sentencing range and the maximum sentence set by the legislature for the charged crime. *State v. Kennar*, 135 Wn. App. 68, 75, 143 P.3d 326 (2006). Here, there is no dispute that the applicable standard sentencing range was 86 to 114 months and that the maximum sentence for the crime of second degree child rape, a class A felony, is life in prison. RCW 9.94A.510; RCW 9A.44.076(2) (second degree rape of a child is a class A felony); RCW 9A.20.021(1)(a) (maximum sentence for a class A felony is life in prison). Thus, Buckman was correctly informed at the *plea hearing* of the consequences of his plea. We hold that the trial court did not abuse its discretion in denying Buckman’s motion to withdraw his guilty plea.

II. APPLICATION OF RCW 9.94A.507(2) AT SENTENCING

Crucial to this appeal is the interpretation and application of RCW 9.94A.507(2). The parties disagree as to the meaning of the phrase “seventeen years of age or younger” contained in the same provision. Buckman contends that the statute’s plain language means that indeterminate sentencing does not apply to Buckman because he was 17 years and 7 months old, but not yet 18, at the time of the offense. The State argues that indeterminate sentencing applies to Buckman because the legislature intended to exclude from indeterminate sentencing only offenders up to and including their 17th birthday but no further. We agree with Buckman.

In construing a statute, our objective is to determine the legislature’s intent. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). “[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Jacobs*, 154 Wn.2d at 600 (alteration in original) (quoting *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). We discern the “plain meaning” of a statutory provision from the ordinary meaning of the language and from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *Jacobs*, 154 Wn.2d at 600. If a statute is susceptible to more than one reasonable interpretation, it is ambiguous and we may resort to legislative history for guidance in discerning legislative intent. *State v. Larson*, 185 Wn. App. 903, 909, 344 P.3d 244 (2015), rev’d on other grounds, 184 Wn.2d 843, 365 P.3d 740 (2015).

RCW 9.94A.507 governs the sentences of certain sex offenders. Offenders subject to RCW 9.94A.507 are sentenced to indeterminate sentences within the mandatory minimum sentence and the statutory maximum sentence for the crime. RCW 9.94A.507(3)(a)-(b). But the statute does

No. 46967-7-II

not apply to all sex crime offenders. RCW 9.94A.507(2) categorically exempts certain offenders who have committed specific crimes. It provides,

An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was *seventeen years of age or younger* at the time of the offense shall not be sentenced under this section.

RCW 9.94A.507(2) (emphasis added).

Accordingly, offenders *17 years of age or younger* and who have committed one of the three specified crimes are not subject to the indeterminate sentencing scheme. Buckman committed the offense of second degree rape of a child when he was 17 years and 7 months old. Therefore, RCW 9.94A.507(2) would apply to Buckman if the phrase “seventeen years of age or younger” includes a person who is beyond their 17th birthday but not yet 18 at the time of the offense. No Washington case has construed the meaning of this phrase and neither party cites to any authority interpreting similar language.

Under the plain and ordinary meaning of the language, however, it is difficult to imagine that the legislature intended the provision to apply to a 17-year-old on the day of his or her birthday, but not for the remaining 364 days of the ensuing year. In common vernacular, ages are stated in yearly intervals. Even though a person 17 years and 1 day old is technically “older than 17,” they refer to themselves as “17” until their 18th birthday. Black’s Law Dictionary recognizes this usual understanding of “age,” noting that “[i]n American usage, age is stated in full years completed (so that someone *15 years of age* might actually be 15 years and several months old).” BLACK’S LAW DICTIONARY 73 (10th ed. 2014). Therefore, we hold that the plain language of the statute supports the interpretation that the phrase “seventeen years of age or younger” in RCW 9.94A.507(2) means the statute does not apply to a person who commits a qualifying crime before his 18th birthday.

However, even if this statute could be considered ambiguous, similar language has been construed by courts throughout the country. Although there is some support for the State's interpretation, the prevailing view is that language in the form of "X years of age or younger" includes persons at any point during the specified year until their next birthday. See *State ex rel. Juvenile Dep't of Columbia County v. White*, 83 Or. App. 225, 227-28, 730 P.2d 1279 (1986) ("17 years of age or younger" includes juvenile until 18th birthday); *State v. Shabazz*, 263 N.J. Super. 246, 252, 622 A.2d 914 (1993) (17 years or younger synonymous with "under 18"); *State v. Munoz*, 224 Ariz. 146, 147, 228 P.3d 138 (2010) ("fifteen years of age or under" includes children until they reach their 16th birthday (quoting ARIZ. REV. STAT. § 13-1204(A)(6) (Supp. 2009))); *State v. Christensen*, 2001 UT 14, ¶ 3, 20 P.3d 329 ("not older than 17" includes persons until they attain 18th birthday (quoting UTAH CODE ANN. § 76-1-106 (Supp. 1998))).

