APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

APPENDIX TABLE OF CONTENTS (Cont.)

RECONSIDERATION ORDERS

OTHER DOCUMENTS

APPENDIX TABLE OF CONTENTS (Cont.)

RULING DENYING MOTION FOR DISCRETIONARY REVIEW, SUPREME COURT OF THE STATE OF WASHINGTON (NOVEMBER 22, 2023)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:
TSAI FEN LEE,

Petitioner.

No. 102333-2

Court of Appeals No. 84274-9-I

Before: Walter M. BURTON, Deputy Commissioner.

RULING DENYING REVIEW

Tsai Fen Lee pleaded guilty in King County Superior Court to unlawful imprisonment, a charge amended from the original charge of felony stalking. At the plea hearing the prosecutor asked Lee whether she understood that her plea "could result" in deportation or exclusion from admission to the United States. Lee responded that she understood. Defense counsel also later explained that he was aware of the "possible" immigration consequences that "might" occur, that he had consulted with a criminal immigration specialist about any negative affect on Lee's immigration status, that he had tried to find ways of minimizing the effect,

and that he had advised Lee accordingly. The superior court accepted the plea and subsequently sentenced Lee to one month confinement. Lee challenged her plea on direct appeal to Division One of the Court of Appeals, claiming the plea lacked a sufficient factual basis, but the court affirmed the conviction. Lee then timely filed a personal restraint petition in the Court of Appeals, arguing in part that defense counsel was ineffective in failing to adequately advise her of the immigration consequences of her plea. Finding no merit to this argument, and rejecting other arguments, the Court of Appeals denied the petition in an unpublished opinion. Lee now seeks this court's discretionary review. RAP 16.14(c). The State opposes review.

To obtain this court's review, Lee must show that the Court of Appeals decision conflicts with a decision of this court or with a published Court of Appeals decision, or that she is raising a significant constitutional question or an issue of substantial public interest. RAP 13.5A(a)(1), (b); RAP 13.4(b). Lee does not specifically cite any of these grounds for review or otherwise show that this court's review is justified. As noted, at the plea hearing the prosecutor asked Lee whether she understood that a guilty plea "could" have adverse immigration consequences. Defense counsel echoed these remarks later when he stated he had discussed with Lee the "possible" immigration consequences that "might" occur if she pleaded guilty. But Lee observes that in her written plea statement she was advised that a plea of guilty to a crime "is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." She

contends that this advice conveyed that adverse immigration consequences were certain, and thus the prosecutor misspoke when he indicated only that there "could" be adverse consequences. Lee argues that when defense counsel failed to counter this misinformation and indeed echoed it later, she was completely deprived of counsel at those moments. She describes this failing as "structural ineffective assistance" or "periodic episodic attorney ineffectiveness," which requires no showing of prejudice. She relies for this argument on *United States v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984), urging that counsel's failing constituted the form of structural ineffectiveness that consists of entirely failing to subject the prosecution's case to meaningful adversarial testing. *See Cronic*, 466 U.S. at 659.

But Lee did not make this argument in the Court of Appeals. Rather she asserted there only an ordinary claim that defense counsel was ineffective in not accurately advising her of immigration consequences, focusing on the issue of whether, for her crime, deportation consequences were "truly clear." *See Padilla v. Kentucky*, 559 U.S. 356, 369, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010) (if consequences are "truly clear," counsel must give that advice correctly; if consequences are not truly clear, counsel need only advise that a guilty plea may carry a risk of adverse immigration consequences).[1] Lee did not cite *Cronic* or otherwise claim that counsel provided structurally ineffective assistance. This court will not consider

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[1] The Court of Appeals held that the immigration consequences of a conviction for unlawful imprisonment are not truly clear, and thus counsel's advice that adverse consequences were possible was sufficient.

arguments that a personal restraint petitioner failed to make in the Court of Appeals. *In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 175 n.1, 196 P.3d 670 (2008). Lee urges that this court may first consider this argument as "manifest error affecting a constitutional right" pursuant to RAP 2.5(a)(3). Aside from the dubious proposition that Lee demonstrates "manifest constitutional error" in the form a complete deprivation of counsel, RAP 2.5(a) is a rule allowing an appellate court to consider for the first time issues that were not raised in the trial court. It does not govern the circumstance in which a personal restraint petitioner tries to raise an issue in this court that the petitioner did not raise in the Court of Appeals. Since the issue of structural ineffective assistance was not raised in the Court of Appeals, that court necessarily did not address it. It is therefore not an issue that justifies this court's review of the Court of Appeals decision.

