Supreme Court No. ____
COA No. 56823-3-II

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERIC S. ROLOSON,

Petitioner.

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

PETITION FOR REVIEW

MATTHEW E. CATALLO
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

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A. INTRODUCTION

The prosecution induced Eric Roloson to plead guilty by repeatedly assuring him the victims would endorse a special sex offender sentencing alternative sentence ("SSOSA"). Indeed, Mr. Roloson turned down a lesser plea to child molestation because the prosecution repeatedly assured him that, if he pleaded to first-degree child rape, the victims would support a SSOSA and explain why he should receive that treatment disposition to the court.

At the sentencing hearing, the victims and their mother only explained why the court *should not* impose a SSOSA, and they all asked the court to imprison Mr. Roloson for life. The prosecutor stood silent during their statements. Mr. Roloson immediately moved to withdraw his plea, but the trial court refused and sentenced Mr. Roloson to life in prison.

The court violated due process by preventing Mr. Roloson from withdrawing his plea. Mr. Roloson relied on

the prosecutor's misrepresentation that the victims would support a SSOSA when he pleaded guilty. Under U.S. Supreme Court precedent, because this misrepresentation induced Mr. Roloson's plea, his plea was involuntary.

Misapplying the law, the Court of Appeals affirmed. It held the plea was not involuntary because the victim statements did not "breach" the plea agreement. The court misapplied and neglected precedent, used the wrong standard of review, and largely sidestepped Mr. Roloson's voluntariness argument. The Court of Appeals' fundamental misunderstanding of the law controlling plea bargains is an issue of substantial public interest, is contrary to United States Supreme Court precedent, and raises a significant constitutional question. This Court should grant review.

B. IDENTITY OF PETITIONER

Eric Roloson, the petitioner here and appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review. RAP 13.4.

C. COURT OF APPEALS DECISION

Mr. Roloson seeks review of the Court of Appeals' decision dated October 8, 2024. The Court of Appeals denied reconsideration on December 19, 2024. Both decisions are appended to this petition.

D. ISSUES PRESENTED FOR REVIEW

Due process requires that a defendant's guilty plea be voluntary. A plea agreement is involuntary if it was induced by a misrepresentation. A misrepresentation does not need to be knowingly made; a misrepresentation, even if made in good faith, can render a plea involuntary. Here, the Court of Appeals failed to address whether Mr. Roloson's plea was involuntary because he relied on the prosecution's misrepresentations. This Court should grant review and hold Mr. Roloson's plea was involuntary because the prosecution's misrepresentation that the victims would endorse a SSOSA induced the plea. RAP 13.4(b)(1), (b)(3), (b)(4).

E. STATEMENT OF THE CASE

The prosecution promised Mr. Roloson that if he pleaded guilty to first-degree child rape, it would recommend a SSOSA under RCW 9.94A.670.[1] CP 133. The State repeatedly promised Mr. Roloson that the victims and their mother would endorse a SSOSA and explain why the court should impose that treatment disposition. RP 18, 56, 60.

Consequently, Mr. Roloson rejected an offer to plead to child molestation because the victims would support a SSOSA if he pleaded to child rape, and he realized their opinion would be given "great weight" under RCW 9.94A.670 (4). RP 55–56; CP 135. Mr. Roloson testified that he would not have pleaded to these specific charges if the victims "were not on board." RP 55–56.

[1] A SSOSA allows a person convicted of a qualifying sex offense to receive sex offender treatment in lieu of incarceration. RCW 9.94A.670(5).

The trial court accepted Mr. Roloson's guilty plea to two counts of first-degree child rape. RP 20. During the plea hearing, the court noted that the plea was made with a "joint recommendation for SSOSA [and] the victims have endorsed SSOSA for this individual." RP 18.

But the victims' statements in the pre-sentence investigation report ("PSI") indicated the victims did not support a SSOSA. CP 20–21. Elizabeth Roloson, the mother, explained, "The girls have a life sentence dealing with what happened to them. [Mr. Roloson] should have a life sentence in prison because you can't take it back." CP 21.

Alarmed, Mr. Roloson's attorney spoke with the prosecutor, who assured Mr. Roloson's attorney that the victim statements in the PSI were inaccurate and "that [Ms. Roloson] and the victims are still supportive of SSOSA." CP 31. The prosecutor reiterated that the victims supported a SSOSA five days later. CP 59. However, the victims also

told the prosecutor they "had conflict" about recommending a SSOSA. CP 137. Yet the prosecutor did not convey this to Mr. Roloson. CP 59, 66, 137.

Despite the prosecutor's repeated assurances to Mr. Roloson, the victims did not endorse a SSOSA at the sentencing hearing. Ms. Roloson referred to Mr. Roloson as "truly an evil man who does not have remorse. . . . The devastation that has been caused cannot be reversed. The time [Mr. Roloson] has spent in jail does not compare to the lifetime of sorrow and scars he has left on my daughters." RP 40.

In discussing SSOSA, Ms. Roloson explained, "It was certainly a hard choice to know *that he may be getting what he wants* after all the years of him manipulating and holding his evil way so well, but I *chose to put him in your hands*, Your Honor, and ultimately in *God's hands where true justice will take place*." RP 41 (emphasis added). She further intimated why Mr. Roloson should not receive a SSOSA: "I do have

fears that if he is released into the community, he will recommit these horrendous crimes . . . I do fear [Mr. Roloson] will try to come after us if he is released." RP 41.

Ms. Roloson concluded by asking the court to sentence Mr. Roloson to life in prison:

> I do not believe Eric Roloson is sorry for his actions. He has shown that by running from police for eight months and *trying to take the easy way out with the SSOSA deal*. . . . He is an evil man who *deserves the same life sentence* he gave my daughters when he decided to rape them for nine years.