For instance, the California Supreme Court held that "10 years of age or younger" included children who had reached their 10th birthday but who had not yet reached their 11th birthday. *People v. Cornett*, 53 Cal. 4th 1261, 1263-64, 274 P.3d 456, 139 Cal. Rptr. 3d 837 (2012) (quoting CAL. PENAL CODE § 288.7 (2006)). In reaching its decision, the *Cornett* court acknowledged that several other States agreed with its interpretation and, although it recognized that there was some support for the alternative construction, it found that virtually all of the States whose courts had so ruled had later amended their statutes in accordance with its interpretation. 53 Cal. 4th at 1273-74.

Legislative history also supports Buckman's view. In the Substitute Senate Final Bill Report discussing the legislation that enacted RCW 9.94A.507(2)'s predecessor (with identical language), the background of the indeterminate sentencing scheme is discussed. FINAL S.B. REP.

ON THIRD ENGROSSED SUBSTITUTE S.B. 6151, at 4-5, 57th Leg., 2nd Spec. Sess. (Wash. 2001). The bill summary states that “[p]ersons convicted of rape of a child in the first or second degree or child molestation in the first degree who were *under 18* at the time of the crime are subject to a determinate sentence.” *Id.*, at 4. This passage evinces the legislature’s intent to exempt minors from the harsh reality of a long mandatory minimum sentence and thus it appears that the legislature intended “seventeen years of age or younger” to include those who were beyond their 17th birthday but not yet 18.

We hold that RCW 9.94A.507(2) exempts minors under the age of 18, or 17 years of age or younger, from indeterminate sentencing under RCW 9.94A.507. Therefore, it was error for the trial court to sentence Buckman to an indeterminate sentence under RCW 9.94A.507(2).

III. STATEMENT OF ADDITIONAL GROUNDS (SAG)

Buckman raises three issues in his SAG. First, Buckman contends that his sentence was not authorized by law and that his judgment and sentence is facially invalid because he cannot be subject to an indeterminate sentence. Second, Buckman argues that his guilty plea was not voluntary and knowing because he was misinformed as to the direct consequences of his guilty plea. Third, Buckman argues that mitigating factors exist to justify an exceptional sentence downward.

We need not address Buckman’s first and second assertions further because we discuss and resolve them above. We also need not address his third argument because we reverse his sentence and Buckman will be resentenced on remand.

No. 46967-7-II

We affirm his conviction, reverse his sentence, and remand for resentencing.

Johnson, J.
JOHANSON, P.J.

We concur:

J. J.
LEE, J.

Sutton, J.
SUTTON, J.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON]	Cause No.: 11-1-00775-2
]	
Plaintiff]	JUDGEMENT AND SENTENCE (FELONY)
v.]	APPENDIX H
BUCKMAN, Brian W.]	COMMUNITY PLACEMENT / CUSTODY
Defendant]	
]	
DOC No. 355481]	

The court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

11-1-00775-2
BUCKMAN, Brian W. 355481
Page 1 of 3

- (a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:
- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
 - (2) Work at Department of Corrections' approved education, employment, and/or community service;
 - (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
 - (4) While in community custody not unlawfully possess controlled substances;
 - (5) Pay supervision fees as determined by the Department of Corrections;
 - (6) Receive prior approval for living arrangements and residence location;
 - (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
 - (8) Notify community corrections officer of any change in address or employment; and
 - (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.