The motion for discretionary review is denied.

/s/ Walter M. Burton
Deputy Commissioner

November 22, 2023

OPINION DENYING LEE'S PERSONAL RESTRAINT PETITION, COURT OF APPEALS OF THE STATE OF WASHINGTON (JULY 31, 2023)

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint Petition of:
TSAI FEN LEE,

Petitioner.

DIVISION ONE
No. 84274-9-I

Before: Cecily C. HAZELRIGG, Acting Chief Judge and Stephen J. DWYER and Bill A. BOWMAN, Judges.

UNPUBLISHED OPINION

DWYER, J. — Tsai Fen Lee filed this personal restraint petition challenging her May 2018 conviction of unlawful imprisonment resulting from a plea agreement. Lee contends that her counsel was constitutionally ineffective for failing to sufficiently advise her of the immigration consequences of the conviction, that her counsel's disclosure of Lee's immigration status at the plea hearing mandates reversal of her conviction, and that her plea was involuntary because she was unaware that King County employees are precluded by county code from honoring immigration

detainer requests. Because Lee has not established an entitlement to relief, we deny the petition.

I

Lee was charged with one count of felony stalking based on her harassment of Cassandra Mitchell, an instructor at a Seattle yoga studio where Lee attended classes.[1] Pursuant to an agreement with the State, Lee pleaded guilty to an amended charge of unlawful imprisonment. She provided the following statement as part of the plea: "I, Tsai Fen Lee, did, without intent to threaten, harm, frighten, or injure Cassandra Mitchell, knowingly prevented Cassandra Mitchell from leaving her yoga studio on or around March 27, 2016, in King County, Washington."

At the plea hearing, Lee reported that her attorney, with the assistance of an interpreter, had fully reviewed the plea agreement with her and had answered all of her questions. Lee further stated her understanding that, if she is not a United States citizen, a guilty plea could result in deportation and exclusion from admission to the United States. The State inquired whether Lee's counsel had discussed with her any potential immigration consequences. Counsel replied:

> [W]e are aware of possible adverse . . . immigration consequences that might occur. . . . [W]e have done our legal research, as well as consulted with a criminal immigration specialist . . . to see what, if any, negative

[1] Additional facts are set forth in *State v. Lee*, No. 78512-5-I (Wash. Ct. App. Nov. 16, 2020) (unpublished), http://www.courts.wa.gov/opinions/pdf/785125.pdf.

> impact this plea resolution would have on Ms. Lee's immigration status. . . . [W]e've also tried to find ways of minimizing the effects to the best that we can . . . and we have advised Ms. Lee accordingly.[2]

Sentencing was scheduled for three days later to allow for notification to the victim. Lee's counsel informed the trial court of Lee's request to be released until the sentencing date. The court asked whether Lee had a place to stay. Counsel replied: "I don't believe she does, Your Honor. and, Your Honor, as an officer of the court, I do have [to] disclose that it's my understanding that . . . there is some sort of immigration hold . . . in her record."[3] The trial court denied Lee's request for release due to concerns that Lee had no place to stay and that "there might be an immigration hold." The court told Lee, "I don't want to release you, and then have something—have you not come back for some reason."

The trial court imposed a standard range sentence of one month of confinement. On direct appeal, Lee asserted that her guilty plea was involuntary because it lacked a sufficient factual basis. We rejected Lee's argument and affirmed her conviction. *State v. Lee*, No. 78512-5-I (Wash. Ct. App. Nov. 16, 2020) (unpub-

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[2] Counsel's case notes, provided by Lee as an appendix to her petition, corroborate this statement. The notes indicate that counsel both researched pertinent immigration law and consulted with an immigration attorney and that counsel discussed immigration matters with Lee.

