

QUESTION PRESENTED

1. WHERE A DEFENDANT ENTERS A PLEA ABSENT KNOWING HIS BLAKELY RIGHTS, IS SAID PLEA MADE KNOWINGLY? COMPETENTLY? AND VOLUNTARILY?
2. WHERE A DEFENDANT IS MISINFORMED AS TO HIS DIRECT CONSEQUENCES, IS SAID PLEA KNOWINGLY? INTELLIGENTLY? COMPETENTLY? OR VOLUNTARILY MADE?
3. WHERE A DEFENDANT DOES NOT STIPULATE TO FACTS WARRANTING AN SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM, IS SENTENCE IN EXCESS THEREOF A VALIDLY IMPOSED SENTENCE?
4. WHERE A DEFENDANT'S JURY DOES NOT FIND FACTS WARRANTING AN SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM, IS SAID SENTENCE IN EXCESS THEREOF A VALIDLY IMPOSED SENTENCE?
5. WHERE THE COURT EXCEEDS ITS SENTENCING AUTHORITY, IS IT ACTIONS VOID?
6. IS ANY SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM A LEGISLATIVELY AUTHORIZED SENTENCE?
7. WHERE THE COURT IMPOSES A SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM AND THE DEFENDANT DID NOT AGREE TO A SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM, IS SAID PLEA VALID WHERE THE TIME IMPOSED EXCEEDS NOT ONLY THE AGREE UPON AMOUNT BUT ALSO THE LEGISLATIVELY AUTHORIZED MAXIMUM FOR THE OFFENSE AT QUESTION?
8. WHERE THE COURT IMPOSES COMMUNITY CUSTODY IN ADDITION TO THE STATUTORY MAXIMUM, DOES IMPOSITION OF THE "TOTAL CONFINEMENT" AND "COMMUNITY CUSTODY" TERM CONSTITUTE AN:
 - (i) Exceptional sentence in the event that appellant is made to serve an additional term of total confinement of 24-48 months for a revocation of the community custody?
9. WHERE RCW 9.94A.[505][728]and[128] PROHIBIT COMMUNITY CUSTODY PLUS TOTAL CONFINEMENT EXCEEDING THE STATUTORY MAXIMUM AND THE COURT NONETHLESS DOES, IS SAID IMPOSITION:
 - (i) In excess of the authorized statutory maximum?
 - (ii) Valid?
 - (iii) In excess of the statutory maximum?
10. POST-BLAKELY WHERE THE PROSECUTION, COURT, AND APPOINTED COUNSEL REPRESENT TO A DEFENDANT THAT HIS STATUTORY MAXIMUM IS LIFE IMPRISONMENT AND THE DEFENDANT PLEADS GULITY BASED UPON THAT INFORMATION, IS SAID PLEA KNOWINGLY? INTELLIGENTLY? COMPETENTLY? OR VOLUNTARILY MADE?