RP 42 (emphasis added).

G.B. also reiterated her mother's request to imprison Mr. Roloson for life: "I don't want—I don't want [Mr. Roloson] to be able to hurt other children the way he hurt my family. I think that he is evil and *does not deserve any freedom*, happiness, or a new life." RP 43 (emphasis added).

T.B. never endorsed a SSOSA, and she only outlined why Mr. Roloson should not be released to the community. She said Mr. Roloson "makes me fear for my safety, my

family's and our community's." RP 46–47. Like G.B. and her mother, T.B. effectively asked the court to imprison Mr. Roloson for life: "[Mr. Roloson] cannot be trusted as a contributing and safe member of society, and he has proven that time and time again. . . . I fear that *if proper action isn't taken*, that others may be hurt and abused by Eric. I cannot live with that. *I ask that you consider the safety of all involved.*" RP 47 (emphasis added).

Immediately after the victims finished speaking, defense counsel moved to "stop the sentencing so I can file a motion to withdraw our plea." RP 47. She explained, "this is completely unanticipated by both sides and not what we agreed to. . . . We had a plea agreement; this is not consistent with that plea agreement." RP 47. The prosecutor opposed Mr. Roloson's motion. CP 121–31. The court noted the victim statements "are certainly not in line with the Court imposing a SSOSA sentence," but denied Mr. Roloson's motion to withdraw his plea. RP 50–51, 75–76.

The court then denied a SSOSA and sentenced Mr. Roloson to 120 months to life on both counts, to be served concurrently. RP 88; CP 101–02.

The Court of Appeals affirmed, finding the court did not abuse its discretion in denying Mr. Roloson's motion to withdraw his plea. Slip Op. at 11–12. It reasoned the victim statements "did not result in a breach of the plea agreement between [Mr.] Roloson and the State." Slip Op. at 12.

F. LAW AND ARGUMENT

Because the prosecutor's misrepresentation that the victims and their mother would support a SSOSA induced Mr. Roloson's guilty plea, his plea was involuntary.

Mr. Roloson pleaded guilty to two counts of child rape because he believed the victims and their mother would endorse a SSOSA and explain why the court should impose that treatment disposition. The opposite happened at sentencing: both victims and Ms. Roloson asked the court to impose a life sentence. The court refused to withdraw Mr. Roloson's plea and sentenced him to life in prison.

The victims' endorsement of a SSOSA was a misrepresentation, and it induced Mr. Roloson to plead guilty. Under binding United States Supreme Court precedent, his plea was involuntary and void. But the Court of Appeals misconstrued and ignored precedent when it rejected Mr. Roloson's argument. The court's mishandling of the issue reveals that this Court's guidance is required, as there is a dearth of similar cases in Washington. This Court should grant review of this significantly important constitutional issue and reverse so Mr. Roloson can withdraw his plea.

1. *Even if an accused person was correctly informed of the direct consequences of their plea, the plea may still be involuntary if it was induced by a misrepresentation.*

"[A] guilty plea is a grave and solemn act to be accepted only with care and discernment[.]" *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 74 (1970). "A defendant who enters such a plea simultaneously

waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers." *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969).

Because "a defendant gives up constitutional rights by agreeing to a plea agreement, and, because fundamental rights of the accused are at issue, due process considerations come into play." *State v. Walsh*, 143 Wn.2d 1, 7, 17 P.3d 591 (2001). "For this waiver to be valid under the Due Process Clause," it must be voluntary. *McCarthy*, 394 U.S. at 466. If not, the plea "has been obtained in violation of due process and is therefore void." *Id.*

The United States Supreme Court in *Brady* established that knowledge of the plea's direct consequences is not enough: "A plea of guilty entered by one fully aware of the direct consequences must stand *unless* induced by misrepresentation (including unfulfilled or unfulfillable

promises)." *Brady*, 397 U.S. at 755 (cleaned up & emphasis added). The *Brady* standard "does not limit unfulfillable promises to those made knowingly, but merely states that the defendant's plea is involuntary when the misrepresentation for which the defendant based his agreement on could not be fulfilled." *Sawyer v. United States*, 279 F. Supp. 3d 883, 888 (D. Ariz. 2017); *accord United States v. Fisher*, 711 F.3d 460, 467 (4th Cir. 2013).

The standard from *Brady* is the "final authority" concerning whether a guilty plea complies with federal due process. *State v. Radcliffe*, 139 Wn. App. 214, 224, 159 P.3d 486 (2007). But the Court of Appeals used a far different standard than the one expressed in *Brady*.

Citing *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006), the Court of Appeals wrote, "a guilty plea is not involuntary if 'the defendant was correctly informed of all of the direct consequences of his guilty plea.'" Slip Op. at 11.

That is not the law, under both *Brady* and Washington case law.

This Court held a plea is involuntary if it was "the product of or induced by coercive threat, fear, persuasion, promise, or deception." *Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966). Division Three of the Court of Appeals similarly observed, "A plea may be involuntary due to circumstances such as misinformation, threats, or mental coercion." *State v. Horntvedt*, 29 Wn. App. 2d 589, 599, 539 P.3d 869 (2023). This Court has also acknowledged that a misrepresentation does not need to be knowingly made. *E.g., Mendoza*, 157 Wn.2d at 587–90 (discussing cases).

This Court's decision in *Mendoza* did not alter any of this settled precedent. Instead, that decision simply indicated a plea "*may* be deemed involuntary when based on misinformation regarding a direct consequence of the plea." *Mendoza*, 157 Wn.2d at 591 (emphasis added). Nowhere in

Mendoza did the Court indicate that was the only way for a plea to be involuntary.

