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No. 95542-5      NO. 76258-3-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

B.O.J.,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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## A. INTRODUCTION

B.O.J. was a seventeen-year old girl who, by the time she appeared in juvenile court for two shoplifting offenses, had been abandoned by her family, deprived of safe support system, and denied significant help from the government, despite being a state dependent.<sup>1</sup>

The prosecution had first promised to recommend the sentence of probation, community service, and credit for time served in exchange for B.O.J.'s guilty plea to the shoplifting offenses. However, prior to her sentencing, the prosecution withdrew its recommendation, arguing that she violated one term of her plea agreement by leaving her foster care placement. B.O.J. denied the allegation.

Nevertheless, the prosecutor drastically departed from its initial recommendation, and asked the court to impose a manifest injustice sentence of twenty-seven to thirty-six weeks to serve at the Juvenile Rehabilitation Administration (JRA). The trial court sentenced her to an even more extreme manifest injustice sentence of forty-two to fifty-two weeks.

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<sup>1</sup> This brief contains factual details included in the Juvenile Probation Counselor's Dispositional Report. Due to its sensitive information, the juvenile court sealed the Report. Pursuant to GR 15(g), this report shall remain sealed in the appellate court. A motion to accept this document under seal is being filed simultaneously with this brief.

## B. ASSIGNMENTS OF ERROR

1. The manifest injustice sentence of forty-two to fifty-two weeks imposed by the court was not supported by clear and convincing evidence.

2. The court improperly considered uncharged acts when it imposed the manifest injustice sentence. Finding of Fact 12.

3. The court failed to consider mitigating factors.

4. The court imposed an excessive and unreasonable sentence for the crime of theft in the third degree.

5. The State improperly breached its obligations under the original plea agreement by failing to prove by a preponderance of the evidence that B.O.J. violated the plea agreement.

## C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. To uphold a manifest injustice disposition, reviewing courts must examine if the trial court's reasons for the sentence are supported by substantial evidence and if the trial court's reasons support the determination of a manifest injustice disposition beyond a reasonable doubt. Here, the court imposed a forty-two to fifty-two week sentence without any substantial evidence supporting the sentence. Is

resentencing required when the trial court fails to find substantial evidence that a manifest injustice sentence should have been imposed?

2. All persons accused of crimes are entitled to the presumption of innocence. Accordingly, it is improper for a court to consider unproven criminal conduct at a juvenile disposition hearing. Is remand for resentencing required when the court improperly considered prior unproven misconduct?

3. In determining whether a manifest injustice sentence should be imposed, the court must also consider mitigating factors. Where the court fails to consider as mitigating evidence that B.O.J.'s crimes of theft in the third degree did not cause physical harm, is remand for resentencing required?

4. Only 0.4 percent of juveniles committed to state institutions have been convicted of class E offenses, the lowest classification of juvenile offenses. The average sentence served by a juvenile sentenced to institutional time is 143 days. Was a sentence of forty-two to fifty-two weeks excessive for a youth convicted of theft in the third degree, a class E offense?

5. In order for the State to relieve itself of its bargained-for obligations under a plea agreement, it must prove that the defendant

violated his or her obligation by a preponderance of the evidence in an evidentiary hearing. Here, the State failed to prove that B.O.J., in fact, did not satisfy her obligations. Does the erroneous imposition of a manifest injustice sentence entitle B.O.J. to specific enforcement of the sentence detailed in the original plea agreement?

#### D. STATEMENT OF THE CASE

B.O.J. was a seventeen-year-old girl surviving on her own because of her unstable family life and unsuccessful foster-care placements. CP 40. Her parents never took care of her, and when she entered the foster system, B.O.J. was never placed in a home where she felt safe. CP 40.

B.O.J. was born crack-exposed. Initial Mental Health Summary Report 1. She was immediately placed in the care of her grandmother. Probation Report 8. B.O.J. did not get the attention and support she needed from her family. Probation Report 8. She had no contact with her mother. Probation Report 8. Her father dealt with addiction problems of his own, making him also unavailable to her. Initial Mental Health Summary Report 1. She turned to friends, some of whom were involved in criminal activity. Her age and susceptibility caused her to be negatively influenced by these people.

