NO. 103812-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ERIC SEAN ROLOSON,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Alysa S. Draper-Dehart, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS DECISION

The Court of Appeals correctly found that there was not a breach of the plea agreement. Slip Op. at 10. The Respondent respectfully requests this Court deny the petition for review in *State of Washington v. Eric S. Roloson*, Court of Appeals No. 56823-3-II and Supreme Court No. 103812-7.

III. ISSUES PRESENTED FOR REVIEW

(1) Does the Court of Appeals' decision, holding there was no breach of Roloson's plea and it was voluntary, warrant reconsideration there is not a significant question of law under the Washington or United States Constitution or a substantial public interest?

IV. STATEMENT OF THE CASE

On October 26, 2020, Eric Roloson was first seen by the Cowlitz County Superior Court for allegations of child rape and molestation for two different children. RP 5. He was charged with two counts of rape of a child in the first degree, domestic violence and two counts of child molestation in the first degree, domestic violence, against his two stepdaughters. CP 1; pg 152-55.

A plea offer was extended for a guilty plea to counts I and III rape of a child in the first degree domestic violence, and to dismiss counts II and IV child molestation in the first degree domestic violence. CP 133. The offer noted Roloson's standard range was 120-160 months to life and that the "parties agree to the following sentence: SOSSA, 12 mos, lifetime CC, SAPO with each victim, agrees any restitution." *Id.* Then noting that the prosecution's recommendation was based on "the following: Victims wishes per 10/21/21 conversation." *Id.* Roloson entered a plea to counts I and III, on November 8, 2021. RP 15-22.

During the November 8th plea hearing, the trial court went through every right he would be forfeiting with his plea. *Id.* He had no reservations about forfeiting those rights. RP 20. The court then informed him of the standard range on his charges, that both counts were subject to the indeterminate sentencing review board (ISRB), and the consequences of any error in his offender score. RP 18. Again, Roloson expressed no reservations. RP 18.

The court then was apprised of the joint recommendation for a sentence under the Special Sex Offender Sentencing Alternative (SSOSA). RP 18-19. The court then informed Roloson "you understand I don't have to follow that recommendation? I can give you anywhere within the standard range?". RP 19: 8-10. Roloson stated "I do understand that, Your Honor." RP 19: 11.

The court set sentencing to December 28, 2021. A pre-sentencing investigation (PSI) report was ordered. RP 23. Both the State and defense counsel received copies of the PSI. Both

parties required additional time to investigate statements made by the defendant and the mother of his victims. They requested a continuance of the sentencing hearing. RP 25-28. Sentencing was scheduled for January 24, 2022. RP 28.

On January 7, 2022, the State spoke with the mother of Roloson's victims. CP 135-138, Appendix B. Both T.B. and her mother participated in the conversation. *Id.* They informed the State and its participants that they supported the SSOSA. *Id.* They further stated that their conflict was between wanting to see Roloson in prison and preventing themselves further harm and suffering by going through trial. CP 137. The State then again went over the SSOSA requirements and what such a sentencing alternative looked like in practice. *Id,* CP 140-144, Appendixes C and D. T.B. and her mother both stated they continued to support SSOSA. *Id.* They also informed the State and its representatives they had victim impact statements to read to the court. *Id.* They did not provide those to the State, as requested. *Id*, Appendix C.

Sentencing was finally held on January 31, 2022. Immediately, the State addressed the concerns that might arise after reading the PSI. RP January 31, 2022, pg 35.