Multiple cases in Washington highlight how a plea can be involuntary irrespective of whether the defendant was correctly informed of direct consequences. For instance, a prosecutor's threat to add charges if the defendant does not plead guilty may render the plea involuntary. *State v. Swindell*, 93 Wn.2d 192, 198, 607 P.2d 852 (1980). Similarly, coercion from a third party may render a plea involuntary. *State v. Frederick*, 100 Wn.2d 550, 556, 674 P.2d 136 (1983), *overruled on other grounds by Thompson v. State, Dep't of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999). A plea can also be involuntary if it was induced by a prosecutor's appeal to fears of racial bias. *Horntvedt*, 29 Wn. App. 2d at 599. And a misrepresentation about a collateral consequence can render a plea involuntary. *State v. Stowe*, 71 Wn. App. 182, 188, 858 P.2d 267 (1993).

None of these decisions focus on whether the defendant was correctly informed of the direct consequences of a plea. Rather, courts focus more broadly on "the relevant circumstances surrounding" the plea. *State v. Williams*, 117 Wn. App. 390, 398, 71 P.3d 686 (2003).

As stated above, one such relevant circumstance is whether a misrepresentation induced the plea. *See Brady*, 397 U.S. at 755. That is the relevant consideration in this case, yet the Court of Appeals refused to consider this crucial issue. This Court should grant review and clarify that the *Brady* standard ultimately controls when determining the voluntariness of a plea.

2. The Court of Appeals misread the facts and misapplied this Court's precedent and other law.

A guilty plea is involuntary and must be withdrawn if it was induced by a "misrepresentation (including unfulfilled or unfulfillable promises)." *Brady*, 397 U.S. at 755. That is exactly what occurred here, as the prosecutor's

misrepresentation that the victims would endorse a SSOSA induced Mr. Roloson's guilty plea.

The Court of Appeals mishandled this issue. First, it reviewed for an abuse of discretion. Slip Op. at 10–12. As this Court has clarified, however, courts review "the constitutional adequacy of a defendant's plea de novo." *State v. Snider*, 199 Wn.2d 435, 444, 508 P.3d 1014 (2022). Specifically, courts reviews whether a plea was involuntary "de novo without giving deference to the trial court's ruling." *State v. Buckman*, 190 Wn.2d 51, 57 n.2, 409 P.3d 193 (2018).

Second, the court misunderstood what can render a plea involuntary. As described above, a plea is not voluntary simply because the court correctly informed the defendant of the direct consequences of a plea. That plea may still be involuntary if it was induced by a misrepresentation. *See Brady*, 397 U.S. at 755.

Third, the Court of Appeals gave no weight to the fundamental importance of the impact of the victim statements at sentencing. Instead, the court merely noted, "these statements were within their rights and did not result in a breach of the plea agreement between [Mr.] Roloson and the State." Slip Op. at 12. But Mr. Roloson did not claim the victim statements "result[ed] in a breach" of the agreement.

Whether a prosecutor breached a plea agreement and whether the plea was involuntary are conceptually distinct. *See State v. S.M.*, 100 Wn. App. 401, 409, 996 P.2d 1111 (2000). The former focuses on the prosecutor's post-plea conduct, *State v. Talley*, 134 Wn.2d 176, 187, 949 P.2d 358 (1998), while the latter focuses on whether improper influences induced the defendant's guilty plea, *Brady*, 397 U.S. at 755.

The court refused to consider the latter. While there is a dearth of factually analogous case law in Washington,

several federal authorities reveal the involuntary nature of Mr. Roloson's plea.

For example, in *United States v. Fisher*, the defendant pleaded guilty in reliance on the prosecutor's statement that certain inculpatory evidence would be admitted at trial. 711 F.3d at 466. However, the officer that gathered the evidence lied in order to secure the warrant, indicating the evidence would likely have been suppressed. *Id.* The defendant moved to withdraw the plea once he discovered the falsity of the officer's testimony. *Id.* at 463. The Fourth Circuit held the plea was involuntary and reversed. *Id.* at 470. It reasoned the defendant's plea was based on a misrepresentation about the admissibility of evidence. *Id.* at 466–67. That misrepresentation induced the plea, "thereby rendering" the defendant's "plea involuntary." *Id.* at 465.

Similarly, in *United States v. Hammerman*, 528 F.2d 326, 330 (4th Cir. 1975), the prosecutor expressed his "firm belief" to the defendant that the court would follow his

sentencing recommendation. The defendant pleaded guilty based on that assurance. *Id.* at 329–30. The trial court ultimately departed from the recommendation and imposed a prison sentence. *Id.* at 330. The Fourth Circuit found the plea was involuntary and reversed. *Id.* at 330–31. Because the prosecutor "lacked the power to implement the prediction," the court found the prosecutor's assurance was an "'unfulfillable' promise condemned by [*Brady*]." *Id.*; *see United States v. Amaya*, 111 F.3d 386, 388–87 (5th Cir. 1997) (holding similarly and reversing where a trial court's misrepresentation about its ability to sua sponte impose a reduced sentence induced the defendant's guilty plea).

Lastly, in *Sawyer v. United States*, the defendant pleaded to assaulting an officer with a sentence enhancement based on the government's representation that the officer suffered a permanent injury. 279 F. Supp. 3d at 884. After he pleaded, the defendant learned the injury was not permanent and moved to withdraw his plea. *Id.* The

district court granted the motion. *Id.* at 889. It found the misrepresentation about the injury constituted an "unfulfilled and unfulfillable promise" because the government would not have been able to prove the permanency of the injury at trial. *Id.* at 889.