When B.O.J.'s grandmother died, B.O.J. became a ward of the State. Probation Report 8. The government attempted to place her in a variety of foster placements, most of which were group homes. CP 40. But due to B.O.J.'s past stranger-related trauma, she would run away from these stress-inducing environments. CP 40. B.O.J. was never placed in a safe home after her grandmother's death. CP 40.

B.O.J. uses marijuana as a means of coping and relieving stress. GAIN-I Recommendation and Referral Summary 2. The government has never placed B.O.J. in a treatment program tailored to her specific needs. Probation Report 4. The only apparent placement noted by her counselor was in 2015, when the counselor tried to place B.O.J. in a program in Spokane. Probation Report 4, 9. The influx of strangers she was exposed to probably added to her distress and eventual departure. The government has been unable to find another program that works for B.O.J. Probation Report 4.

B.O.J. was accused of stealing five bottles of liquor in April 2016. CP 6. Five months later, she was accused of taking diapers and Rice Krispie Treats. CP 6. She was charged with two counts of theft in the third degree. CP 6-7.

Based on her offender score, B.O.J. was subject to local sanctions. RP 8; RCW 13.40.0357. B.O.J. pled guilty to these charges based on the prosecution's agreement to recommend that B.O.J. be sentenced to six months of community supervision, eight hours of community service, and credit for time served. CP 15; RP 13.

The probation department recommended that the court impose a manifest injustice sentence of fifty-two weeks. CP 40. In a sealed document, probation recommended the disposition because of her criminal history, treatment needs, and overall addiction to a "life of crime." Probation Report 3. The probation officer believed, based on B.O.J.'s one failed treatment attempt, that she was not amenable to community-based treatment. Probation Report 2. He thought her' treatment needs would be best served through incarceration. Probation Report 11.

After the adjudicatory hearing on November 15, 2016, B.O.J. was conditionally released based upon her completion of the Global Appraisal of Individual Needs (GAIN) assessment, with the conditions of continued treatment compliance, random urinalysis testing, a curfew, and residing in her foster care placement. RP 21. B.O.J. completed the

GAIN assessment before her next hearing and did not commit any new crimes. RP 24.

On November 30, 2016, the prosecutor argued B.O.J. had violated the conditions of her release by running away from her foster care placement. 11/30/16 RP 4. The prosecutor did not prove by a preponderance of the evidence that B.O.J. had breached their stipulated plea agreement by running away. 13 Wash. Prac., Criminal Practice & Procedure § 3418 (3d ed.). B.O.J. denied the allegation. 11/30/16 RP 4. The prosecutor nevertheless argued that this voided the plea agreement. RP 21. The prosecutor then recommended a manifest injustice sentence of twenty-seven to thirty-six weeks of incarceration because the prosecutor believed twenty-seven to thirty-six weeks would allow B.O.J. ample time to access and complete drug and alcohol treatment. RP 20. The prosecutor also argued that incarceration would “function as a housing option for B.O.J.” RP 20.

B.O.J., who was months away from turning 18, believed that a year of incarceration would not help her. RP 28. B.O.J. wanted help in the community. RP 28. B.O.J. hoped to obtain her G.E.D. and get a job, so that she could positively contribute to her community. RP 28. She recommended a sentence of sixty days of incarceration, four months of

probation, and an opportunity to be placed in a local treatment program. CP 22. B.O.J. reiterated her belief that further institutionalization was counterproductive and that she needed a change. RP 28; 37.

The trial judge followed neither of these recommendations. CP 39. The court believed incarceration would provide B.O.J. with the “stable” environment necessary for rehabilitation. RP 34. As a result, the judge imposed a sentence of forty-two to fifty-two weeks of incarceration. RP 36. The court found several aggravating factor existed, including B.O.J.’s previous non-compliance with the conditions of community supervision, her uncharged criminal conduct, seriousness of her criminal history, and her treatment needs. CP 40-41.