FILED
 COURT OF APPEALS
 STATE OF WASHINGTON
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11. WHERE APPELLANT'S JUDGMENT AND SENTENCE IDENTIFIES HIS STATUTORY MAXIMUM AS LIFE AND IT IS IN FACT THE TOP END OF THE STANDARD RANGE, IS SAID JUDGMENT AND SENTENCE FACIALLY VALID?
12. WHERE A DEFENDANT IS NOT PROPERLY AND CORRECTLY INFORMED AS TO THE DIRECT CONSEQUENCES OF PLEA, IS SAID PLEA MADE KNOWINGLY? INTELLIGENTLY? COMPETENTLY? OR VOLUNTARILY?
13. WHERE ON ANOTHER OFFENSE APPELLANT IS INFORMED THAT HIS STATUTORY MAXIMUM IS "10 YEARS" AND HIS STATUTORY MAXIMUM IS IN FACT HIS STANDARD RANGE, WHERE SAID REPRESENTATION HAD AN EFFECT ON THE DECISION TO PLEAD GUILTY IS SAID PLEA THEREAFTER KNOWINGLY? INTELLIGENTLY? COMPETENTLY? OR VOLUNTARILY MADE?
14. WHERE COUNSEL DOES NOT INFORM DEFENDANT OF HIS BLAKELY RIGHTS IS COUNSEL EFFECTIVE AND/OR OPERATING EFFECTIVELY?
15. WHERE A DEFENDANT PLEADS TO "REAL FACTS" SUPPORTING HIS "UNDERLYING CONVICTION" DOES SAID "REAL FACTS" CONSTITUTE A STIPULATION TO "ADDITIONAL FACTS" THAT WARRANT IMPOSITION OF A SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM OR THE AGREE UPON SENTENCE?
16. WHERE COMMUNITY CUSTODY AND THE STANDARD RANGE EXCEED THE STATUTORY MAXIMUM, IS SUCH COMBINATION IN VIOLATION OF THE AFOREMENTIONED RCW'S REGULATING AND CONTROLLING STATUTORY MAXIMUM'S AND TOTAL CONFINEMENT?
17. WHERE MR, WILTON'S JUDGMENT AND SENTENCE DOES NOT CLARIFY THAT HIS TERM OF TOTAL CONFINEMENT CANNOT EXCEED HIS STATUTORY MAXIMUM AND MR. WILTON IS SUBJECT TO IMMINENT INCARCERATION ON THAT PORTION OF THE JUDGMENT AND SENTENCE, IS THE JUDGMENT AND SENTENCE VALID AND/OR AMBIGUOUS AS TO THAT RELEVANT PORTION?
18. WHERE THE PROSECUTION FAILS TO MAKE RECORD OF ALL ISSUES THAT ARE "BINDING" ON A PLEA AGREEMENT, IS SAID FAILURE IN VIOLATION OF Cr.R 4.2.?
19. INSOFAR AS A PLEA AGREEMENT IS CONCERNED DOES A DEFENDANT HAVE A LEGAL STANDING TO ACCEPT AN E-MAIL" THAT IS NOT PART OF THE RECORD, AS BEING BINDING UPON A PLEA, AND IS SUCH E-MAIL ENFORCEABLE WHERE IT IS NOT PART OF THE RECORD ANYWHERE?
20. INSOFAR AS A PLEA COLLOQUY IS CONCERNED, IS THE COURT AND PROSECUTION DUTY BOUND TO MAKE RECORD OF ALL FACTORS RELEVANT TO THE UNDERLYING PLEA?
21. WHERE A MATTER IS BINDING ON A PLEA AGREEMENT, IS THERE SUCH REQUIREMENT THAT THE BINDING PORTION THEREOF BE MADE PART OF A RECORD?

22. WHERE ALL ISSUES AND FACTORS SURROUNDING A PLEA IS NOT MADE PART OF ANY RECORD, WHAT IS THE REMEDY FOR SUCH FAILURE?
23. DOES A DEFENDANT HAVE A LEGAL STANDING TO RELY ON AN "PER SE" "E-MAIL" AS HAVING A BINDING EFFECT ON A PLEA CONTRACT, WHERE THAT PROVISION AND/OR BINDING PORTION IS NOT MADE PART OF ANY RECORD AT ALL?
23. That articulated aforetohere and hereafter are not "exclusive" errors but rather those known to appellant at the time of this drafting, additionally Propia Persona, the arguments advanced herein are not all denoted as questions in this "question presented" section and therefore appellant respectfully request "Liberal Interpretation" of this Statement.

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,) NO. 62412-1-I
Respondent,)
) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
v) PURSUANT TO RAP 10.10
)
)
REGINALD WILTON,)
Appellant.)

I, Reginald Wilton, have received and reviewed the Appellant Opening Brief, prepared by my Attorney, and I believe that the issues pertinent to my case were not adequately addressed. And, I understand that the court will review this Statement of Additional Grounds for review when my appeal is considered on the merits.

ADDITIONAL GROUNDS(1)

MAXIMUM SENTENCE RANGE

Appellant was misinformed as to his direct consequences insofar as to his "maximum sentence" is concerned.

In negotiating the plea agreement betwixt appellant and the State, appellant's appointed counsel, the prosecution as well as the Court, all represented to appellant that his maximum sentence and/or his maximum "range" was "Life Imprisonment".

While appellant has yet been unable to obtain his VRP's "Verbatim Report of Proceedings" of his plea colloquy notwithstanding numerous request(s), appellant's Judgment and Sentence at page 2, portion 2.4 provides and evidences that appellant's "statutory maximum" is/was life imprisonment. As such, appellant asserts his plea was not:

- (i) Knowingly
- (ii) Intelligently
- (iii) Competently, nor
- (iv) Voluntarily

entered into.

Consequently appellant is therefore able to withdraw his plea of guilt.

ADDITIONAL GROUNDS(1)

ARGUMENT

Due Process requires that an affirmative showing that the defendant entered the guilty plea intelligently and voluntarily. State v Barton, 93 Wn.2d 304, 310 (citing Boykin v Alabama, 394 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d. at 284). Appellant asserts that his plea was not knowingly nor intelligently made and as a direct consequence the plea therewith was not voluntarily made due to the error of the appellant being misinformed as to his statutory maximum equating life in prison.