Here, the prosecution repeatedly misinformed Mr. Roloson that the victims would support a SSOSA. Like the defendants in *Fisher*, *Hammerman*, and *Sawyer*, Mr. Roloson pleaded guilty in reliance on the prosecution's misrepresentation. That promise was "unfulfilled" as the victims did not support a SSOSA. *See Brady*, 397 U.S. at 755. This Court should grant review and hold that, under *Brady*, the prosecution's misrepresentation about the victims' support for a SSOSA rendered Mr. Roloson's plea involuntary.

3. This significant constitutional issue requires this Court's guidance.

This Court should grant review here and provide much-needed clarity. As the Court of Appeals in this case demonstrated, courts are misconstruing this Court's precedent and ignoring *Brady*.

The involuntariness of Mr. Roloson's plea is clear. He pleaded guilty because the prosecution assured him the victims would support a SSOSA. That support was pivotal for his decision, as he turned down a better offer because he thought he would receive victim support. CP 135; *Cf. State v. Estes*, 188 Wn.2d 450, 466, 395 P.3d 1045 (2017) ("[I]t is reasonably probable that had Estes known that there was a much higher chance that he would be spending life in prison, the result of the proceeding would have differed."). But when it mattered, he lacked their support and instead contended with the victims and their mother requesting a life

sentence. This is precisely the type of misrepresentation the *Brady* Court said would render a plea involuntary.

The Court of Appeals ignored this analysis. That is a problem, as countenancing what occurred here jeopardizes the integrity of plea bargaining. "If a defendant cannot rely upon an agreement made and accepted in open court, the fairness of the entire criminal justice system would be thrown into question." *State v. Tourtellotte*, 88 Wn.2d 579, 584, 564 P.2d 799 (1977). "No attorney in the state could in good conscience advise his client to plead guilty and strike a bargain if that attorney cannot be assured" that core components of the plea agreement will be effectuated. *Id.*

"[T] the integrity of the plea bargain process requires that defendants be entitled to rely on plea bargains as soon as the court has accepted the plea." *State v. Miller*, 110 Wn.2d 528, 536, 756 P.2d 122 (1988), *overruled on other grounds by State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011). Mr. Roloson depended on the prosecutor's

assurances that the victims would support a SSOSA, but those assurances were unreliable. *See Tourtellotte*, 88 Wn.2d at 584 (noting that a defendant "should not suffer as a result of the state's oversight").

Indeed, the prosecutor's assurances were not just unreliable, they were deceptive. A guilty plea is involuntary if it was "the product of or induced by . . . deception." *Woods*, 68 Wn.2d at 605. In the PSI, the victims and Ms. Roloson said they did not endorse a SSOSA and instead wanted Mr. Roloson to serve a life sentence. CP 21. The prosecutor spoke with the victims after the PSI was released, and they told the prosecutor that they "had conflict" about recommending a SSOSA. CP 137. Yet in turn, the prosecutor only told Mr. Roloson that the victims still supported a SSOSA. CP 59. The prosecutor's failure to tell Mr. Roloson about the victims' conflict highlights his deceptive conduct in this case. CP 66.

Despite all of this, the Court of Appeals failed to intervene and remedy this due process violation. The court's holding signals that similar violations in other cases will go unrectified. Such an outcome "undercut[s] the judicial system." *State v. Poupart*, 54 Wn. App. 440, 445, 773 P.2d 893 (1989).

"Plea bargaining is an 'essential' and 'highly desirable' part 'of the administration of justice.'" *State v. Harris*, __ Wn.3d __, 559 P.3d 499, 506 (2024) (quoting *Santobello v. New York*, 404 U.S. 257, 260–61, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). "The negotiation of pleas leads to the majority of final dispositions in criminal cases." *Id.* (explaining that 97 percent of federal convictions and 94 percent of state convictions result from guilty pleas). The Court of Appeals' mishandling of this issue jeopardizes this system. This Court should grant review of this issue of substantial public interest and reverse.

Review is also required to provide guidance on this undeveloped area of constitutional law in Washington. This Court's recent precedent has focused on whether a plea is involuntary because the defendant was incorrectly advised about sentencing consequences. *E.g.*, *Buckman*, 190 Wn.2d at 59; *Mendoza*, 157 Wn.2d at 582; *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 594–95, 316 P.3d 1007 (2014); *State v. A.N.J.*, 168 Wn.2d 91, 114, 225 P.3d 956 (2010); *State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d 965 (2008); *State v. Gregg*, 196 Wn.2d 473, 483–84, 474 P.3d 539 (2020). The last time the Court considered a somewhat similar challenge was nearly 60 years ago in *State v. Krois*, 74 Wn.2d 404, 408, 445 P.2d 24 (1968), in which it held the defendant's plea was involuntary because it was induced by the misrepresentation the defendant would receive medical care instead of incarceration.

Updated guidance is also warranted given the advent of victim rights. The Court of Appeals was seemingly

concerned that Mr. Roloson's argument would cut against the victims' rights. *See* Slip Op. at 11–12.

It is undisputed the victims had the right to speak at the sentencing hearing. Const. art. I, § 35. The victims and their mother fully exercised that right at sentencing. RP 37–47. But victims' rights do not exist "in a vacuum; they must be considered together with a defendant's due process rights." *State v. MacDonald*, 183 Wn.2d 1, 16, 346 P.3d 748 (2015). "In the event that the crime victims' rights impede the defendant's due process rights, the court must make every reasonable effort to harmonize theses distinct rights and to give meaning to all parts of the Washington State Constitution." *Id.* "To the extent that these rights are irreconcilable, federal due process rights supersede rights arising under Washington's statutes or constitution." *Id.*

Thus, while a victim has the right to speak at sentencing, that is not a zero-consequence right. As it occurred here, what a victim says at sentencing may reveal

that a defendant was misled into pleading guilty. If that occurs, the defendant's right to due process requires the withdrawal of their plea. *See id.*

This Court should grant review of this extremely important constitutional issue. RAP 13.4(b)(3), (b)(4). Mr. Roloson's due process rights and the integrity of the plea bargaining system require nothing less.