#### E. ARGUMENT

##### **1. Institutionalizing children for minor offenses is counterproductive to the rehabilitative goals of the Juvenile Justice Act.**

The court’s stated reason for incarcerating B.O.J. was to provide her with a “stable” environment. RP 34. However, this justification runs entirely counter to evidence on the harms of incarcerating youth, which has been found to further expose youth to severe violence and trauma, and to exacerbate recidivism.

The United State Supreme Court has acknowledged the negative and counterproductive impacts of incarceration on juveniles. In *Roper v. Simmons*, 543 U.S. 551, 569–70, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Court abolished the death penalty for juveniles. Later, in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), the Court struck down the imposition of mandatory life sentences for youth convicted of non-homicide crimes. Finally, in *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the Court held that mandatory life without parole sentences are unconstitutional for juveniles convicted of homicide crimes. In developing these decisions, the Court relied upon newly-developed research and science demonstrating that the adolescent brain functions very differently than the adult brain.

Delinquent behavior is common in youth. It is estimated that about one third of young people engaged in some sort of deviant behavior before “aging out” of such conduct. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 6 (2011).<sup>2</sup> However, for youth

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<sup>2</sup> [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

who are incarcerated for delinquent behavior, their normal pattern of aging out is interrupted and delayed due to their forced disconnect from family, school, and employment. *Id.*

Additionally, congregating juveniles accused of delinquent behavior leads to high recidivism rates and worse outcomes. This phenomenon is referred to as “peer deviancy training.” See James Snyder, et. al., *Peer Deviancy Training and Peer Coercion: Dual Processes Associated With Early-Onset Conduct Problems* (2008). Researchers studying this phenomenon have found higher levels of substance abuse, difficulty in school, violence, and difficult adjusting throughout adulthood in juveniles. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 6 (2011)(citing Thomas J. Dishion, et. al., *When Interventions Harm: Peer Groups and Problem Behavior* (1999)).<sup>3</sup>

Youth who are incarcerated are more likely to be incarcerated as adults. See Joseph Doyle, et. al., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-assigned Judges*

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<sup>3</sup>[https://www.researchgate.net/publication/12789140\\_When\\_Interventions\\_Harm\\_Peer\\_Groups\\_and\\_Problem\\_Behavior](https://www.researchgate.net/publication/12789140_When_Interventions_Harm_Peer_Groups_and_Problem_Behavior)

(2015).<sup>4</sup> Incarceration has been proven no more effective than probation or other sentencing alternatives in reducing juvenile criminality. The Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, 12 (2011). Correctional placements may actually exacerbate criminality. *Id.*; Office of Juvenile Justice and Delinquency Programs, *Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, 2 (2010).<sup>5</sup> Notably, incarcerated youth committing low-level crimes have been found to be more likely to reoffend than those who were not incarcerated. *Id.*; see Center on Juvenile and Criminal Justice, *Study: Long-term Juvenile Incarceration Fails to Decrease Reoffending Rates* (2012).<sup>6</sup>

A majority of incarcerated youth have to cope with trauma, abuse and mental illness. In Washington, 60% of jailed youth have mental health issues, and more face drug or alcohol dependency. City of Seattle, Resolution 31614, Legislation Details (With Text), 4

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<sup>4</sup>[http://www.mit.edu/~jjdoyle/aizer\\_doyle\\_juvenile\\_incarceration\\_january2015.pdf](http://www.mit.edu/~jjdoyle/aizer_doyle_juvenile_incarceration_january2015.pdf)

<sup>5</sup><http://www.pathwaysstudy.pitt.edu/documents/Highlights%20from%20the%20Pathways%20to%20Desistance%20Study.pdf>

<sup>6</sup> <http://www.cjcj.org/news/5476>

(2015).<sup>7</sup> Nine out of ten girls who are incarcerated have suffered from physical, sexual or emotional abuse before entering the juvenile justice system. *Id.*

Further, incarceration itself exposes youth to physical and sexual abuse. 9.5 percent of youth detained in state juvenile facilities reported at least one incident of sexual victimization by another youth or staff in the past 12 months or since admission. *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012*, 9 (2013).<sup>8</sup> Of those who reported being victims of staff sexual misconduct, 85.9 percent reported more than one incident, while 20.4 percent reported being victimized more than 10 times. *Id.* at 24.