Appellant's "Statutory Maximum" is not "life Imprisonment" save a jury verdict supporting such, and/or stipulation from the appellant supporting a sentence in excess of his statutory maximum, appellant's statutory maximum for his

Class A offense is the top end of his standard range. State v Knotek, 136 Wn.App. 412, 425 (2007).

To the extent that appellant was sentenced post-Blakely (infra) it was error for the state and other relevant parties to represent to Mr. Wilton that his statutory maximum was life imprisonment. Furthermore appellant was not informed that he was and is entitled to the benefit of a jury determination that aggravating factors [if present] warrant an exceptional sentence, or for a lack of better terminology, "a sentence in excess of his statutory maximum".

The defendant need not be informed of all possible consequences of the plea, but rather, only direct consequences. State v Ross, 129 Wn.2d at 284. The maximum sentence is among such direct consequences of the plea. Knotek(supra) at 423. (citing State v Morley, 134 Wn.2d 588, 621; State v Ross(supra) at 284-87)). If a plea is based on misinformation about sentencing consequences, a guilty plea is not entered knowingly. Knotek Id (citing State v Miller, 110 Wn.2d 513, 528.

Appellant does not advance that Blakely(infra) nullify's a life imprisonment as the statutory maximum for a Class A offense...Knotek Id. But rather that Blakely(infra) outlined the procedure by which a life sentence may be imposed in the state of Washington, [unless conceded] a life sentence is not possible for a Class A offense except where the trier of fact specifically finds beyond a reasonable doubt, or the defendant admits to aggravating factors supporting such an exceptional sentence of life imprisonment. Knotek(supra) at 425.

So as to elucidate the error; appellant was not informed that:

- (i) his statutory maximum was the top end of his standard range, and
- (ii) He possessed and possesses the right to have a jury determine that life was and/or is warranted for his offense and circumstances

Where the trial court, appointed counsel, and the state all failed to and/or misinformed appellant as to these critical factors in assisting him in making informed decisions knowingly, intelligently, competently, and voluntarily, it is wholeheartedly incorrect to assume [even arguendo] that defendant thereafter made a voluntary plea. As our courts have soundly declared "that where a defendant is not properly informed about the relevant factors surrounding the plea, it cannot be inferred that it was therewith voluntarily made".

A trial court is required to correctly inform a defendant who pleads guilty as to the maximum sentence on the charge. State v Morley, 134 Wn.2d at 621. That did not happen in Mr. Wilton's case. Assuming "arguendo" that the prosecution rebuts that appellant knew his 'maximum', the prosecution can make no showing that appellant was in fact informed of his Blakely(infra) rights, nor that he was properly and correctly informed as to the relevant statutory maximum. Should the state be able to make such showing(s) their showing is invited and therewith anticipated. The state bears the burden of proving the validity of the defendant's guilty plea including the defendant's knowledge of the direct consequences. Knotek(supra) at 412.

Appellant was sentenced in 2007. Blakely v Washington, 542 U.S. 296, which was issued and published in 2004 provides at relevant portion "other than the fact of a prior conviction, any fact used to increase the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt, or admitted by the defendant".

See also United States v Booker, 543 U.S. 296, 125 S. Ct. 738, 160 L. Ed. 2d. 621; State v Ose, 156 Wn.2d 140, 148; Apprendi v New Jersey, 530 U.S. 466, 482-484, 120 S. Ct. 2348, 2359. 147 L. Ed. 2d 435; Ring v Arizona, 536 U.S. 586, 602. 122 S. Ct. 2428. 153 L. Ed. 2d..556.

It necessary follows that appellant was also misinformed as evidenced in his Judgment and Sentence that his other offense's Statutory Maximum was "10 Years". This is incorrect likewise. As a progeny of Blakely(supra) appellant's range on that offense is not "10 Years" but rather the standard range as well.

Where a guilty plea is based on misinformation regarding the direct consequences of the plea [] the defendant may withdraw his plea based on involuntariness. State v Mendoza, 157 Wn.2d 582 (2006). Additionally, any guilty plea may be withdrawn if (1) counsel is ineffective (2) plea not ratified by the defendant (3) plea was involuntary, or (4) plea was breached by the state. Plea is involuntary if made without knowing the direct consequences, and the sentencing range is a direct consequence. State v Moon, 108 Wn.App. 59.

Appellant has made showing as to how his statutory maximum was misrepresented to him, and how he was not properly informed as to his sentence ranges and direct consequences. While at this juncture for the purpose of the factors cited on the preceding page in Moon(supra), without placing sole reliance on Moon(supra) appellant furthers:

- (1) Counsel was ineffective for his representations and misrepresentations.
- (2) Knowing the Blakely holding now, appellant would not have ratified his plea
- (3) Involuntariness, is argued herein throughout and,
- (4) The plea was breached by the state, (see argument infra).