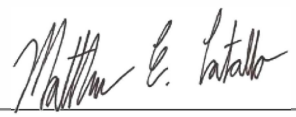
G. CONCLUSION

Mr. Roloson respectfully asks this Court to accept review. RAP 13.4(b).

This petition is 4,155 words long and complies with RAP 18.7.

DATED this 21st day of January 2025.

Respectfully Submitted



Matthew E. Catallo (WSBA 61886)
Washington Appellate Project (91052)
Counsel for Mr. Roloson

Matthew@washapp.org
wapofficemail@washapp.org

APPENDIX

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Filed
Washington State
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October 8, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ERIC SEAN ROLOSON, Appellant.	No. 56823-3-II UNPUBLISHED OPINION

VELJACIC, A.C.J. — Eric S. Roloson pled guilty to two counts of rape of a child in the first degree. As part of the plea agreement, the State agreed to recommend a special sex offender sentencing alternative (SSOSA). The trial court rejected the recommendation and imposed a standard range sentence. Roloson appeals, contending that the State breached the plea agreement by nominally recommending a SSOSA and then raising aggravating facts to persuade the court not to impose a SSOSA. He also contends he should be permitted to withdraw his guilty pleas because they were involuntary. Roloson lastly contends that the court erred by imposing a $500 victim penalty assessment (VPA), a $100 deoxyribonucleic acid (DNA) collection fee, and a $100 domestic violence assessment. We affirm Roloson's convictions, but remand for the trial court to strike the VPA and DNA collection fee and reconsider the domestic violence assessment.

FACTS

Following allegations in January 2020 of sexual abuse involving Roloson and his stepdaughters, Roloson left for Hawaii. He was arrested in August 2020 and brought back to

Washington in October 2020.[1] The State charged him with two counts of rape of a child in the first degree and two counts of child molestation in the first degree. All crimes included a special allegation of domestic violence.

Roloson agreed to plead guilty to two counts of rape of a child in exchange for the State dropping the molestation charges and recommending a SSOSA. It was the parties' understanding that the victims also endorsed a SSOSA for Roloson.

At the plea hearing, the trial court informed Roloson of the standard sentencing range on both charges and that both counts were subject to the Indeterminate Sentencing Review Board. Roloson expressed no reservations. The court also informed him that it was aware of the parties' joint recommendation for a SSOSA, but the court did not have to follow that recommendation and instead it could impose a sentence anywhere within the standard sentencing range. Roloson stated, "I do understand that, Your Honor." Rep. of Proc. (RP) at 19. Roloson then pled guilty to two counts of rape of a child in the first degree. The court ordered a presentencing investigation report (PSI).

The PSI indicated that the girls' mother and one of the girls "initially agreed that a SSOSA sentence was appropriate, but that they do not want that now." Clerk's Papers (CP) at 21. The PSI also indicated that the mother reported that "[t]he girls have a life sentence dealing with what happened to them. [Roloson] should have a life sentence in prison because you can't take it back." CP at 21. Based on the victims' statements, Roloson's statements, and a risk assessment, the PSI recommended that Roloson receive a standard range sentence.

[1] The delay in returning to Washington was because Roloson was incarcerated in Hawaii and, while in custody, he was attacked by other inmates. His injuries were significant, resulting in a lengthy hospital stay and ultimately delaying commencement of proceedings in Washington.

At the 2022 sentencing hearing, the State began by stating that there was an agreed recommendation for a SSOSA. The State then addressed the somewhat inconsistent statements from the victims in the PSI about initially supporting a SSOSA but then appearing to change their minds. The State explained that it had been a long and difficult process for them in part because Roloson "took flight to Hawaii," was brought back to Washington in October 2020, and the matter had been pending ever since. RP at 36.

The State went on to explain that it described the sentencing recommendation alternatives with the victims and they agreed a SSOSA would be best, and most importantly, they wanted finality. The State clarified that the girls and their mother "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." RP at 36-37.

The girls' mother spoke at the sentencing hearing. She told the trial court that she supported the plea agreement, including a SSOSA recommendation, to prevent her daughters from having to testify and relive Roloson's horrendous actions. She further stated that she had "fears that if he is released into the community, he will recommit these horrendous crimes. Repeating the same actions of molesting, raping, physically and mentally abusing my family. . . . I do fear [Roloson] will try to come after us if he is released." RP at 41. She requested that if the court decided to impose a SSOSA that Roloson not be permitted to "be released into Cowlitz County. The thought of him living in the same town as us is completely devastating." RP at 41.

The girls also made statements at the sentencing hearing. One told the trial court that "[t]he only reason I chose to let him have the SSOSA deal was because I was scared of facing him in trial." RP at 43. The other girl stated, "I fear that if proper action isn't taken, that others may be

hurt and abused by [Roloson]." RP at 47. She asked the court to take into consideration "the safety of our community." RP at 47.

Roloson then interjected that the sentencing hearing must stop because he was going to file a motion to withdraw his guilty pleas. The trial court stopped the sentencing hearing and allowed briefing on the motion to withdraw the guilty pleas.

