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Division II
State of Washington
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No. 57546-9-II

IN THE COURT OF APPEALS – DIVISION II
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH ALLEN CAMPBELL,

Appellant.

APPELLANT'S OPENING BRIEFING
REVIEW FROM CLARK COUNTY SUPERIOR COURT

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A. ASSIGNMENTS OF ERROR

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2. Mr. Campbell received ineffective assistance of counsel in entering a guilty plea with an incorrect offender score.

B. STATEMENT OF THE CASE

Mr. Campbell entered a guilty plea to one count of rape of child second degree. CP 2-19.[1] The offender score listed in the guilty plea was listed as '0' with standard sentencing range of 78-102 months. *Id*. A statement of criminal history was not attached to the plea document. *Id*.

Sentencing was set over and a criminal history was subsequently attached to the judgment and sentence which listed three prior juvenile offenses for residential burglary (case 12301), residential burglary (case 03264), and burglary second degree (case 10210). CP 21-41. Each of these prior offenses was counted as half a point each. CP 41. Mr. Campbell was

[1] Court recordings for these proceedings do not exist anymore, so the briefing in this matter relies on the court file.

under eighteen years of age at the time of each of these prior offenses, as his birthdate is April 6, 1985. CP 21, 41. The criminal history also had the box checked indicating that "[t]he defendant committed a current offense while on community placement (adds one point to score) RCW 9.94A.360." *Id*. The total points were calculated at 2.5 points. *Id*. Mr. Campbell was then sentenced at an offender score of 2 with standard sentencing range of 95 to 125 months. CP 23.

This appeal follows.

C. ARGUMENT

1. Mr. Campbell's entry of a guilty plea was not knowing, intelligent, and voluntary as it was based on an incorrect offender score.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004); *State v. Weyrich*, 163 Wn.2d 554, 556, 182 P.3d 965 (2008); *State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980); *Boykin v. Alabama*, 395 U.S. 238, 243- 44, 89 S. Ct. 1709, 23 L.Ed.2d

274 (1969); U.S. Const. Amend XIV; Const. Art. I, § 3. CrR 4.2(d) requires a plea be "made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." Prior to acceptance of a guilty plea, "[a] defendant 'must be informed of all the direct consequences of his plea.'" *State v. A.N.J.*, 168 Wn.2d 91, 113-14, 225 P.3d 956 (2010) (quoting *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). The length of a sentence is a direct consequence of a guilty plea. *State v. Mendoza*, 157 Wn.2d 582, 590, 141 P.3d 49 (2006). A defendant need not establish a causal link between deficient information regarding direct sentencing consequences and his decision to plead guilty. *Weyrich*, 163 Wn.2d at 557 (citing *lsadore*, 151 Wn.2d at 302). A sentencing court acts without statutory authority under the sentencing reform act when it imposes a sentence based upon a miscalculated offender score. *In re Pers. Restraint of Call*, 144 Wn.2d 315, 332, 28 P.3d 709, 718 (2001). The incorrect calculation of an offender score constitutes a fundamental

defect in sentencing resulting in a miscarriage of justice which requires relief. *Id*.

Where the terms of a plea agreement conflict with the law or the defendant was not informed of the sentencing consequences of the plea, the defendant must be given the initial choice of a remedy to specifically enforce the agreement or withdraw the plea." *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). An involuntary plea constitutes a manifest injustice, and a defendant may raise this claim of error for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 6-8, 17 P.3d 591 (2001). A defendant may be allowed to withdraw his guilty plea "'whenever it appears that withdrawal is necessary to correct a manifest injustice.'" *State v. Codiga*, 162 Wn.2d 912, 922-23, 175 P.3d 1082 (2008) (citing CrR 4.2(f)). "An involuntary plea can amount to manifest injustice." *Codiga*, 162 Wn.2d at 923. A miscalculation of an offender score renders the defendant's plea involuntary and the plea may be withdrawn. *Codiga*, 162 Wn.2d at 925.

(i) The point added to Mr. Campbell's offender score for being on "community placement" at the time of the offense was erroneous.

A trial court's offender score calculation is reviewed *de novo*. *State v. Mutch*, 171 Wn.2d 646, 653, 254 P. 3d 803 (2011).

The standard sentencing range under Washington's Sentencing Reform Act of 1981 (SRA) for any given offense is a function of the offense's seriousness level and the defendant's offender score. *See* Former RCW 9.94A.525 (2002 c 290 § 3). RCW 9.94A.525 governs the calculation of an offender score. Offender scores are calculated by adding prior non-wash out convictions to current offenses while following any specific rules laid out in RCW 9.94A.525 to determine the sum of the convictions. Prior convictions are defined as convictions which existed before the date of sentencing for the offense for which the offender score is being computed. If the present conviction is for a violent offense, count 1/2 point for each prior juvenile nonviolent felony conviction. RCW 9.94A.525(8) (2002 c 290

§ 3). Rape of child second degree is a violent offense; residential burglary and burglary second degree are non-violent offenses. RCW 9.94A.030(29, 45) (2003 c 53 § 55).

If the present conviction is for an offense committed while the offender was under community placement, add one point. RCW 9.94A.525(17) (2002 c 290 § 3). "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two. Former RCW 9.94A.030(7) (Definitions) (2003 c 53 § 55). "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW

13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably. RCW 9.94A.030(30) (2003 c 53 § 55). "Postrelease supervision" is that portion of an offender's community placement that is not community custody. RCW 9.94A.030(33) (2003 c 53 § 55).