> "Having reviewed the PSI, you may question yourself, why there is an agreed recommendation of SSOSA. And so, I want to work through that process with you so you understand the where we're at and, and the concerns that both parties had regarding that PSI. … , I took it to the victims, [T.B.] and [G.B.] and the victim's mother, Elizabeth. We sat down and we had a long conversation about all-all the options that were available to Mr. Roloson. I explained the process of SSOSA. …
> I then made it clear to them that I didn't want them to make a decision at that time. I wanted them to go home, think about it, and get in contact with me whether it was the next day or a week. …
> They contacted our office the next morning and stated that they were in support of SSOSA. … but what they do want is some—they want this—they wanted an opportunity for this to be resolved. They wanted to—they recognized some of the concerns that are there for them as-as witnesses. But more importantly, they wanted finality. They did support the SSOSA. They still do support the SSOSA. But as with everything in life there are conflicts. And they're—they're just normal people who have had a really bad thing happen to them and they have some conflicts. They're going to have an opportunity to express that to Your Honor…

> They'll express to you, probably better than what I could, what the process that they went through and why it is that they support SSOSA even though that they-they are conflicted."

RP35-7. The mother of the victims then spoke. RP 39: 22-25. However, she did inform the court that she did agree to SSOSA for her daughters, and the reasons why she made that decision. RP 40: 17-25; 41: 1-5-8.

Her daughters then spoke with the court. First, G.B. spoke about her feelings regarding Roloson and that she held concerns about what he could do in the future, if released. RP pg 43: 7-22. She then informed the court that she agreed to SSOSA only because she was scared to face him in trial. Then T.B. addressed the court. RP pgs 44-48. She detailed the years of abuse, the impact they had on her life, and her fears for the future. Following her statement, defense counsel moved to withdraw Roloson's plea. In her initial statements to the court, defense counsel was clear that the statements were unexpected and took both counsel off-guard. RP 49: 3-6, 16-24.

Defense and the State agreed the motion to withdraw should be heard prior to sentencing. The court requested briefing. RP 49. The motion was set for February 22, 2022. RP 51. On February 22, 2022, the court heard from Defense and then the State. The trial found that the State had not breached the plea agreement, and the victim was not acting as an agent of the State. RP 75-76. The court explained; "this does not, essentially, put the victim into a position where they're negotiating or part of the plea negotiation. They may have a position that's relayed, and in this case they did." RP 74: 17-20. The court further stated that "[the victim's] opinion was sought and it was relayed to the Defendant, and I don't have any doubt that the Defendant relied on that to some extent. But it's not a direct consequence of his guilty plea because the court still has to exercise its discretion at sentencing." RP 74: 20-24.

After denying the motion to withdraw, the court declined to give a SSOSA and sentenced Roloson within the standard range. The trial court reviewed the SSOSA statute and

requirements, and found that the SSOSA was "too lenient." RP 83.

In a unanimous decision, the Court of Appeals affirmed Roloson's convictions. Slip Opinion at 1. The Court of Appeals held: "the State did not breach the plea agreement, we need not reach Roloson's argument that he is entitled to either withdraw his guilty plea or request specific performance of the parties' agreement." Slip Op. at 4, citing *State v McNichols,* 128 Wn.2d 242, 253, 906 P.2d 329 (1995). In summary, the court explained that the plea was an agreement between the defendant and the State. Slip Op. at 6. "[J]ust because the parties reached an agreed recommendation does not mean the sentencing court '[sh]ould be faced with a one-sided hearing'". Slip Op. at 6. Here, the "State clearly stated that it adhered to its recommendation and hoped the trial court would follow it." Slip Op. at 9.

Roloson now petitions this Court for review.

A. THIS COURT SHOULD DENY REVIEW BECAUSE THE PETITION FAILS TO RAISE GROUNDS UNDER RAP 13.4(B).

Because Roloson's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Roloson claims the Court of Appeals' decisions are in conflict with decisions made by the Supreme Court, that there is a significant question of law under the Washinton or United States Constitution and it involves a substantial public interest that should be reviewed by the Supreme Court. RAP 13.4(b)(1), (3)

and (4). He does not claim grounds for review under RAP 13.4(b)(2).

The Court of Appeals' decision is not in conflict with the Supreme Court decision, there is not a significant question of law under the Washington State or United States Constitution, and there is not a substantial public interest to be determined by the Supreme Court. Because Roloson fails to raise grounds for review under RAP 13.4(b), review should not be granted.