Roloson argued that he wanted to withdraw his guilty pleas on the basis that his pleas were not knowing, intelligent, and voluntary because the State breached the plea agreement. Roloson claimed that he only took the plea agreement because of the State's assurances that the victims would support a SSOSA and it appeared that was not the case at the sentencing hearing. Roloson claimed he was "bombarded" and that the plea agreement was "undercut" in a way that created a manifest injustice. RP at 67-68.

The State responded that it satisfied its obligation under the plea agreement by recommending a SSOSA and that the victims expressed their desire for a SSOSA even though they had concerns about Roloson in the community. The State further argued that there was no breach because it could not control what the victims would say and that the victims were not parties to the plea agreement. The State commented that it appeared defense counsel was implying that Roloson "only admitted behavior in order to get this deal and not that he was actually admitting to the behavior. That's a problem." RP at 71.

In an affidavit in support of its memorandum opposing Roloson's motion to withdraw the guilty plea, the prosecutor stated that the PSI caused him "some concern" based on both Roloson's and the victims' statements so he met with the girls and their mother after the PSI and felt satisfied that they "remained supportive" of a SSOSA. CP at 136-37.

The trial court denied Roloson's motion to withdraw his guilty pleas, finding that the State did not breach the plea agreement. The court reminded Roloson that the court did not have to follow the State's sentencing recommendation or the victims' wishes.

The matter proceeded to sentencing. The State informed the trial court that it "adheres to its recommendation" for a SSOSA and asked the court to "follow that." RP at 77.

The trial court went through the statutory factors of whether to impose a SSOSA. It found that Roloson could benefit from treatment, but it also found that there were allegations that Roloson committed numerous acts of sexual assault over the years against his young stepdaughters and therefore a SSOSA appeared too lenient. The court also found that Roloson was a significant risk to the community. The court stated that the victims and their mother "said the words, they wanted SSOSA imposed" and appeared to "desire for SSOSA" RP at 84-85. The court acknowledged that the mother "kind of strayed" and the girls appeared to want a SSOSA "largely to avoid trial." RP at 84-85. The court also noted that Roloson's leaving the area to avoid prosecution caused concern that he may do the same if there was a SSOSA violation and a sanction was imposed. The court noted, "the risk is huge if there's a re-offense." RP at 88.

Ultimately, the trial court denied the SSOSA recommendation and imposed the low end of a standard range sentence of 120 months to life on both counts, to be served concurrently. The court found Roloson was indigent, but imposed a $500 VPA, a $100 DNA collection fee, and a $100 domestic violence assessment as legal financial obligations (LFOs).

Roloson appeals.

ANALYSIS

I. BREACH OF PLEA AGREEMENT

Roloson contends the State breached the plea agreement by nominally recommending a SSOSA and then raising aggravating facts to persuade the trial court not to impose a SSOSA. He further alleges he should be entitled to withdraw his guilty plea or demand specific performance based on the State's alleged breach. We disagree.

A. Legal Principles

Whether a breach of a plea agreement has occurred is a question of law we review de novo. *State v. Molnar*, 198 Wn.2d 500, 513, 497 P.3d 858 (2021). A plea agreement is a contract between the defendant and the State. *Id.* at 512. Because plea agreements concern the fundamental rights of the accused, the State has a "'good faith obligation to effectuate the plea agreement.'" *Id.* (quoting *State v. Sledge*, 133 Wn.2d 828, 840, 947 P.2d 1199 (1997)).

"A prosecutor is obliged to fulfill the State's duty under the plea agreement by making the promised sentencing recommendation." *Sledge*, 133 Wn.2d at 840. "The recommendation need not be made 'enthusiastically.'" *Id.* at 840 (quoting *State v. Coppin*, 57 Wn. App. 866, 873, 791 P.2d 228 (1990)). But the prosecutor is obligated not to undermine the terms of the agreement either explicitly or through conduct demonstrating an intent to evade the terms of the plea agreement. *Sledge*, 133 Wn.2d at 840.

Just because the parties reached an agreed recommendation does not mean the sentencing court "[sh]ould be faced with a one-sided hearing." *State v. Talley*, 134 Wn.2d 176, 186, 949 P.2d 358 (1998). "The State must be allowed to use descriptive words in addition to stipulated facts because, while the State's 'recommendation need not be made enthusiastically,' it need not be made so unenthusiastically that it is unhelpful to the sentencing court." *Molnar*, 198 Wn.2d at 517

(internal quotation marks omitted) (emphasis omitted) (quoting *Sledge*, 133 Wn.2d at 840). Thus, the mere mention of aggravating facts does not automatically breach the plea deal. *Molnar*, 198 Wn.2d at 516.

Ultimately, we "'review [the] prosecutor's actions and comments objectively from the sentencing record as a whole to determine whether the plea agreement was breached.'" *State v. Ramos*, 187 Wn.2d 420, 433, 387 P.3d 650 (2017) (alteration in original) (quoting *State v. Carreno-Maldonado*, 135 Wn. App. 77, 83, 143 P.3d 343 (2006)). "A breach occurs when the State 'undercut[s] the terms of the agreement explicitly or implicitly by conduct evidencing an intent to circumvent the terms of the plea agreement.'" *Id.* (quoting *Carreno-Maldonado*, 135 Wn. App. at 83). We review the State's actions objectively, focusing "'on the effect of the State's actions, not the intent behind them.'" *Id.* (quoting *Sledge*, 133 Wn.2d at 843 n.7). If we find a party breached the plea agreement, the nonbreaching party may either rescind or specifically enforce the terms of the plea agreement. *State v. Wiatt*, 11 Wn. App. 2d 107, 111, 455 P.3d 1176 (2019).