[3] The record indicates that Lee had overstayed the tourist visa with which she had entered the United States and that an Immigration and Customs Enforcement detainer had been issued as a result.

lished), http://www.courts.wa.gov/opinions/pdf/785125.pdf.

Lee thereafter timely filed this personal restraint petition.

II

To successfully challenge a judgment by means of a personal restraint petition, a petitioner must establish either (1) actual and substantial prejudice arising from constitutional error, or (2) nonconstitutional error that inherently results in a "complete miscarriage of justice." *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). If a personal restraint petitioner makes a successful ineffective assistance of counsel claim, she necessarily meets the burden to show actual and substantial prejudice. *In re Pers. Restraint of Crace*, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012).

III

Lee first asserts that she received ineffective assistance of counsel because her counsel failed to advise her that her guilty plea would "inevitably" lead to deportation, exclusion from admission to the United States, or denial of naturalization. We disagree. Lee has not shown that her conviction of unlawful imprisonment has truly clear immigration consequences. Accordingly, her counsel was required only to advise her that the conviction may carry a risk of adverse immigration consequences. Because Lee's counsel did so, his performance was not deficient.

Both the Sixth Amendment to the United States Constitution and article I, section 22 of our state con-

stitution guarantee a defendant the right to effective assistance of counsel in criminal proceedings. *Strickland v. Washington*, 466 U.S. 668, 684-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). This right encompasses the plea process. *State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). To establish ineffective assistance of trial counsel, a petitioner must demonstrate both that counsel's representation was deficient and that prejudice resulted. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Representation was deficient if "it fell below an objective standard of reasonableness based on consideration of all the circumstances." *McFarland*, 127 Wn.2d at 334-35. There is a strong presumption that counsel's representation was effective, and the burden is on the defendant alleging ineffective assistance of counsel to overcome that presumption. *State v. Manajares*, 197 Wn. App. 798, 814, 391 P.3d 530 (2017).

"Because of deportation's 'close connection to the criminal process,' advice about deportation consequences falls within 'the ambit of the Sixth Amendment right to counsel.'" *Sandoval*, 171 Wn.2d at 170 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)). The United States Supreme Court recognized in *Padilla* that "[i]mmigration law can be complex," and that some attorneys "who represent clients facing criminal charges . . . may not be well versed in it." 559 U.S. at 369. Accordingly, the Court held that the specificity of the advice required to be given by defense counsel depends on the clarity of the law. *Padilla*, 559 U.S. at 369. When the deportation consequence of a particular plea is "truly clear," defense counsel's "duty to give correct advice is equally clear." *Padilla*, 559 U.S. at 369. However, in

the "numerous situations in which the deportation consequences of a particular plea are unclear or uncertain," defense counsel's duty is "more limited." *Padilla*, 559 U.S. at 369. "When the law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." *Padilla*, 559 U.S. at 369.

Here, as Lee acknowledges, the record demonstrates that her counsel advised her of the potential for adverse immigration consequences resulting from her guilty plea. Lee asserts, however, that the law is truly clear that her plea would subject her to such immigration consequences and, thus, that her counsel was required to provide more specific advice. We disagree. To prevail on her claim of ineffective assistance of counsel, Lee must overcome the strong presumption that counsel's performance was effective. Lee has failed to demonstrate that it is truly clear that her conviction of unlawful imprisonment, as pled and proven here, would qualify as either a crime of moral turpitude or an aggravated felony for immigration purposes. Accordingly, Lee has not shown that her counsel's representation was deficient.

A

Lee contends that unlawful imprisonment is a crime of moral turpitude for purposes of the Immigration and Nationality Act (INA). However, the actual question presented here is whether it is "truly clear" that the offense to which Lee pleaded guilty qualifies as a crime of moral turpitude, such that defense counsel was required to discharge a higher professional obligation. *See Padilla*, 559 U.S. at 369. It is not.

Pursuant to the INA, "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude" is excludable from admission into the United States. 8 U.S.C. § 1182(a)(2)(A)(i)(I). Additionally, any "alien who . . . is convicted of a crime involving moral turpitude committed within five years . . . after the date of admission" and "is convicted of a crime for which a sentence of one year or longer may be imposed" is deportable. 8 U.S.C. § 1227(a)(2)(A)(i).