WAIVER: The following above-listed mandatory conditions are waived by the Court:

- (b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:
- 1) The defendant shall submit to a sexual deviancy evaluation with a therapist approved by the Department of Corrections, and follow all treatment recommendations.
 - 2) The defendant shall have no contact with minor aged children without prior approval from the Community Corrections Officer and ~~the~~ treatment provider.
 - 3) The defendant shall obtain a substance abuse evaluation and follow all recommended treatment.
 - 4) The defendant shall not ~~possess~~ possess alcohol during the period of community custody.
 - 5) The defendant shall have no contact with K.B.S. (DOB 11/8/96) without prior approval of the Community Corrections Officer and ~~the~~ treatment provider.
 - 6) The defendant shall not possess or view sexually explicit material as defined by RCW 9.68.130, ~~or other materials as deemed inappropriate by the treatment provider.~~
 - 7) The defendant shall submit to polygraph testing and provide non-deceptive polygraphs at the request of the Community Corrections Officer and ~~the~~ treatment provider, and the defendant shall submit to plethysmograph testing at the request of the treatment provider.
 - 8) Must consent to allow home visits by DOC to monitor compliance with supervision. Home

11-1-00775-2

BUCKMAN, Brian W. 355481

Page 2 of 3

visits will include access for purposes of visual inspection of all areas of the residence in which the offender lives or has exclusive or joint control or access.

10/11/2012

DATE

William E. Heintz

JUDGE, LEWIS COUNTY SUPERIOR COURT

JAN 26 2012

By Kathy A. Brack, Clerk
Deputy

AB

Superior Court of Washington
for Lewis County

State of Washington

Plaintiff

vs.

Brian Buckman

Defendant

SCANNED

No. 11-1-775-2

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

1. My true name is: Brian Buckman

2. My age is: 19

3. The last level of education I completed was: _____

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: Rape of a Child Second Degree
The elements are: Have sexual intercourse with someone who is under the age of 14, to whom not married; and at the time was more than 36 months older

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;

1 sec. 3 ; *Boyd v. Alabama*, 395, U.S. 238, 242, 89 S.Ct. 1709, 23 L.3d. ad 274 (1969);
State v. Knotek, 136 wn. app. 412, 423, 149 P.3d 676 (2006) ; *In re Pers. Restraint of Isadore*,
151 wn. ad 294, 297, 88 P.3d 396 (2004).

A defendant may challenge the voluntariness of his guilty plea where he was misinformed of the sentencing consequences. *State v. Miller*, 48 wn. app. 625, 742 P. ad 723 (1987) ; *State v. Miller*, 110 wn. ad 528, 536, 756 P. ad 122 (1988) ; *State v. Mendoza*, 157 wn. ad 582, 590 (2006) ; *State v. Ross*, 129 wn. ad 279, 284, 916 P. ad 405 (1996) ; *State v. Weyrich*, 163 wn. ad 554, 182 P.3d 965 (2008).

During the review of the plea agreement to one count 2nd° Rape of a Child, Mr. Brown explained to me the sentencing consequences. My offender score was (1) point that had a standard range of 86 to 114 months minimum and a maximum sentence of life was mandatory as was community custody. (Jan. 26, 2012) Statement of Defendant on Plead of Guilty to sex offense, pg. 2' paragraph 6(a).

(The following pages and paragraphs will explain in factual detail the sentencing consequences that I was misinformed and will establish that I was in fact advised that I was subject to the indeterminate sentencing consequences under RCW 9A4A.507 around the time I entered a plead of guilty).

Guilty Plea Form (Jan. 26, 2012)

pg. 2' paragraph 6(a) informs the defendant of his offender score, standard range, community custody, and maximum term. My offender score is marked as (1), standard range is marked- 86 to 114, community custody is marked- life, and the maximum term is labeled as life. pg. 2' paragraph 6(b) explains that the "standard sentence range is based on the crime charged and my criminal history." The criminal record and offender scores provide :

- (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	1	86-114	-	life	life, \$50,000
2					
3					

* 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, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (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 sex offenses 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 period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. 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 sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: 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 period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.507: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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 period of confinement is over one year, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006: For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.

2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.

3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation: 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.

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

~~\$6,000 DOC~~, \$200 A ling fee, \$500 CUPM, Aply fees,
\$1000 jail fee, service fees, Restitution \$100 DNA
State withholds rec. until PSI & SSOSA eval. are done, but
oppose SSOSA

[] 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 register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.
- (n) 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.
- (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

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*.

BB

(p) 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 offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

BB

(q) **Special sex offender sentencing alternative:** In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after July 1, 2005; I will be

ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

~~(r) If this is a crime of domestic violence, the court may order me 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.~~

BB (s) 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.