In the instant case, Mr. Campbell's offender score was erroneously inflated by one point because of supposedly being on "community placement" at the time of the current offense for a prior juvenile offense. Community placement is only available for criminal matters resolved in adult court. There is no possibility for community placement to be imposed for juvenile matters. The court and the parties apparently erroneously believed that juvenile probation was the same as community placement for purposes of calculating the offender score. It is not. The Sentencing Reform Act is applied to offenses in adult court, whereas the Juvenile Justice Act is

applied to offenses in juvenile court. The three prior burglary offense were resolved in juvenile court and Mr. Campbell was 15 years old or younger at the time of the offenses. Community placement was not an option for those offenses. The date of the offense in the instant case was one month after Mr. Campbell turned eighteen years old when juvenile court still had jurisdiction over Mr. Campbell for his prior juvenile adjudications.

Given the above, the court erroneously imposed one more point in Mr. Campbell's offender score. His correct offender score should have been 1 with standard range sentence of 86 to 114 months.

(ii) Mr. Campbell is entitled to his chosen relief of withdrawal of his guilty plea.

Although Mr. Campbell stipulated to his offender score, the erroneous score results from a legal error entitling him to relief. *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 50 P. 3d 618 (2002). The law is well settled. "[A] sentence that is

based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice." *Id*. at 867- 68 (citing *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P. 2d 1019 (1997)); *In re Pers. Restraint of Gardner*, 94 Wn.2d 504, 507, 617 P. 2d 1001 (1980) ("a plea bargaining agreement cannot exceed the statutory authority given to the courts"); *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P. 2d 1293 (1980) ("[W] hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered.") (quoting *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P. 2d 848 (1955)); *accord*, *State v. Wilson*, 170 Wn.2d 682, 688- 89, 244 P. 3d 950 (2010).

2. Mr. Campbell received ineffective assistance of counsel in entering a guilty plea with an incorrect offender score.

In order to succeed on a claim of ineffective assistance of counsel, a defendant must show that his counsel's representation fell below an "objective standard of

reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Sixth Amendment to the United States Constitution protects an individual's fundamental right to a fair trial.[2] The United States Supreme Court has repeatedly emphasized that entitlement to counsel plays a critical role in protecting this fundamental right.[3] In *Strickland*, the United States Supreme Court announced a two-prong test to evaluate whether a convicted defendant was

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[2] U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.")

[3] *See, e.g.*, *Gideon v. Wainwright*, 372 U.S. 335, 342, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Johnson v. Zerbst*, 304 U.S. 458, 467, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); *Powell v. Alabama*, 287 U.S. 45, 67, 53 S.Ct. 55, 77 L.Ed. 158 (1932). In an adversarial judicial system, "access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." *Strickland*, 466 U.S. at 685 (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 63 S.Ct. 236, 87 L.Ed. 268 (1942)). Because an attorney's role is of vital importance, a person accused of a federal or state crime, with limited exceptions, has the right to have counsel appointed if one cannot be obtained. *Argersinger v. Hamlin*, 407 U.S. 25, 30–31, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972) (rejecting the contention that prosecutions of petty crimes, which may be tried without a jury, could be tried without a lawyer).

deprived of his Sixth Amendment right to effective assistance of counsel. *Strickland*, 466 U.S. at 687.[4] In order to succeed on a claim of ineffective assistance of counsel, the defendant must show (1) the "counsel's performance was deficient" and (2) that the deficient performance prejudiced the defendant as to deprive him of a fair trial. *Strickland*, 466 U.S. at 687. In evaluating counsel's alleged deficiency, the inquiry must be whether counsel's assistance was reasonable considering all the circumstances. *Strickland*, 466 U.S. at 689. In evaluating the prejudice prong, courts require that "but-for" counsel's deficiency, the result of the trial likely would have been different. *Id*. at 693–94 ("…[W]e believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case…The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

[4] The Supreme Court had already "recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970).

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome."). The *Strickland* test applies to claims of ineffective assistance of counsel arising from plea bargains. *State v. McCollum*, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997).

In the instant case, Mr. Campbell entered a plea of guilty with an offender score of '0'. He was subsequently sentenced at an offender score of '2' due to one point being erroneously counted for supposedly being on "community placement" for a juvenile offense at the time of the instant offense. There is no indication in the court file that defense counsel objected to this erroneous scoring. There is no rational basis for proceeding with a plea and sentencing at a higher offender score than was authorized by law and there is no strategic value to having the court erroneously impose more time for one's client. Mr. Campbell was specifically prejudiced by this deficiency as his SSOSA sentence was revoked and Mr. Campbell had to spend additional time in prison as a result. Given the above, Mr.

Campbell received ineffective assistance of counsel with the entry of the guilty plea.

D. CONCLUSION

Given the foregoing, the appellant respectfully requests that this court remand this matter back to the superior court to allow Mr. Campbell to withdraw his guilty plea.

DATED this June 15, 2023.

RAP 18.17 certification: This document contains 2,658 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sean M. Downs, a person over 18 years of age, declare under penalty of perjury under the laws of the State of

Washington that on June 15, 2023 I electronically filed the APPELLANT'S OPENING BRIEF with the clerk of the court using the electronic filing system, which will send a copy to the following electronic participant: Aaron Bartlett <Aaron.Bartlett@clark.wa.gov>, attorney for Respondent. On the same date, I caused to be mailed a copy of the APPELLANT'S OPENING BRIEF to the appellant, Joseph A. Campbell, DOC #858961, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, WA 98520.

Dated this June 15, 2023. Signed in Vancouver, WA.

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