Courts employ the categorical approach in determining whether a conviction qualifies as a crime involving moral turpitude for purposes of deportation. *Fugow v. Barr*, 943 F.3d 456, 458 (9th Cir. 2019); *Turijan v. Holder*, 744 F.3d 617, 620 (9th Cir. 2014). This approach "'requires us to compare the elements of the crime to the generic definition of moral turpitude and decide whether the conduct proscribed in the statute is broader than, and so does not categorically fall within, this generic definition.'" *Turijan*, 744 F.3d at 620 (quoting *Nunez v. Holder*, 594 F.3d 1124, 1129 (9th Cir. 2010), *superseded in part as stated by Betansos v. Barr*, 928 F.3d 1133, 1142 (9th Cir. 2019)). "If there is a 'realistic probability' that the statute of conviction would be applied to non-turpitudinous conduct, there is no categorical match." *Fugow*, 943 F.3d at 458 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193, 127 S. Ct. 815, 166 L. Ed. 2d 683 (2007)).

Here, Lee pleaded guilty to the offense of unlawful imprisonment. A person is guilty of this offense "if he or she knowingly restrains another person." RCW 9A.40.040(1). "'Restrain' means to restrict a person's

movements without consent and without legal authority in a manner which interferes substantially with his or her liberty." RCW 9A.40.010(6).

> Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

RCW 9A.40.010(6).

The Ninth Circuit has observed that "moral turpitude is 'perhaps the quintessential example of an ambiguous phrase.'" *Turijan*, 744 F.3d at 620 (quoting *Marmolejo-Campos v. Holder*, 558 F.3d 903, 909 (9th Cir. 2009) (en banc)). Nevertheless, federal courts have articulated a definition of crimes involving moral turpitude. Such crimes involve "'either fraud or base, vile, and depraved conduct that shocks the public conscience.'" *Fugow*, 943 F.3d at 458 (quoting *Nunez*, 594 F.3d at 1131). "Only truly unconscionable conduct surpasses the threshold of moral turpitude." *Robles-Urrea v. Holder*, 678 F.3d 702, 708 (9th Cir. 2012). Nonfraudulent crimes involving moral turpitude "almost always involve an intent to injure someone, an actual injury, or a protected class of victims." *Turijan*, 744 F.3d at 621. However, a reckless endangerment offense can constitute a crime involving moral turpitude when the offense creates "'a substantial, actual risk of imminent death.'" *Fugow*, 943 F.3d at 459 (quoting *Leal v. Holder*, 771 F.3d 1140, 1146 (9th Cir. 2014)).

In asserting that unlawful imprisonment constitutes a crime involving moral turpitude for purposes of the INA, Lee relies on Ninth Circuit decisional authority indicating that Hawaii's offense of first degree unlawful imprisonment constitutes such a crime. *See Route v. Garland*, 996 F.3d 968 (9th Cir. 2021); *Fugow*, 943 F.3d 456. However, Hawaii's offense of unlawful imprisonment in the first degree is materially different than the offense to which Lee pleaded guilty. Pursuant to Hawaii law, "[a] person commits the offense of unlawful imprisonment in the first degree if the person knowingly restrains another person under circumstances *which expose the person to the risk of serious bodily injury*." Haw. Rev. Stat. § 707-721(1) (emphasis added). In *Fugow*, the Ninth Circuit held that it was this element of the offense—that the offender "expose another person to a risk of serious bodily injury"—that rendered the offense morally turpitudinous. 943 F.3d at 459. No such element exists in Washington's offense of unlawful imprisonment. Accordingly, decisional authority regarding the Hawaii offense does not demonstrate that the law is truly clear that our state's unlawful imprisonment offense constitutes a crime of moral turpitude.[4]

Lee has identified no authority indicating that it is truly clear that, in pleading guilty to unlawful imprisonment, she admitted to committing acts that constitute the essential elements of a crime involving moral turpitude. It is Lee's burden to overcome the

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[4] Indeed, as Division Three has recognized, the Ninth Circuit has concluded "that unlawful imprisonment under a similar, if not identical, California statute is *not* a crime involving moral turpitude." *Manajares*, 197 Wn. App. at 814-15 (citing *Turijan*, 744 F.3d at 621-22).

strong presumption that plea counsel's representation was effective. She has not done so here.