Accordingly, appellant has also made a showing addressing each factor as outlined in Moon(supra).

Where a defendant is misinformed of [his] standard range, whether too low or too high, plea may be withdrawn if, after evidentiary hearing, defendant shows that misinformation affected the decision to plead vs go to trial. State v McDermond, 152 Wn.2d 182 (2004).

Appellant did not understand all of the consequences of and rights inherent in his prosecution as they were not properly explained to appellant and a defendant must understand the sentencing consequences of a guilty plea for the plea to be valid. State v Miller, 110 Wn.2d 513, 531(citing Wood v Morris, 87 Wn.2d 501, 503).

This error has resulted in a manifest injustice as appellant certainly would not have plead knowing all he knows now. [post-plea]

Therefore the court shall allow the defendant to withdraw his plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice Cr.R 4.2; Miller(supra) at 531.

In the case at bar there exist no other means of eradicating the manifest injustice save withdrawal. That very injustice has and is working to appellants' prejudice and disadvantage as he is serving a prison term on various misinformation(s). Indeed federal courts have declared that unless the courts failure to inform the defendant of mandatory minimum and maximum sentence for charge constitutes harmless error, defendant will be allowed to withdraw his plea. United States v Berrio-Callejas, 219 F.3d. 1.

The court, Counsel, and States failure in this case cannot be deemed harmless as the error(s) on behalf of each party minus Mr. Wilton, have consequently resulted in a man serving an substantial amount of prison time, due to those very errors. That man of course Mr. Wilton. The errors are all non-invited nor contributed to on Mr. Wilton's behalf, again for a lack of better terms, "circumstances beyond Mr. Wilton's control" if you will?

The defendant/appellant was not properly informed as to either the mandatory minimums, statutory maximums, Blakely rights, direct consequences, and the other direct consequences mentioned aforetohere.

Plea withdrawal is warranted and this court should so hold.

ADDITIONAL GROUND(2)

COMMUNITY CUSTODY IN EXCESS OF STATUTORY MAXIMUM

Appellant's Judgment and Sentence is yet in another way invalid, also necessitating plea withdrawal due to its adverse affects on his plea decision. In addition to being sentence to the range imposed, appellant was also sentenced to an additional term of "total confinement" of 24-48 months "Community Custody". This sentence:

- (i) Exceeds the statutory maximum
- (ii) Was not authorized by jury verdict, and
- (iii) Was not stipulated to by Mr. Wilton

ADDITIONAL GROUND(2)

ARGUMENT

Ab Initia RCW 9.94A.505; 728; and 128 all provide:

A COURT MAY NOT IMPOSE A SENTENCE PROVIDING FOR A TERM OF CONFINEMENT, OR COMMUNITY SUPERVISION, COMMUNITY PLACEMENT, OR COMMUNITY CUSTODY WHICH EXCEEDS THE STATUTORY MAXIMUM

Just the contrary has happened in the instant case. Where appellant's standard range is 240-318 months and the court imposed an additional term of "total confinement" of 24-48 months, the court in essence imposed an exceptional sentence. The court entered this sentence absent any supporting facts warranting a sentence in excess of the statutory maximum. Insofar as the court has imposed this sentence, the court erred in imposing a sentence:

- (i) In excess of the statutory maximum
- (ii) Lacking sufficient facts stipulated to or found by a jury.

A jury cannot find any fact used to increase a defendant's sentence beyond a standard range sentence, as this has to be submitted to a jury and proved beyond a reasonable doubt, or admitted by the defendant. State v Ose, 156 Wn.2d 140, 148 (2005(citing Blakely(supra))).

Even though there exist no facts in the instant case warranting said sentence(s), when a judge inflicts punishment that the jury verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment. Bishop §57 at 55. Inherently and consequently the judge exceeds his proper authority. Blakely(supra) at 2537.

The "statutory maximum" is the maximum sentence a judge may impose on the basis of the facts reflected in the jury verdict or admitted by the defendant. Ring v Arizona, 536 U.S. 584, 606. 122 S. Ct. 2428. 153 L. Ed. 2d. 556. In appellant's case that maximum sentence consist of 318 months, taken in conjunction with the total term of community custody of 24-48 months that sentence then becomes 264-366 months of total confinement, clearly in excess of the statutory maximum of 318 months. (See Washington State Sentencing Guidelines)

Our courts have recently defined the term "Direct Maximum Sentence" and in compliance with Blakely(supra) our courts have soundly held that the Statutory Maximum [] is the top end of the standard range. Knotek(supra) at 425.