B. No Breach

Here, the State addressed how difficult the process was for the victims and mentioned that this was in part due to Roloson taking "flight to Hawaii" after the abuse allegations, which extended the time for them to have finality. RP at 36. In response to Roloson's motion to withdraw his guilty pleas, the State argued that there was no breach because it could not control what the victims would say and that the victims were not parties to the plea agreement. Later, the State commented that it appeared defense counsel was saying that Roloson "only admitted behavior in order to get this deal and not that he was actually admitting to the behavior. That's a problem." RP at 71.

Relying on *State v. Xaviar*, *State v. Jerde*, and *Carreno-Maldonado*, Roloson argues these statements amount to a breach of the plea agreement.

In *State v. Xaviar*, 117 Wn. App. 196, 198-201, 69 P.3d 901 (2003), the State and the defendant agreed to a recommendation at the bottom of the standard sentencing range. But at sentencing, the prosecutor emphasized the graveness of the crime, reiterated the charges that the State did not bring, noted that the State could have, but did not, ask for a 60-year exceptional sentence, highlighted aggravating factors that would support an exceptional sentence, and referred to the defendant as "'one of the most prolific child molesters that this office has ever seen.'" *Id.* at 200. Division One of this court held that the prosecutor's conduct constituted a breach of the plea agreement. *Id.*

In *State v. Jerde*, 93 Wn. App. 774, 776-77, 970 P.2d 781 (1999), the State agreed to recommend a standard range sentence, while the PSI recommended an exceptional sentence. At sentencing, the prosecutor briefly noted the State's recommendation but proceeded to identify aggravating factors that the court could consider in support of an exceptional sentence, including factors that were not contained in the PSI. *Id.* at 777-78, 782. This court concluded that the prosecutor's conduct amounted to a breach of the plea agreement, making specific note of the prosecutor's reference to aggravating factors not mentioned in the PSI and observing that the prosecutor "advocated for an exceptional sentence by highlighting aggravating factors and even added an aggravating factor not found in the [PSI]." *Id.* at 782.

Finally, in *Carreno-Maldonado*, 135 Wn. App. at 79-80, the State agreed to make a low-end recommendation on one count of rape in the first degree, a midpoint recommendation of 240 months on five counts of rape in the second degree, and a high-end standard range recommendation on a count of assault in the second degree. At the sentencing hearing, the trial court set out the

standard range sentence, acknowledged having reviewed the PSI and plea agreements, then asked the State if it had anything to add. *Id.* at 80. The prosecutor then made a statement "'on behalf of the victims'" in which the prosecutor referred to the defendant's "'very extreme violent behavior'" and his preying on "'what would normally be considered a vulnerable segment of our community'" in carrying out "'crimes . . . so heinous and so violent [they] showed a complete disregard and disrespect for these women.'" *Id.* at 80-81. Only when defense counsel objected and suggested that the State was failing to comply with the plea agreement did the prosecutor respond, "'I'm speaking here on behalf of the victims and on behalf of the [S]tate[.] And I'm not going beyond my recommendation in this case. It's an agreed recommendation. M[y] recommendation [for the rape in the second degree is] 240 months.'" *Id.* at 81 (alterations in original). This court held that the prosecutor's statements at the sentencing hearing breached the plea agreement by undercutting the State's agreed sentence recommendation. *Id.* at 79.

In this case, the State commented on Roloson leaving to Hawaii, recognized there was some inconsistency with the victims' and their mother's wishes, and commented during the motion to withdraw the guilty plea that Roloson's timing of his motion to withdraw his guilty plea seemed to suggest he "only admitted behavior in order to get this deal and not that he was actually admitting to the behavior." RP at 71. But we do not view these statements in isolation. *Ramos*, 187 Wn.2d at 433.

Viewing the sentencing record as a whole, the State clearly stated that it adhered to its recommendation and hoped the trial court would follow it. The State also stated that it described the sentencing recommendation alternatives with the victims, they agreed a SSOSA would be best, and most importantly, they wanted finality. The State clarified that the girls and their mother "did support the SSOSA. They still do support the SSOSA." RP at 36. Additionally, Roloson's travel

to Hawaii was significant because it caused months of delay in the Washington proceedings because of his concomitant hospital stay. This was relevant to the length of the proceeding and related difficulty this caused for the victims, which explains in part their conflicted position as to the SSOSA. The State was not advocating against the plea agreement in highlighting this fact.

Based on the above, the facts of this case are distinguished from *Xaviar*, *Jerde*, and *Carreno-Maldonado*. While the State may not have enthusiastically recommended a SSOSA, it did not undercut the terms of the plea agreement explicitly or implicitly.

Because we hold that 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. *See State v. McNichols*, 128 Wn.2d 242, 253, 906 P.2d 329 (1995) (based on the court's dispositive holding, it need not reach issue regarding proper remedy).

II. WITHDRAWAL OF GUILTY PLEAS

Roloson next contends that he should be entitled to withdraw his guilty pleas because his pleas were involuntary due to the State's false assurance that the victims would recommend a SSOSA. We disagree.

A. Legal Principles

Because this issue was raised before the trial court, our review is focused on whether the trial court abused its discretion in denying Roloson's motion to withdraw his guilty pleas. *State v. Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012). Discretion is abused if the court's decision lacked a tenable basis in law or fact. *State v. Arndt*, 194 Wn.2d 784, 799, 453 P.3d 696 (2019). Trial courts must allow a defendant to withdraw a guilty plea to prevent a manifest injustice. *State v. Wilson*, 162 Wn. App. 409, 414, 253 P.3d 1143 (2011); CrR 4.2(f). Our courts generally recognize

four indicia of a manifest injustice: (1) denial of effective assistance of counsel, (2) failure of the defendant or one authorized by him to do so to ratify the plea, (3) involuntary plea, and (4) violation of plea agreement by the prosecution. *State v. S.M.*, 100 Wn. App. 401, 409, 996 P.2d 1111 (2000).