Incarcerated youth are also subjected to physical abuse. 13,000 claims of abuse had been reported from 2004 through 2007 in state-run juvenile facilities nationwide. Holbrook Moore, *AP: 13K Claims of Abuse in Juvenile Detention Since '04* (2008).<sup>9</sup> An estimated 45 percent of youth confined in secure correctional facilities and camp programs

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<sup>7</sup><https://seattle.legistar.com/View.ashx?M=F&ID=4019767&GUID=7C099120-9DED-4455-B5F9-81F0AA0D25E5>

<sup>8</sup> <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>

<sup>9</sup> [https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention\\_N.htm](https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention_N.htm)

report staff use unnecessary force, while 30 percent of those youth report that staff use solitary confinement as a discipline tool. *Id.*

The adults in B.O.J.'s life, who act on behalf of the government, including DSHS staff and her Juvenile Probation Counselor, acknowledge that incarceration has been a "revolving door" for B.O.J. Probation Report 10. She admitted that incarceration frustrates her because it feels like mere retribution for the government's lack of understanding the root of her behavior rather than a genuine attempt to alter her circumstances. RP 37. Previous incarceration has not helped curb B.O.J.'s behavior because incarceration is inherently incapable of addressing the underlying problems in her life that result in her delinquent behavior. Furthermore, incarceration fundamentally impedes her ability to mature, rehabilitate, and, ultimately, reintegrate into society as a productive member. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 6 (2011).

**2. B.O.J.'s manifest injustice disposition should be reversed because the evidence fails to support the trial court's decision.**

A court may only impose a juvenile court sentence outside the standard range if it determines that a disposition within the standard

range would “effectuate a manifest injustice.” RCW 13.40.160(2); *State v. Tai N.*, 127 Wn. App. 733, 741, 113 P.3d 19 (2005). A “manifest injustice” means a disposition that would either impose an excessive penalty on the juvenile or a disposition that would impose a serious a clear danger to society in light of the purposes of the Juvenile Justice Act. RCW 13.40.020(19). Clear and convincing evidence must support a ruling in favor of a manifest injustice disposition. RCW 13.40.160(2). The “clear and convincing standard” as applied to a manifest injustice disposition is equivalent to the “beyond a reasonable doubt” standard. *Tai N.*, 127 Wn. App. at 741.

A manifest injustice sentence is excessive when it cannot be justified by a reasonable view of the evidence. *State v. Strong*, 23 Wn. App. 789, 795, 599 P.2d (1979). To be upheld, a reviewing court must find (1) the juvenile court’s reasons are supported by the record, (2) those reasons clearly and convincingly support the conclusion that a disposition within the standard range would constitute a manifest injustice sentence, and (3) the sentence is neither clearly too lenient nor clearly too excessive. RCW 13.40.230(2); *State v. Duncan*, 90 Wn. App. 808, 812, 960 P.2d 941 (1998).

- a. *The reasons for imposing a manifest injustice sentence are not clearly and convincingly supported by the record.*

Standard range sentences are normally adequate to achieve the goals of the Juvenile Justice Act, including the goal of rehabilitation. *Tai N.*, 127 Wn. App. at 745. The juvenile court's fifty-two week sentence for B.O.J.'s shoplifting offenses cannot be justified by a reasonable view of the evidence. Under local sanctions, B.O.J. should have been sentenced to no more than sixty days detention, four months of probation, with a release from confinement for treatment. CP 22.

The court based the imposition of a manifest injustice sentence on the following factors: (1) her substance abuse and treatment needs, (2) her significant criminal history and continuing to reoffend, (3) failing to comply with court orders, and (4) that the range is too lenient. CP 41-42.