Any sentence in excess of that statutory maximum, absent sufficient facts in support thereof either found by a jury or admitted by the defendant, constitutes a facially invalid judgment and sentence, as well as an erroneous sentence, nowhere in our statutes authorized by our congressional nor legislative body. Our courts have declared that any sentence in excess of that statutory maximum is erroneous and invalid. State v Zavala-Reynoso, 127 Wn.App. 119, 121.

To the extent that Mr. Wilton pled, Mr. Wilton [even in the event that he did] cannot extend the trial courts authority by agreeing to a punishment in excess of the statute. State v Phelps, 113 Wn.App. 347, 354-355. As such a trial court may only impose a sentence that is statutorily authorized. Phelps(supra) at 354-55. If the trial court exceeds its sentencing authority, its actions are void. Phelps(supra) at 355.

Here the trial courts are likewise voided, as Mr. Wilton's sentence(s) exceed and clearly overstep the legislatively authorized sentence for the circumstances of his specific case.

While the aforementioned RCW's 9.94A.[128],[505], and [728] all provide that a court may not provide for a term of confinement that exceed the statutory maximum, our courts have went on further and better articulated such situations as Mr. Wilton's.

In Zavala-Reynoso(supra) and Sloan(infra) our courts determinations thereon place Mr. Wilton's case squarely in sync with those holdings, Our courts in those cases have declared: Except as otherwise provided, a court MAY NOT impose for a term of confinement or community custody, which exceeds the statutory maximum for the crime. Zavala-Reynoso (supra) at 124; Also: State v Vanoli, 86 Wn.App. 643, 645.

Indeed another court has opined further, imprisonment plus community custody may not exceed the statutory maximum. State v Hopkins, 109 Wn.App. 558, 569.

Where this court [in the unlikely event] may hold that appellant's community custody does not exceed his statutory maximum, this matter nonetheless needs to be remanded back to the Superior Court for clarification of the Judgment and Sentence. In the event that Mr. Wilton gets released after serving his 240-318 months, and say for instance he commits a violation of his conditions and is subsequently violated and has his community custody "revoked", he would then be ordered to serve the remaining 24-48 months in a total confinement setting, after said revocation time had been completed Mr. Wilton would have verily served a term of 264-366 months, a sentence that is not statutorily authorized, a sentence that is/was not stipulated to, and a sentence that a jury has not authorized. As such, when a defendant is sentenced to the statutory maximum, and also sentenced to community custody, the judgment and sentence should clarify that the term of total confinement may not exceed that maximum. State v Sloan, 121 Wn.App. 220, 221 (2004). Mr. Wilton's

judgment and sentence at this point does not reflect said holding of Sloan(supra).

Mr. Wilton's judgment and sentence for the reason(s) articulated in additional ground (1) as well as additional ground (2) constitute a void judgment, furthermore a void judgment is one entered by a court that lacks jurisdiction of the parties or the subject matter, or which lack[ed] the inherent power to make or enter a particular order involved. Zavala-Reynoso(supra) at 122. Insofar as the judgment is void Mr. Wilton can be relieved from the operation of the judgment. ID

There exist many sentencing prejudices which clearly are not statutorily authorized under Mr. Wilton's circumstances, therefore, sentencing provisions outside the authority of the trial court are illegal or invalid. State v Luke, 42 Wn.2d 260, 262.

To the extent that this community custody also has bearing on the validity of the plea, it is Mr. Wilton's contention that he was not advised that community custody would be mandatory, had he been advised of such, Mr. Wilton would have held strong reservations about entering said plea. Suffice it to say, it would have played a more than critical role in his deciding to enter a guilty plea. As a progeny of that error Mr. Wilton did not know that the Community Custody would impose a definite, immediate, and automatic effect on his range of punishment.

If a defendant is not advised that mandatory conditions of a sentence would be community custody and if the defendant would not have pled if he would have known this, and if the

community [custody] impose[d] a definite and automatic effect on the range of punishment, a plea is not voluntary and not intelligent. State v Rawson, 94 Wn.App. 293.

RCW 9.94A.030 also lends some credence on this matter in providing that "community custody range means the minimum and maximum period of community custody included as part of a sentence...Mr. Wilton was not made aware of this factor being mandatory and/or having the effect to exceed his statutory maximum, nor was he apprised of the fact that should community custody been imposed, it was to be "part of the sentence" and on the same footing as the issues in additional ground one, plea withdrawal in this matter is warranted. Our Washington State Supreme Court has opined [A] defendant [is] entitled to withdraw his guilty plea to first degree murder made pursuant to plea agreement, where the parties to the agreement were mistaken as to the relevant mandatory sentence. State v Miller, 110 Wn.2d 528; State v Labanowski, 117 Wn.2d 405.