B

Lee additionally contends that, pursuant to the modified categorical approach, her conviction qualifies as a "crime of violence," and, thus, is an aggravated felony, for purposes of the INA. Again, the actual question is whether it is truly clear that the conviction qualifies as a "crime of violence," such that Lee's counsel was required to provide more specific advice regarding the immigration consequences of her plea. Again, it is not.

The INA provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." 8 U.S.C. § 1227(a)(2)(A)(iii). The term "aggravated felony" means one of the numerous offenses set forth in 8 U.S.C. § 1101(a)(43)(A)-(U). Pursuant to the statute, an "aggravated felony" includes "a crime of violence . . . for which the term of imprisonment [is] at least one year." 8 U.S.C. § 1101(a)(43)(F). A "crime of violence" is "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a).[5]

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[5] We note that the residual clause of the federal criminal code's definition of "crime of violence," set forth at 18 U.S.C. § 16(b), and as incorporated into the INA's definition of "aggravated felony," has been determined by the United States Supreme Court to be impermissibly vague in violation of due process. *Sessions v. Dimaya*, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018). Accordingly, we analyze Lee's claim of error with respect only to the "elements clause" of the statute, set forth at 18 U.S.C. § 16(a). *See Sessions*, 138 S. Ct. at 1211.

In evaluating whether a prior conviction qualifies as an aggravated felony for immigration purposes, we apply the categorical approach set forth in *Taylor v. United States*, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990). *See United States v. Pallares-Galan*, 359 F.3d 1088, 1099 (9th Cir. 2004). In employing this approach, "we 'look only to the fact of conviction and the statutory definition of the prior offense'" in order to determine "'whether the full range of conduct encompassed by [the state statute] constitutes an aggravated felony.'" *Pallares-Galan*, 359 F.3d at 1099 (alteration in original) (quoting *Taylor*, 495 U.S. at 602). "If the state statute under which the defendant was previously convicted has the same elements as, or is narrower than, the federal, generic crime, then the prior conviction can serve as an aggravated felony predicate." *Rendon v. Holder*, 764 F.3d 1077, 1083 (9th Cir. 2014). This is because "the conviction necessarily implies that the defendant has been found guilty of all the elements of [the predicate offense]." *Taylor*, 495 U.S. at 599.

To help "implement the categorical approach when a defendant was convicted of violating a divisible statute," courts apply the "modified categorical approach." *Descamps v. United States*, 570 U.S. 254, 261, 263, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013). This approach "allows courts to look beyond the statutory text to a limited set of documents to determine the elements of the state offense of which the defendant was convicted when some alternative elements of the state crime would match the federal, generic crime, and other alternative elements would not." *Rendon*, 764 F.3d at 1083. The modified approach

> retains the categorical approach's central feature: a focus on the elements, rather than the facts, of a crime. And it preserves the categorical approach's basic method: comparing those elements with the generic offense's. All the modified approach adds is a mechanism for making that comparison when a statute lists multiple, alternative elements, and so effectively creates "several different . . . crimes."

Descamps, 570 U.S. at 263-64 (alteration in original) (quoting *Nijhawan v. Holder*, 557 U.S. 29, 41, 129 S. Ct. 2294, 174 L. Ed. 2d 22 (2009)).

As an initial matter, we note that unlawful imprisonment can be accomplished without any use or threatened use of force and, thus, is clearly not a categorical crime of violence. RCW 9A.40.010(6), .040(1). Lee nevertheless asserts that, pursuant to the modified categorical approach,[6] her admissions in the statement on plea of guilty would be considered in an immigration proceeding. This would result, according

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[6] We do not hold that the modified categorical approach may properly be applied in determining whether unlawful imprisonment constitutes an aggravated felony for immigration purposes. We are cognizant that courts may use this approach only when the statute of conviction "lists multiple, alternative elements, and so effectively creates 'several different . . . crimes.'" *Descamps*, 570 U.S. at 264 (alteration in original) (quoting *Nijhawan*, 557 U.S. at 41). This is because "only divisible statutes enable a sentencing court to conclude that a jury (or judge at a plea hearing) has convicted the defendant of every element of the generic crime." *Descamps*, 570 U.S. at 272. We leave for another day, and upon more thorough briefing, the question of whether our state's unlawful imprisonment statute is "divisible," such that the modified categorical approach may be applied.

to Lee, in inevitable immigration consequences. We disagree.