The court's intention in imposing a manifest injustice sentence appears to have been primarily to provide her with a "stable" environment to help her access the required treatment. RP 30-31; CP 40. However, the court's reference to B.O.J.'s lack of success in her treatment placements failed to acknowledge how the Department of Social and Health Services and the probation department were unable

to provide placements that addressed her underlying trauma. CP 40. The failure of these institutions to adequately address her treatment needs does not justify a manifest injustice sentence for her.

B.O.J. also lacked the significant criminal history that would have justified sentencing her to the maximum sentence she could have received for her conviction. CP 40. B.O.J. had never been convicted of a felony offense. CP 40. Her record consisted of property crimes, false statements, and misdemeanor assault. CP 40. For scoring purposes, B.O.J. had two points. CP 18. B.O.J.'s previous convictions are low-level offenses that she's resorted to in time of desperation and survival. CP 40. B.O.J. described her previous shoplifting behavior, as her taking something she needs, but isn't able to afford. Probation Report 6. B.O.J.'s history does not support a sentence outside the standard range.

*b. The court committed reversible error by erroneously considering factors it is expressly prohibited from considering.*

The court also erroneously considered B.O.J.'s uncharged criminal conduct as an aggravating factor. CP 40 (Finding of Fact 12). The use of uncharged conduct is an improper aggravating factor, as it is a violation of the presumption of innocence. *State v. Melton*, 63 Wn. App. 63, 71–72, 817 P.2d 413 (1991). Without other substantial

and compelling reasons to justify the sentence, especially where the court places considerable weight on this factor, remand for resentencing is appropriate. *See, e.g., State v. Fisher*, 108 Wn.2d 419, 739 P.2d 683 (1987).

The court further erroneously considered the fact that B.O.J. was a dependent. Children are dependent if they are 1) abandoned; 2) abused or neglected by a person legally responsible for the care of the child; or 3) have no parent or guardian capable of caring for the child, which puts the child in circumstances that constitute a danger of substantial damage to the child's psychological or physical development. RCW 13.34.030(6)(a),(b),(c). A juvenile court cannot consider a juvenile's economic circumstances and factors indicating that a child is dependent when determining a child's sentence. RCW 13.40.150(4)(d) and (e). Notably, the court cannot impose a punishment solely on the basis that a lack of facilities exists in the community. RCW 13.40.150(5). Again, the court characterized incarceration as a way to provide B.O.J. with "a housing option." RP 20. B.O.J.'s economic and familial circumstances should never weigh in favor of a manifest injustice sentence. Reversal is also required for this error.

c. *The sentence imposed by the court was excessive.*

The average adult jail sentence for a felony property offense in Washington is three months. Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing*, 1 (2015).<sup>10</sup> For juveniles who are committed to an institution, the average stay for all offenses is 143 days. Juvenile Rehabilitation Administration, *Average Residential Stay (In Days)* (2016).<sup>11</sup> Only two youth, approximately 0.4 percent of the population of the juvenile institutions, were serving sentences for class E offenses, which includes theft in the third degree at the beginning of 2016. Juvenile Rehabilitation Administration, *Demographic Snapshot on 1/11/2016*, 5 (2016).<sup>12</sup>

The prosecutor did not suggest that a sentence fifty-two weeks was necessary for B.O.J. to achieve her treatment needs. RP 20. In the disposition hearing, the prosecution argued for a manifest injustice sentence of up to thirty-six weeks. RP 20. This prosecutor believed this would be ample time for B.O.J. to receive treatment, even if there was a

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<sup>10</sup> Available at [http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult\\_Stat\\_Sum\\_FY2015.pdf](http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2015.pdf)

<sup>11</sup> Available at <https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/Reports/2016AverageLOS-FY15.pdf>

<sup>12</sup> Available at <https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/Reports/2016DemographicsOn1-11-16.pdf>

delay. RP 20. The typical drug treatment at the juvenile institution lasts ten weeks. CP 41. Even if this Court finds a manifest injustice sentence above thirty days is appropriate, the excessive sentence, well beyond what is necessary for B.O.J.'s treatment needs, is unnecessary.