Mr. Wilton is entitled to withdraw his plea based upon that aforespoken and this court should so hold.

ADDITIONAL GROUND(3)

Cr.R 4.2(d) Voluntariness

Cr.R 4.2(d) Voluntariness

The court shall not accept plea of guilty without first assuring that it is made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. State v Easterlin, 159 Wn.2d 203.

As aforesaid, there exist numerous reasons and additional grounds as to why Mr. Wilton's plea was not made voluntarily, competently, and with an understanding of the consequences of the plea, as such, again, withdrawal is warranted.

ADDITIONAL GROUND(4)

Cr.R 4.2(e) Agreements

...[t]he nature of the agreement and the reasons for the agreement **shall** be made part of the record at the time the plea is entered...State v Smith, 155 Wn.2d 496.

(SEE Argument and error asserted in Additional Ground (6) "Plea Breach")

Notwithstanding, it is Mr. Wilton's assertion that Cr.R 4.2(e) was violated because all of the agreements were not made part of the record as established by Cr.R 4.2 See argument infra.

ADDITIONAL GROUND(5)

Cr.R 4.2(f) Withdrawal of Plea

I. The court shall allow a defendant to withdraw the plea of guilty whenever it appears the withdrawal is necessary to correct a manifest injustice. State v Smith, 137 W,App. 437; State v Knotek(supra).

If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.090 that the agreement is not consistent with (i) the interest of justice or (ii) the prosecuting standards set forth in RCW 9.94A.430;.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered.

And here, appellant asserts that after he had filed his timely Motion to Withdraw Plea after judgment, which is governed by Cr.R 7.8, and that the relief he had sought had not been granted therein, that he now, maintains his position before this court under appeal with this Statement of Additional Grounds.

i. This court should allow Mr. Wilton to withdraw his plea of guilt as it is evidenced and "appears" that the withdrawal is necessary to correct a manifest injustice. Mr. Wilton has made a showing that a manifest injustice

does exist, and therefore withdrawal is warranted to remedy said injustice/err. and that is Mr. Wilton's precatory.

ii. This court should also determine pursuant to RCW 9.94A.090 that said agreement is not consistent with (1) the interest of justice nor (2) is it within the prosecuting standards set forth in RCW 9.94A.430-460, and as such this court should inform the appellant that his plea can be withdrawn based upon the aforementioned grounds and arguments.

ADDITIONAL GROUND(6)

PLEA BREACH

Error occurred when as part of the plea agreement, the prosecutor [of his own volition] agreed not to file various pending matters that Mr. Wilton was alleged to have committed. As part of the agreement the state agreed to not prosecute an offense involving a 1-Maria Lopez-Valenzuela. Ms. Lopez-Valenzuela was in fact pleaded in Mr. Wilton's information for determination for Probable Cause, as well as various other pleadings that are present in the court file.

The error in comes when at the plea colloquy, the state failed to "spread across the record" this alleged offense. The error was no oversight nor an inadvertant omission, and Mr. Wilton verily asserts that said failure to make record of the Lopez-Valenzuela matter was and is a blatant "misrepresentation" on behalf of the state.

Indeed the prosecution sent an E-mail [attachment 1] to Mr. Wilton's appointed counsel stating:

Counsel, pursuant to our prior understanding and the felony plea agreement in this case, [1] we will not file any additional charges of Robbery in these matters, [2] SPECIFICALLY INCLUDING MS. VALENZUELA. [3] please consider this e-mail binding on this matter. [4] I do not believe it is necessary to file an addendum to the felony plea agreement [5] as this was originally contemplated in the agreement.

In replying to, and asserting errors throughout this e-mail, as affects Mr. Wilton plea, the states' e-mail evidences:

(1) It was pre-agreed that no other Robberies would be charged [indeed the Lopez-Valenzuela matter is a Robbery] Therefore Ms. Lopez-Valenzuela's matter was inclusive in the agreement coined "these matters", that further evidenced by the pleadings in this matter, and the e-mail itself.

The Lopez-Valenzuela matter still suffices to another charge that has the propensity and potentiality for active prosecution.

(2) The states e-mail in fact quotes "specifically including Ms. Lopez-Valenzuela" insofar as the prosecution "specifically" denotes the Lopez-Valenzuela matter; it held explicit significance and therefore mandated being made part of the record. That holds true based upon the prosecutor's very next statement in his e-mail:

(3) "please consider this e-mail binding on this matter" insofar as the parties [including Mr. Wilton] were under the assumption that the Lopez-Valenzuela matter was "binding" on the plea agreement, it likewise mandated being verbalized on the record, and it simply was not.