~~(l) 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.~~

~~(u) 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[p].~~

~~(v) 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.~~

~~(w) The offense(s) I am pleading guilty to include 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.~~

~~(x) For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.~~

7. I plead guilty to:

count Ray of a Child Second Degree
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:

On or about June 2010, I had
sexual intercourse with my girlfriend, KBS (DOB 11/8/96)
we were not married, and I am more than 36 mos
older than her.

[] 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. 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.

BB Brian Buckman
Defendant

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

David W. Brown
Defendant's Lawyer

[Signature]
Prosecuting Attorney

Jennifer L. Meyer 28238
Print Name WSBA No.

DAVID W. BROWN 2037A
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 attached.

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

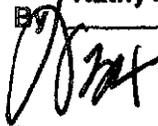
I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 1/26/12

James W. Lawley
Judge

MAR 07 2012

Kathy A. Brack, Clerk

By  Deputy

SCANNED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,
vs.
BRIAN WALLACE BUCKMAN,
Plaintiff,
Defendant.

NO. 11-1-00775-2
STIPULATION ON PRIOR CRIMINAL
RECORD AND OFFENDER SCORE

Upon the entry of a plea of guilty in the above cause number, the Defendant hereby agrees and stipulates that the following prior convictions are his/her complete FELONY CRIMINAL HISTORY for offender score purposes, and that the information in this Stipulation on Prior Record and Offender Score is correct, and furthermore that he/she is the person named in the convictions:

WASHINGTON STATE CONVICTIONS:

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1	Malicious Mischief 2	3/30/2007	4/17/2007	Lewis County Superior (Lewis, WA)	J	NV felony	
2	UPF 2	3/31/2007	4/17/2007	Lewis County Superior (Lewis, WA)	J	NV felony	
3	VUCSA: Attempted Delivery of Controlled Substance	3/28/2008	7/15/2008	Lewis County Superior (Lewis, WA)	J	NV felony	
4							
5							

* DV: Domestic Violence was pled and proved.

- 1 The defendant stipulates that he/she committed a current offense while on
 2 community placement/community custody (adds one point to score). RCW
 3 9.94A.525.
 4 The defendant stipulates that the prior convictions listed as number(s) _____,
 5 above, are one offense for purposes of determining the offender score (RCW
 6 9.94A.525).
 7 The defendant stipulates that the prior convictions listed as number(s) _____,
 8 above, are not counted as points but as enhancements pursuant to RCW 46.61.520.
 9 Other current convictions listed under different cause numbers used in calculating
 10 the offender score are (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>
1.			
2.			

9 **CONVICTIONS FROM OTHER STATES:**

10 The defendant also stipulates to the admissibility of the attached documents
 11 pertaining to the following out-of-state felony convictions and stipulates that the
 12 following out-of-state felony convictions are equivalent to Washington State felony
 13 convictions of the class indicated, per RCW 9.94A.525(3) (Classifications of
 14 felony/misdemeanor, Class, and Type made under Washington Law):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1							
2							
3							

17 **OFFENDER SCORE:**

18 The defendant stipulates that the above criminal history and scoring are correct,
 19 producing an offender score as follows, including current offenses, and stipulates that
 20 the offender score is correct and that no convictions have "washed out":

Count No.	Offender Score	Seriousness Level	Standard Range	Plus Enhancements *	Total Standard (including enhancements)	Maximum Term
I.	1	XI	Min. of 86-114 and max. of life	n/a	Min. of 86-114 and max. of life	Life

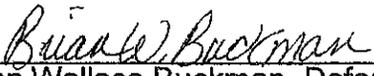
24 * (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom,
 25 see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF)
 26 Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving
 minor, (AE) endangerment while attempting to elude.

The defendant further stipulates:

- 1
2
3
4
5
- 1) That the defendant waives any right the defendant may have to have a jury decide the existence of the defendant's prior and current convictions beyond a reasonable doubt and agrees to a judicial fact-finding of prior and current convictions based on this stipulation;
 - 2) That if any additional criminal history is discovered, the State of Washington may re-sentence the defendant using the corrected offender score and the Prosecuting Attorney's recommendation may increase without affecting the validity of the plea of guilty;

6 If sentenced within the standard range, the defendant further waives any right to appeal
7 or seek redress via any collateral attack based upon the above-stated criminal history
8 and/or offender score calculation.