B. THIS COURT SHOULD DENY RECONSIDERATION BECAUSE THE PLEA WAS NOT BREACHED, THE TRIAL COURT DID NOT ERR AFTER DENYING THE MOTION TO WITHDRAW.

The Court of Appeals correctly held Roloson's plea was not breached and that the trial court correctly did not allow the plea to be withdrawn. Slip Opinion 10, 12. A plea agreement is not a contract between a defendant and a victim, a plea agreement is a contract between the defendant and the prosecutor. *State v. Turley*, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). A prosecutor must act in good faith when carrying out the terms of the plea

agreement. *State v. Sledge*, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997); *State v. Marler*, 32 Wn. App. 503, 508, 648 P.2d 903, *review denied*, 98 Wn.2d 1007 (1982). However, plea agreements are more than simple contracts. *Sledge*, 133 Wn.2d at 839, 947 P.2d 1199.

Since plea agreements concern fundamental rights of the accused, constitutional due process rights apply. *Id.* "Due process requires a prosecutor to adhere to the terms of the agreement". *Id.* (*citing Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)); *State v. Talley*, 134 Wn.2d 176, 183, 949 P.2d 358 (1998).

Accordingly, a plea agreement obligates the State to recommend to the court the sentence contained in the agreement. *Talley*, 134 Wn.2d at 183, 949 P.2d 358; *Sledge*, 133 Wn.2d at 840, 947 P.2d 1199. This obligation does not, however, require the State to make the sentencing recommendation enthusiastically. *Talley*, 134 Wn.2d at 183, 949 P.2d 358; *Sledge*, 133 Wn.2d at 840, 947 P.2d 1199. At the same time, the State

must not undercut the terms of the agreement. *Talley*, 134 Wn.2d at 183, 949 P.2d 358; *Sledge*, 133 Wn.2d at 840, 947 P.2d 1199. The State can undercut a plea agreement either explicitly or implicitly through conduct indicating an intent to circumvent the agreement. *Sledge*, 133 Wn.2d at 840, 947 P.2d 1199.

To determine whether a prosecutor has adhered to the terms of an agreement, the court can review the sentencing record to ascertain the parties' "objective manifestations of intent." *Turley*, 149 Wn.2d at 400, 69 P.3d 338 (*citing Wilson Court Ltd. P'Ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 699, 952 P.2d 590 (1998)).

"When a defendant pleads guilty after receiving a charging document that accurately describes the elements of the offense charged, their plea is presumed to be knowing, voluntary, and intelligent." *State v. Snider*, 199 Wn.2d 435, 445, 508 P.3d 1014, 1020 (2022) (citing *Bousley v. United States, 523 U.S. 614, 618, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998)*). To be voluntary, a plea of guilty must be freely, unequivocally, intelligently, and

understandingly made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act. It cannot be the product of or induced by coercive threat, fear, persuasion, promise, or deception. *In re Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966), see also *Brady v. United States*, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)[1]. In fact, entry of guilty pleas for the recommendation of more lenient sentences are not involuntary. *Brady*, 397 U.S. at 753, 90 S.Ct. at 1471.

> The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action. More particularly, absent misrepresentation or other impermissible conduct by state agents, cf. *Von Moltke v. Gillie*s, 332 U.S. 708, 68 S.Ct. 316, 92

[1] A plea of guilty is not invalid merely because entered to avoid possibility of a death penalty. Even if the death penalty was not applicable 9 years later does not require the conviction to be set aside.

> L.Ed. 309 (1948), a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise.

Brady, 397 U.S. at 757, 90 S. Ct. at 1473, 25 L. Ed. 2d 747.