Lack of information may render a guilty plea involuntary. *State v. Mendoza*, 157 Wn.2d 582, 587-88, 591, 141 P.3d 49 (2006). But a guilty plea is not involuntary if "the defendant was correctly informed of all of the direct consequences of his guilty plea." *Id.* at 591.

Washington State Constitution, article I, section 35 (amend. 84) provides crime victims and their families or representatives the opportunity to make a statement at a defendant's sentencing. *See also State v. Gentry*, 125 Wn.2d 570, 624, 888 P.2d 1105 (1995). As it relates to the rights of victims and their families, the amendment provides, "[t]his provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding." WASH. CONST. art. I, § 35. In addition to constitutional protections, RCW 7.69.030(1)(m) and (n) permit victims and victims' families or representatives to submit victim impact statements to the court and to personally make a statement at a sentencing hearing in a felony case.

B. No Abuse of Discretion

Here, the State charged Roloson with two counts of rape of a child in the first degree and two counts of child molestation in the first degree. In exchange for the State dropping both child molestation charges and recommending a SSOSA, Roloson agreed to plead guilty to the child rape charges.

At the sentencing hearing, the State informed the trial court that there was an agreed recommendation for a SSOSA. The State went on to explain that it described the sentencing recommendation alternatives with the victims and they agreed a SSOSA would be best, and most importantly, they wanted finality. The State clarified that the victims and their mother "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." RP at 36-37. After the trial court denied Roloson's motion to withdraw his guilty plea, the State reiterated that it "adheres to its recommendation" for a SSOSA and asked the court to "follow that." RP at 77.

While the victims made statements detailing Roloson's years of abuse and their fear that he would continue to hurt people in the future, these statements were within their rights and did not result in a breach of the plea agreement between Roloson and the State. Notably, the victims' mother and one of the victims expressed their support of the SSOSA. RCW 7.69.030(1)(m) and (n); *Gentry*, 125 Wn.2d at 624. Moreover, the trial court clearly advised Roloson that it was not bound by the sentencing recommendation in the plea agreement. *See* RCW 9.94A.431(2).

Based on the above, there was no manifest injustice based on an involuntary guilty plea to warrant the withdrawal of Roloson's guilty pleas. The trial court properly concluded likewise. Therefore, we hold that the trial court did not err in denying Roloson's motion to withdraw his guilty plea.

III. LFOs

Roloson next contends that the trial court erred by imposing a $500 VPA, a $100 DNA collection fee, and a $100 domestic violence assessment after finding Roloson indigent. The State took no position on Roloson's arguments.

When the trial court sentenced Roloson, it was required to impose a VPA of $500 under former RCW 7.68.035(1)(a) (2018), regardless of a defendant's indigency, as well as a $100 DNA collection fee under former RCW 43.43.7541 (2018). But those statutes have since been amended.

Now, a "court shall not impose the [VPA] under this section if the court finds that the defendant, at the time of sentencing, is indigent as defined in RCW 10.01.160(3)." LAWS OF 2023, ch. 449, § 1. The legislature also eliminated the $100 DNA collection fee for all defendants. *See* LAWS OF 2023, ch. 449, § 4. Both amendments took effect July 1, 2023. LAWS OF 2023, ch. 449, § 27. Although these amendments took effect after Roloson's sentencing, they apply to cases pending appeal. *See State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023). Therefore, we remand for the trial court to strike the VPA and DNA collection fee.

Regarding the domestic violence assessment, former RCW 10.99.080(1) (2015) states that the trial court may impose a domestic violence assessment on any adult offender convicted of a crime involving domestic violence. Recent amendments to this statute did not change this language. LAWS OF 2023, ch. 470, § 1003. Sentencing courts have discretion as to whether to impose a domestic violence assessment, which is to be used for the purposes of domestic violence advocacy and domestic violence prevention. *See* RCW 10.99.080(1), (2)(a); LAWS OF 2015, ch. 275, § 14. The assessment is not mandatory. Sentencing courts "are encouraged to solicit input from the victim or representatives for the victim in assessing the ability of the convicted offender to pay the penalty," but are not required to do so. *See* RCW 10.99.080(5), LAWS OF 2015, ch. 275, § 14. Because there is no explanation in our record regarding the trial court's decision to impose the domestic violence assessment, we permit Roloson to move for the trial court to reconsider that fee on remand in light of Roloson's indigence.

CONCLUSION

We affirm Roloson's judgment and sentence but remand to strike the VPA and DNA collection fee and potentially revisit the domestic violence assessment.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Veljacic, A.C.J.

We concur:

Lee, J.

Che, J.

Filed
Washington State
Court of Appeals
Division Two

December 19, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

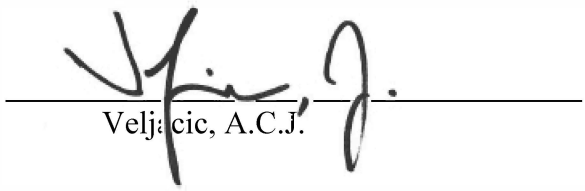
STATE OF WASHINGTON, Respondent, v. ERIC SEAN ROLOSON, Appellant.	No. 56823-3-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Eric Sean Roloson, moves this court to reconsider its October 8, 2024 opinion. After consideration, we deny the motion. It is

SO ORDERED.

Panel: Jj. Lee, Veljacic, Che

FOR THE COURT:



Veljacic, A.C.J.

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