It is Mr. Wilton's position that he (a) should not have, and (b) could not have considered an e-mail binding on a matter that hinges entirely upon the record.

The prosecutor goes on to provide:

(4) He did not feel it incumbent upon himself to "file an addendum to the felony plea agreement" as

(5) This was originally contemplated in the agreement...

The prosecutor's position on filing an addendum would hold significant weight had this been "spread across the record" however the prosecutor's position fails as the full agreement was not made part of the record. To the extent that it was "originally contemplated in the agreement" that alone mandated it being inclusive in the colloquy, had it not been mandated by it being "contemplated" it nonetheless mandated it once it became "binding" on the plea. That "binding" part of the agreement, as of current lacks being part of any record at all.

Where all of these issues on the states behalf fails, plea withdrawal is necessitated, warranted and justifiable.

Additionally, Mr. Wilton's counsel on a note on the copy of the e-mail provided to Mr. Wilton [attachment 1] stated:

"Mr. Wilton, we can ask that this be attached to the judgment and sentence so that it will be part of the court record"

It is neither a valid part of any "judgment and sentence" nor did it become "part of the record".

Again withdrawal is warranted, justifiable and necessitated.

ADDITIONAL GROUND(6)

ARGUMENT

Any plea bargain must be spread across the record at the plea hearing. State v Perez, 33 Wn.App. 258.

Perez(supra) in elucidating Cr.R 4.2 which governs and controls plea bargain hearing/proceedings goes on to provide the language of Cr.R 4.2(e) is clear, any part of the plea bargain must be spread across the record at the plea hearing [and] the criminal rules were not made to be broken or ignored. Id

Perez(supra) went further to articulate how our United States Supreme court noted in consideration of the Federal counterpart of Cr.R 4.2:

[T]he rule [Fed. R. Crim. P. 11] is intended to produce a complete record at the time the plea is entered of the factors relevant to this voluntariness determination, thus, the more meticulously the rule is adhered to, the more it tends to discourage, or at least enable more expeditious disposition of, the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas. McCarthy v United States, 394 U.S. 459, 465. 22 L. Ed. 2d. 418. 89 S. Ct. 1166.

Our Supreme Court of Washington in citing McCarthy noted the salutary effect of strict compliance with the rule stating:

"We agree with the Supreme Court that such a result will help reduce the great waste of judicial resources

required to process the frivolous attacks on guilty plea convictions that are encouraged, and more difficult to dispose of when the original record is inadequate. McCarthy (supra) at 472.

The slight burden imposed on trial judges by these requirements is more than outweighed by the benefits noted above, particularly in light of the numerous role guilty pleas in our criminal justice system play. Id

And undeniably our courts in Perez(supra) soundly opined "therefore, we now hold that with regards to pleas taken after publication of this opinion, failure to comply with Cr.R 4.2(e) **standing alone will be grounds for withdrawal of a plea**, compliance of the rule, of course, is the responsibility of the attorney and the prosecutor, no judge can make a agreement part of the record if it is not disclosed Perez(supra) at 258.

In Mr. Wilton's case there exist a noncompliance with Cr.R 4.2 [in more than one way] as such "grounds for withdrawal of his plea" are present, and this court should so hold.

To the extent that the state has not yet filed charges in the Lopez-Valenzuela "matter", the underlying issue is, it was to be part of the record, and it was not.

Assuming 'arguendo' that the state counters it will not file charges, Mr. Wilton asserts that the states "mere assertion" is not dispositive of the issue(s) and error(s)

as it was "binding" and "originally contemplated" in his plea contract. That provision of his contract agreement was not incorporated anywhere other than a "per se" "e-mail" and so consequently his plea and contract is invalid and void.

Additionally the prosecutions' omissions where not inadvertant or accidental, in fact the prosecution of his own behest opted to not "file an addendum," those action at this juncture are not to Mr. Wilton's peril and disadvantage. In law and in fact, Mr. Wilton has no standing to "consider" an e-mail as being "binding" on his liberty interest.

And as an indispensable party to the case at bar, it is Mr. Wilton's precatory that his plea be withdrawn, and at the very least as relates to this specific issue, remand for evidentiary hearing is mandated as there are "matters" that were and are supposed to be "binding" on Mr. Wilton's Plea that are not part of any record.

Plea withdrawal is warranted and this court should so hold.

PER SE ERROR

As an per se matter it is noteworthy that the appellant's judgment and sentence reflects a "No Contact Order" provision for "Life" and that provision clearly exceeds the appellant's statutory maximum for the offense. "A judge may not impose court ordered conditions which exceed the statutory maximum for the underlying offense".

