No. 103812-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ERIC S. ROLOSON,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

MEMORANDUM OF *AMICUS CURIAE* WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

JOSHUA R. SAUNDERS
WSBA No. 50510
901 Fifth Avenue
Suite 2800
Seattle, WA 98164
(253) 245-3553
josh@marshallandsaunders.com

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I. IDENTITY OF MOVING PARTY

The Washington Association of Criminal Defense Lawyers (WACDL) moves for the relief specified in part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

WACDL asks this court to grant the Petition for Review filed by Eric S. Roloson on January 21, 2025.

III. GROUNDS FOR RELIEF AND ARGUMENT

Mr. Roloson's petition is based on the premise that underlies the theory of plea bargaining in American jurisprudence: that each side must perform their end of the bargain. This is a matter of substantial public interest, since the vast majority of criminal cases resolve by plea. RAP 13.4(b)(4). Moreover, the Court of Appeals' decision in this case is contrary to United States Supreme Court precedent and raises a substantial constitutional question. RAP 13.4(b)(1). This Court should grant review and make clear that misrepresentation by a prosecutor renders a plea involuntary.

A. This Issue is of Substantial Public Interest

Eric Roloson pleaded guilty to Rape of a Child in the First Degree because he was repeatedly assured by the prosecutor that the victims and their mother would endorse a Special Sexual

Offender Sentencing Alternative Sentence (SSOSA) at sentencing. Indeed, he turned down a lesser plea to child molestation because of this assurance.

Instead, the victims and their mother recited a number of reasons why Mr. Roloson should *not* receive a SSOSA. His defense counsel's motion to withdraw the plea was denied, and the Court then sentenced him to 120 months to life on both counts, to be served concurrently.

i. Plea Bargaining is of crucial importance to Washington's criminal legal system

A 2023 report by the Plea Bargain Task Force for the American Bar Association notes that nearly 98% of convictions nationwide come from guilty pleas. [1] Specific data for Washington is elusive, but there is little doubt that the percentage is similarly high. Washington State courts would not be able to function without plea bargaining. Chief Justice Burger wrote in *Santobello v. New York* that "[p]roperly administered, [plea bargaining] is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to

[1] https://www.americanbar.org/news/abanews/aba-news-archives/2023/02/plea-bargain-task-force/

multiply by many times the number of judges and court facilities." 404 U.S. 257 at 261 (1971).

The Court of Appeals' decision in this case undermines plea bargaining in Washington. RCW 9.94A.431 already allows judges to decline to follow an agreed recommendation in sentencing. This can create a substantial barrier to plea bargains for some defendants. The Court of Appeals' decision in this case raises another barrier, since it effectively allows prosecutors to misrepresent the intent of victims without negating a plea. If it stands, defense attorneys would be put in the position of being unable to guarantee the outcome of a plea bargain *and* unable to guarantee the accuracy of a prosecutor's representation. This is not a good outcome for a criminal legal system that relies on plea bargaining to function. The efficient and just function of the criminal legal system is bluntly a matter of public interest.

Amicus curiae WACDL wishes to emphasize the importance of this issue to our members and our members' clients. WACDL members are called upon to advise defendants of the likely consequences of plea bargains every day. We often do not have access to victims and witnesses that a prosecutor does, and we

must rely on prosecutors to communicate those viewpoints. Our ability to work effectively depends on trustworthy communication with prosecutors and our clients.

We also wish to emphasize that the petition filed by Mr. Roloson is not an outlier but rather presents an issue that occurs regularly in our courts. It is a more dramatic example than most, perhaps, but all unchecked misrepresentations jeopardize the integrity of our legal system. It is thus of "substantial public interest" to WACDL membership and its current and future clients. RAP 13.4(b)(4).

ii. SSOSAs are of substantial public interest

In 2022, Washington's Sex Offender Policy Review Board unanimously recommended that the "SSOSA statute be protected and preserved." Its report noted that the "evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades."[2] The policy review board is made up of prosecutors, defense attorneys, victim advocates, and others. It includes representatives from Washington

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2 https://sgc.wa.gov/sites/default/files/public/SOPB/documents/house_public_safety_committee_report.pdf at 22.

Association of Sheriffs and Police Chiefs, the Department of Corrections, and the Superior Court Judges Association.

The evidence is clear that SSOSA has been helpful for both victims and defendants. It reduces recidivism, facilitates victim input in the process, and offers a cost-effective alternative to incarceration.

Mr. Roloson's petition asks the Court to participate in the important work of protecting and preserving this humane and effective resolution to sex cases. If a prosecutor is allowed to misrepresent the likelihood of a SSOSA sentence, it undermines confidence in it as a sentencing alternative and does a disservice to Washingtonians.

WACDL members have long recognized the value of SSOSA as a dispositional tool. It is important to them that it be preserved and protected.

B. The Court of Appeals' Opinion Conflicts with This Court's Precedents

In *Brady v. United States*, 397 U.S. 742 at 755, 90 S. Ct. 1463, 25 L. Ed. 2d 74 (1970), the United States Supreme Court made clear that a guilty plea cannot stand if induced by

"misrepresentation (including unfulfilled or unfulfillable promises."

In Mr. Roloson's case, there is little doubt that the promise was unfulfilled, and it may have been unfulfillable. Despite the prosector's repeated indications that the victims were preparing to support a SSOSA at sentencing, they clearly were not. That ambiguity was not represented to Mr. Roloson, and it rendered his plea involuntary.

A failure to follow this precedent flies in the fact of Washington law as well. In *Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966), this Court recognized that a plea is involuntary if it is the product of promise or deception.

Indeed, endorsing the contrary position opens up troubling possibilities. Could a prosecutor misrepresent what sentence they will propose to induce a plea? Could they offer a statement of facts that differs from that in the plea paperwork that paints the defendant in a worse light? Guidance from the Court is necessary to make clear that misrepresentation makes a plea involuntary.

Because our work depends on the ability to accurately advise our clients about the consequences of plea bargains,

WACDL members urge the Court to grant review and make clear that the *Brady* standard controls when determining the voluntariness of a plea.

IV. CONCLUSION

For the foregoing reasons, WACDL respectfully requests the Court grant Mr. Roloson's Petition for Review.

Respectfully submitted this 21st day of March, 2025.

s/ Joshua R. Saunders
WSBA No. 50510
Attorney for Amicus Curiae WACDL
E-mail: josh@marshallandsaunders.com

CERTIFICATION

I certify that this memorandum complies with the length limitation of RAP 18.17 and contains 1104 words.

THE MARSHALL DEFENSE FIRM, P.S.

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