B.O.J. was incarcerated for two counts of theft in the third degree. CP 18. No one was ever placed in danger by her actions. She has no significant criminal history, or any history of felony offense. CP 40. There is no justification for sentencing B.O.J. to a sentence above the maximum she could have received for her charge. RCW 9A.56.050. The State's failure to account for her needs while she was a dependent does not justify the excessive sentence. The imposition by the court was clearly excessive.

d. *Reversal is required.*

A "manifest injustice" disposition should only be imposed when a juvenile would impose a serious and clear danger to society. RCW 13.40.020(19). The juvenile court's manifest injustice sentence of fifty-two weeks for shoplifting offenses was inappropriate and erroneous. The court failed to find "clear and convincing" evidence supporting the manifest injustice sentence. The factors the court relies on are invalid or insufficient to justify the sentence. In light of B.O.J.'s struggles, it is

clear a fifty-two week sentence for theft in the third degree is an excessive and unjust sentence. This Court should reverse with instructions for entry of a local sanctions sentence.

**3. Because the prosecution failed to prove B.O.J. violated a condition of the plea agreement, B.O.J. is entitled to specific performance of her plea agreement.**

B.O.J. was released at the disposition hearing based on her completion of various conditions including completion of a Global Appraisal of Individual Needs (GAIN) assessment, submission of a urinalysis, and compliance with Department of Social and Health Services placements. On November 30, 2016, the government accused B.O.J. of violating a condition of their stipulated agreement by running away from her placement. B.O.J. denied that the violation occurred.

11/30/16 RP 4.

There is no record to show B.O.J. actually ran from a placement. However, despite its failure to prove that B.O.J. actually violated the plea agreement, the prosecution breached plea agreement and recommended that the court impose a manifest injustice sentence. RP 21.

In order to vacate a guilty plea on basis of a defendant's breach of the stipulated agreement, the government must establish that the

breach occurred in an evidentiary hearing. *Matter of James*, 96 Wn.2d 847, 850, 640 P.2d 18 (1982). Plea agreements inherently implicate fundamental due process rights; therefore the prosecution must adhere to bargained-for terms until breach of agreement is proven by a preponderance of the evidence. *Id.* An evidentiary hearing must be held where due process must be complied with, including affording the defendant the opportunity to call witnesses. *Id.* Merely accusing a defendant of misconduct or of a violation does not relieve the State of its bargained-for duty. *Id.*; *State v. Sledge*, 133 Wn.2d 828, 838-39, 947 P.2d 1199 (1997).

The remedy for the imposition of a sentence outside of the terms of the plea agreement without proving the defendant's violation by a preponderance of the evidence is either specific enforcement of the original agreement or withdrawal of the plea. *State v. Schaupp*, 111 Wn.2d 34, 41, 757 P.2d 970 (1988); *see also State v. Galeazzi*, 181 Wn. App. 1023 (2014). In B.O.J.'s case, the prosecution's relieving itself of its agreed-upon commitments, without proving by a preponderance of the evidence that B.O.J. violated the agreement, was improper. This Court should find B.O.J. is entitled to specific enforcement of the

original plea agreement: six months of community supervision, eight hours of community service, and credit for time served. CP 15.

F. CONCLUSION

B.O.J. is entitled to resentencing. The trial court failed to support its imposition of an upward manifest injustice sentence with substantial evidence and did not prove a sentence in excess of the statutory maximum for theft in the third degree was justified. At her resentencing, B.O.J. is entitled to specific performance from the government, because of the prosecution's failure to prove she breached the conditions of the plea agreement.

For these reasons, B.O.J. asks this court to reverse the sentence of the trial court and enforce the sentence set forth in the original plea agreement.

DATED this 1st day of May 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Tadeu F. Velloso', written in a cursive style.

TADEU F. VELLOSO – Rule 9 #9722859

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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Washington Appellate Project (91052)  
Attorneys for Appellant