PRECATORY AND/OR RELIEF SOUGHT

- (A) Granting of this Statement of Additional Grounds in supplementation of Appellant's Opening Brief filed by appellant's attorney to withdraw plea
- (B) Remand for further proceedings in light of Sloan(supra)
- (C) In the unlikely event the aforementioned are not granted, this matter warrants remand for evidentiary hearing so as to determine and/or make record of what in fact was "knowingly" "intelligently" "competently" and/or "voluntarily" made. Marshall 144 Wn.2d 266
- (D) Correction of the Community Custody Range issue that has bearing and affected plea negotiations and the validity of the Judgment and Sentence Contract.

Date: June 24, 2009 Signature: Reginald Wilton

EXECUTED under my hand this 24th day of June, 2009

Reginald Wilton
REGINALD WILTON
Appellant

FURTHER AFFIANT SAYETH NAUGHT

ATTACHMENT 1

E-Mail

McDonald, Catherine

From: Ferrell, Jim [Jim.Ferrell@METROKC.GOV]
Sent: Monday, December 18, 2006 4:29 PM
To: McDonald, Catherine
Subject: RE: Wiltom

Counsel,

Pursuant to our prior understanding and the felony plea agreement in this case, we will not file any additional charges of robbery in these matters, specifically including Ms. Valenzuela. Please consider this e-mail binding on this matter. I do not believe it is necessary to file an addendum to the felony plea agreement, as this was originally contemplated in the agreement.

As a practical matter, I believe we would be prohibited from doing so even if we wanted to due to mandatory joinder rules and caselaw. I am providing this e-mail in response to you recent communication on this matter.
Thank you. Jim

Mr. Wilton - we can ask that this be attached to the Judgment + Sentence so that it will be part of the Court Record.

Catherine -

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 JUN 29 AM 11:18

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,) Case No: 62412-1-I
)
Plaintiff,)
) Affidavit of Service by Mail
vs.)
)
)
)
Defendant.)

I, Reginald Wilton, being first sworn upon oath, do hereby certify that I have served the following documents:

One copy of Statement of Additional Grounds, and two(2) copies of Affidavit of Service by Mail forms to furnish proof that all parties of record have been served one copy each of Statement, as well as to provide this, on to wit:

(list all papers)

Upon:

Richard D. Johnson- Court of Appeals, Division I, Court

Administrator/Clerk- One Union Square-600 University Street- Seattle, WA.

98101

(name of other party) by placing same in the United States Mail at:

Coyote Ridge Corrections Center-P.O. Box 769- Connell, WA.

99326

(address of origin), in the city of Connell, State of Washington.

On this 24th day of June, 2009.

Regina Od Wilson
Name and Number

Affidavit pursuant to 28 U.S.C. § 1746, *Dickerson v. Wainwright*, 626 F.2d 1184 (1980);
Affidavit sworn as true and correct under penalty of perjury and has full force of law and does
not have to be verified by Notary Public

2009 JUN 29 AM 11:18

FILED
COURT OF APPEALS, JUDICIAL
STATE OF WASHINGTON

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,)	Case No.: No.62412-1-I
)	
Plaintiff,)	
)	
vs.)	Affidavit of Service by Mail
)	
REGINALD WILTON,)	
)	
Defendant.)	

I, Reginald Wilton, being first sworn upon oath, do hereby certify that I have served the following documents:

Statement of Additional Grounds w/Attachment 1,
and also this affidavit on, to wit: Prosecuting Atty King
County-W554 King County Courthouse-516 Third Avenue-
Seattle, WA. 98104

(list all papers)

Upon:

King Co Pros/App Unit Supervisor

_____ (name of other party) by placing

same in the United States Mail at:

Coyote Ridge Corrections Center-P.O. Box 769-

Connell, WA. 99326

_____ (address of origin), in the city of Connell, state of Washington.

On this 24th day of June, 2009.

Reginald Wilton #940598

Name & Number

Affidavit pursuant to U.S.C. 1746, Dickerson v Wainwright 626 F.2D 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

2009 JUN 29 AM 11:18

FILED
COURT OF APPEALS
STATE OF WASHINGTON

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,)	Case No.: No.62412-1-I
)	
Plaintiff,)	
)	
vs.)	Affidavit of Service by Mail
)	
REGINALD WILTON,)	
)	
Defendant.)	

I, Reginald Wilton, being first sworn upon oath, do hereby certify that I have served the following documents:

Statement of Additional Grounds w/ Attachment 1,
and also this affidavit on, to wit: Nielsen Broman & Koch PLLC-
1908 E Madison St.- Seattle, WA. 98122-2842

(list all papers)