A plea may be involuntary because of misrepresentation. *See Sawyer v. United States*, 279 F. Supp. 3d 883, 887 (D. Ariz. 2017).[2] However, assessment of the "misinformation, threats, or mental coercion," looks to the parties involved with the plea. *State v. Horntvedt*, 29 Wn. App. 2d 589, 599, 539 P.3d 869, 874 (2023).[3] Misrepresentation from the prosecutor can be with regards to statements made by the prosecutor which are "blatant misrepresentations," *United States v. Fisher*, 711 F.3d 460, 465 (4th Cir. 2013).[4] But to set aside a plea as involuntary there must

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[2] A plea was involuntary because the State represented the nature of the evidence against the defendant that it would have argued in trial.

[3] Where plea was involuntary and in violation of due process because it was predicated on race-based prosecutorial misconduct.

[4] Where gross police misconduct went to the heart of the prosecutions case, the plea was induced by the officer's

first be impermissible government conduct. *Brady v. United States*, 397 U.S. at 757.

When there is a denial of a motion to withdraw a guilty plea the Court of Appeals reviews the decision for abuse of discretion. See *State v. Pugh*, 153 Wn. App. 569, 576, 222 P.3d 821, 824 (2009), *State v. Olmsted*, 70 Wn.2d 116, 118, 422 P.2d 312, 313–14 (1966).

Victims are not a party to a plea, however, their input can be noted. The prosecutor and the defendant are the only parties to a plea agreement. *State v. Sanchez*, 143 Wn.2d 339, 348, 46 P.3d 774 (2002)[5] *citing State v. Wakefield*, 130 Wn.2d 464, 474, 925 P.2d 183 (1996). The statute governing the plea-bargaining process agrees with that assertion. *See* RCW 9.94A.421.

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misconduct as the prosecutor indicated the evidence would be admitted at trial if the defendant did not plea.

[5] A community corrections officer was not a party to a plea agreement when preparing a presentence investigation report and was not bound by a plea agreement.

In a case involving a crime against a person as defined under RCW 9.94A.411, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and the reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement. RCW 9.94A.421. Only when a party is acting on behalf of the prosecutor is that party bound by the plea agreement. *Sledge*, 133 Wn.2d at 843, 947 P.2d 1199.

RCW 7.69.020(4) clearly states the nature of a statement made by a victim to the court. Nowhere in the RCW does it require the victim to limit their statement to a previous discussion.

> "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

RCW 7.69.020(4).

A plea is a contract between the State and the defendant, not the victim and the defendant.[6] A plea offer and a plea agreement determine what the State and the defendant intend to do for sentencing; however, it does not control sentencing for the court, the presentence investigation and or the victim impact statements.[7]

A defendant may agree to a SSOSA and complete all the required evaluations. However, those may still be undercut if the defendant does not take responsibility or does not cooperate with the process after. Even if he or she does, the court considers the following:

> [the] court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to

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[6] *Turley*, 149 Wn.2d 395, 400, 69 P.3d 338

[7] *See* RCW 9.94A.670, *Sanchez*, 143 Wn.2d 339, 348, 46 P.3d 774, RCW 7.69.020(4).

> treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

RCW 9.94A.670(4).

There is no one reason why a defendant takes a plea. There is no one reason why a victim may support a plea. There is no RCW which requires a victim impact statement to address only certain terms or the plea that is offered. Victims are not parties to the plea, the State can consider a victim's wishes and try to work with that victim, but it is the State and the defendant who are the only parties to a plea agreement.

Here, in exchange for a plea the State offered to dismiss two of four charges and to agree to a SSOSA. The plea offer stated it was "following the victims wishes per 10/21/21 conversation," and that the defendant could seek a SSOSA. CP 133. That was the information Roloson could rely on. Over the course of the case from plea to sentencing the State continued to

speak with the victims. In fact, in some of their statements to the court they continued to support the SSOSA. However, victim impact statements do not fall under the same analysis as a breach of a plea agreement because victims are not a party to the plea and were not an agent of the State when they make impact statements.