9 Stipulated to in open Court this 7th day of March, 2012.

10 
11 Brian Wallace Buckman, Defendant

12 
13 Colin P. Hayes, WSBA# 35387
14 Deputy Prosecuting Attorney

15 
16 Dave Brown, WSBA# 20379
17 Attorney for Defendant

CHRONOLOGICAL INDEX

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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARCH 7, 2012

Sentencing Hearing	5
<u>State's recommendation</u>	<u>5</u>
Defense's recommendation	9
Statement by Cindy Stevenson	12
Statement by the victim	14
Statement by the defendant	14
Imposition of sentence	15
Report sealed	17
Concluded	20

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1 whether or not he can be successful in treatment. The
2 evaluator didn't appear to believe that that was enough
3 for concern.

4 So with all that said, we are opposing the --
5 we are opposing the imposition of a special Sex
6 Offender Sentencing Alternative. We're asking the
7 court to impose a middle-of-the-range sentence, which
8 in this case would be -- ranges 86 to 114 months to
9 life. The middle of the standard range would be 100
10 months minimum with the maximum of life. That would be
11 our request based upon his standard range.

12 We are asking that he have community custody
13 for a period up to the statutory maximum, which would
14 be life in this case, standard conditions, and those
15 are all listed in both the community custody section of
16 the judgment and sentence and I've also attached
17 Appendix H to both proposed judgment -- the SOSA
18 judgment as well as the felony prison judgment.

19 Any restitution to be determined within 180
20 days, \$500 victim assessment, \$200 criminal filing fee,
21 \$84 sheriff service fee, court appointed attorney fees
22 to be determined, \$100 DNA collection fee, \$1,000 in
23 Lewis County Jail fee reimbursement.

24 And we are requesting a lifetime no-contact
25 order with the victim; however, I have -- again, the

OCT 03 2014

Kathy A. Brack, Clerk
By _____ Deputy

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS**

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STATE OF WASHINGTON,
Plaintiff,

10
vs.

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12
BRIAN WALLACE BUCKMAN,
Defendant.

NO. 11-1-00775-2

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
WITHDRAW GUILTY PLEA**

13
14
15
16
COMES NOW BRIAN WALLACE BUCKMAN by and through his attorney
undersigned, and submits this memorandum of law in support of his motion to withdraw
his guilty plea.

17
18
1. FACTUAL HISTORY

19
20
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22
23
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25
Mr. Buckman was charged with one count of Rape of a Child in the Second
Degree by Information. Pursuant to the Information, the maximum penalty was specified
as "Life imprisonment." He ultimately pled guilty and was granted a SSOSA. His SSOSA
was later revoked. His Statement of Defendant upon Plea of Guilty and his Judgment and
Sentence indicate that his standard sentence range was 86 to 114 month to life. Pursuant to
RCW 9.94A507, "An offender convicted of rape of a child in the first or second degree or
child molestation in the first degree who was seventeen years of age or younger at the time
of the offense shall not be sentenced under this section." Instead of an indeterminate
sentence, a standard range sentence without the possibility of life is the appropriate

MEMO IN SUPPORT OF MOTION TO WITHDRAW PLEA

CLIENT
COPY

THE LAW OFFICES OF
MANO, McKERRICHER,
& PAROUTAUD, INC., P.C.
P. O. BOX 1123
CHEHALIS, WASHINGTON 98532

1 sentence. It is undisputed that Mr. Buckman was 17 or younger when the offense allegedly
2 occurred.¹ It is also believed to be undisputed that Mr. Buckman was improperly advised
3 of the sentencing consequences of his plea, specifically, that he was informed that if he,
4 didn't accept a SSOSA he would face the possibility of life in prison. The only dispute is
5 whether withdrawal of his plea is the appropriate remedy, or whether he should merely be
6 given a new sentence within the standard range.

7 **2. LEGAL AUTHORITY AND ARGUMENT**

8 The first issue that needs to be determined is whether the case needs to be
9 transferred to the Court of Appeals as a personal restraint petition. CrR 7.8(c)(2) outlines
10 as follows:
11

12 Transfer to Court of Appeals. The court shall transfer a motion filed
13 by a defendant to the Court of Appeals for consideration as a personal
14 restraint petition unless the court determines that the motion is not
15 barred by RCW 10.73.090 and either (i) the defendant has made a
16 substantial showing that he or she is entitled to relief or (ii) resolution of
17 the motion will require a factual hearing.