The Court of Appeals was correct to first address whether or not there was even a breach, before reviewing for an abuse of discretion. Slip Opinion 6-10. Assessment of breach helps determine the voluntariness of the plea as the plea is an agreement by the parties involved. The court further stated, "whether a breach of a plea agreement has occurred is a question of law we review de novo." Slip Opinion 6, *citing State v Molnar,* 198 Wn.2d 500, 513, 497 P.3d 858 (2021). The Court of Appeals reviewed the statements made by the prosecutor, the procedural history of the case and the case law whether similar or distinguishable in comparison. Slip Opinion at 6-10.

Per the plea offer, the State offered to dismiss two charges and agreed to the SSOSA sentence. CP 133. This was based on "[v]ictim wishes per 10/21/21 conversation." *Id.* The State adhered to the plea agreement. There was no breach. The prosecutor spoke with the victim and guardian, for their own reasons they supported a SSOSA outcome and the offer was made to a SSOSA, which the prosecutor asked for. The prosecutor was dealing with the victims and guardian, two children and an adult; therefore, the prosecutor had to account for varying perspectives. There was no deception discussing the plea, outcomes, their emotions and statements by them.

It is not a breach for a victim to give an impact statement, or to inform the court of the impact of the case. It is not a breach for a victim to not bring up a plea or alternative during the impact and it is not a breach if they do not advocate for the plea. That is not the purpose of the impact statement. To address the victim impact statements made by the victim and guardian at

sentencing, to limit them or restrict what can be said in the future would go against the public interest and the RCW.

A judge is also not controlled by a plea agreement, that is why counsel asks the court to follow the recommendation in the plea. A plea does not control what a victim says in an impact statement. The RCW outlines the different rights that a victim has in a criminal case, and there is *no limitation* placed on a victim describing how a case has impacted her life or the life of others. A plea controls the agreement between the State and the defendant.

Before and after this case there will be victims who continue to address the court, even if the plea offered is what they agree to. There will be victims who address the court even disagreeing with the choices made by prosecution. Their statements may never address the plea and may address additional consequences, such as the psychological, economic or family impact of a defendant's actions. But this does not render a plea involuntary because they are victims, not agents of the

State. They are not a party to the plea, and their role is that of victims who have the right to address the court per the RCW.

The plea offered to Roloson stated the offer was by the prosecutor and that it was the 'victim wishes per 10/21/21 conversation." The victims could agree to a SSOSA for various reasons but this does not prohibit them from providing an impact statement. The plea was not breached, the plea was not involuntary and there was not a misrepresentation to agree to the SSOSA.

Pleas are involuntary when there is a misstatement by the prosecutor to the consequences of the plea, or the nature of the evidence, or the strength of the case. But this plea was voluntary. A plea is a contract between the defendant and the prosecutor. The parties to the plea did not breach their agreement. Roloson was informed of the possible consequences. The trial court correctly denied the motion to withdraw the guilty plea.

The Court of Appeals correctly reviewed the case law, statements, and the facts in the case. The Court of Appeals

correctly reviewed for a breach de novo and found no breach. The Court of Appeals then determined the lower court did not abuse its discretion after Roloson's attorney moved to withdraw the plea. The Court of Appeals' decision was in line with decisions made by the Supreme Court, the Washington and United States Constitution, and there is no substantial public interest other than following the laws already set forth by the courts. To further address a victim's impact statement there are very real negative substantial public interest consequences to do so. Sentencing is post plea or finding of guilt by a judge or a jury, a victim impact statement is already addressed by the RCW. The petition for review should be denied as it fails to provide grounds for review under RAP 13.4(b)(1), (b)(3) or (b)(4).

V. CONCLUSION

The Court of Appeals reviewed the issues presented with the correct standard of review the motion for reconsideration should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 4,201 words, as calculated by the word processing software used. Font is 14 pt.

Respectfully submitted this 21 day of March, 2025.

Alysa S. Draper-Dehart, WSBA #61031
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the RESPONSE TO PETITION FOR REVIEW was filed electronically through the Supreme Court Portal and which will automatically cause such filing to be served on the opposing counsel listed below:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on the 21st day of March, 2025.

Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

March 21, 2025 - 10:19 AM

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