18 Mr. Buckman's motion is not barred by 10.73.090 as it is facially invalid. In re Pers.
19 Restraint of Yates, 180 Wn.2d 33, 38-39, 321 P.3d 1195 (Wash. 2014). Based on the
20 undisputed facts, Mr. Buckman has made a substantial showing that he is entitled to relief,
21 which is that he accepted a plea agreement upon mistaken and incorrect advice that he was
22 otherwise facing the potential of life imprisonment.

23 The case law addressing withdrawal of pleas has been addressed by the
24 Washington State Supreme Court on two occasions in the last year. It is necessary to
25 briefly outline the case history to determine the appropriate standard and the state of the

¹ Mr. Buckman is 47 months and 20 days older than the alleged victim, and so once he turned 18 the victim would have been 14 and no rape of a child charge could be proven.

1 case law, as it is expected that the State will argue that Mr. Buckman must show actual
2 and substantial prejudice in order to obtain relief pursuant to Yates and its predecessor, In
3 re Pers. Restraint of Stockwell, 179 Wn.2d 588 (Wash. 2014).

4 In Stockwell the Petitioner filed a PRP challenging a 1986 conviction more than
5 two decades after his judgment became final. His petition was filed after he was convicted
6 in 2004 of a different sex offense and sentenced as a persistent offender to life without the
7 possibility of parole. The Court analyzed the prior case law and concluded that a judgment
8 and sentence that did not correctly state the maximum of life imprisonment would “be
9 presumed prejudicial” on direct appeal, but Mr. Stockwell would be required to “show the
10 error caused actual and substantial prejudice” on collateral review. Stockwell at 596.

11 In Yates the Court addresses a PRP of a serial killer who pled and agreed to 408
12 years out of Spokane County, and who apparently was also sentenced to death due to
13 separate convictions from Pierce County. Two of the counts were wrongly noted as 20
14 year maximums, where they should have been life with a minimum of 20 years. The Court
15 reiterates Stockwell and denies the PRP based on the fact that no prejudice is even alleged,
16 and that a 408 year prison term exceeds any possibly human life-span, and so there “is
17 simply no way to find prejudice in this context.” Yates at 41.

18 These cases are easily distinguished from the case at hand. First, this is not a PRP
19 and therefore Mr. Buckman should not be required to show actual prejudice. Prejudice is
20 presumed. Second, if the court finds that Mr. Buckman is required by Stockwell and Yates
21 to show actual and substantial prejudice, this showing is made and he should be allowed to
22 withdraw his plea. This is not a case where a serial killer already serving hundreds of years
23 wants to quibble over two counts. This is not a case where a multi-time sex offender is
24 sentenced to life without the possibility of parole and thereafter attempts to find a
25

1 technical defect in a 20 year old conviction. This is a young man who allegedly had
2 consensual sex when he was 17 and the victim was 13. When he realized that he had been
3 incorrectly advised and sentenced, he filed a motion to withdraw his plea.

4 Additionally, Mr. Buckman may be entirely innocent of any crime at all, as he is
5 within the 48 month age difference exception in Rape Child 3. Based on a miscalculation
6 of birth dates it was thought Mr. Buckman was more than 48 months older than the victim
7 and would be guilty of Rape Child 3 if not Rape Child 2. This is factually not the case.

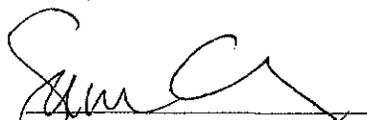
8 Finally, it is important to remember that Mr. Buckman was a young man when he
9 was contemplating whether to enter a plea and petition for a SSOSA. He relied upon what
10 his attorney told him, which was erroneous. It is actual and substantial prejudice to accept
11 a plea deal upon the mistaken belief that if you don't take that deal you may serve your
12 entire adult life behind bars.

13
14 **3. CONCLUSION**

15 This is not a PRP and the motion to withdraw should be granted as a matter of law
16 based on the incorrect attorney advice, the incorrect information and the incorrect J&S. If
17 the Court determines prejudice must be shown, the motion should still be granted as
18 prejudice is apparent.
19
20

21 DATED: October 3, 2014

22 MANO, McKERRICHER & PAROUTAUD,
23 INC., P.C.

24 
25 Samuel L. Groberg, WSBA #39540
Attorney for Defendant