Lee's statement on plea of guilty is wholly inconsistent with a determination that the crime to which she pleaded guilty constitutes "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a) (defining "crime of violence"). Indeed, Lee stated in the plea that she knowingly prevented the victim from leaving the yoga studio "*without intent to threaten, harm, frighten, or injure*" her. (Emphasis added.) Nowhere in Lee's statement did she admit to conduct constituting a crime of violence for purposes of the INA.[7]

Importantly, we are presented not with the question of whether the crime of conviction constitutes a deportable offense. Instead, we must determine whether the immigration consequence of the plea is "truly clear," such that Lee's counsel was required to provide more than a general warning of the risk of such a consequence. *Padilla*, 559 U.S. at 369; *Sandoval*, 171 Wn.2d at 170. Lee has failed to identify any authority indicating that it is truly clear that her plea admitted to committing acts that qualify as a crime of violence for immigration purposes. Accordingly, we conclude that her counsel's provision of general immigration

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[7] Lee cites to Ninth Circuit decisional authority in asserting that unlawful imprisonment, as defined by our state statute, constitutes a crime of violence for purposes of the INA. *See United States v. Osuna-Armenta*, 2010 WL 4867380 (E.D.Wash. Nov. 23, 2010) (unpublished). However, there, the defendant pleaded guilty to unlawful imprisonment by means of the use of physical force. *Osuna-Armenta*, 2010 WL 4867380, at *5. Accordingly, that authority is inapposite here.

warnings constituted competent representation.[8] Because Lee has failed to demonstrate deficient representation, we need not reach her claim of prejudice.

IV

Lee additionally asserts that her conviction must be reversed because, she contends, her counsel improperly disclosed her immigration status at the plea hearing. We disagree. Lee has demonstrated neither that she was required to disclose her immigration status to the court nor that any statement made by her counsel impacted her plea. Additionally, Lee fails to show that RCW 10.40.200 provides the substantive remedy requested here.

Our legislature enacted RCW 10.40.200 "to promote fairness to . . . accused individuals [who are not citizens of the United States] by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea." RCW 10.40.200(1). To that end, the statute mandates that

> [p]rior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions

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[8] Lee additionally asserts that her counsel was deficient in not informing her regarding the potential that her conviction could render her ineligible for withholding of removal in an immigration proceeding. However, the record nowhere indicates that withholding of removal was relevant here. Accordingly, Lee's counsel was not required to inform her of such potential consequences. In any event, Lee does not provide argument regarding whether it is truly clear that her plea would result in such immigration consequences.

> under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

RCW 10.40.200(2). The statute further states: "It is . . . the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court." RCW 10.40.200(1).

Lee asserts that her counsel improperly disclosed her immigration status during the plea hearing. Following Lee's guilty plea, her counsel informed the court of her request to be released until sentencing three days later. The court asked whether Lee had a place to stay. Counsel responded, "I don't believe she does, Your Honor. And, Your Honor, as an officer of the court, I do have [to] disclose that it's my understanding . . . from the King County Jail employees that there is some sort of immigration hold . . . in her record." The court denied Lee's request for release.

According to Lee, counsel's statement that he believed there was an immigration hold in her record constituted improper disclosure of Lee's immigration status that "directly influenced" the court's decision to deny her request for release. This is not so. First, RCW 10.40.200(1) sets forth the legislature's intent, in the context of mandated warnings of the potential immigration consequences of a plea, that the "defendant may not be required to disclose . . . her legal status to the court." Here, however, Lee was not

required to disclose her legal status. Moreover, the statute on which she relies nowhere provides that defense counsel commits misconduct by informing the court of a potential immigration hold in a public record.

Second, Lee has not demonstrated that the statement made by defense counsel impacted her plea. Indeed, because the statement was made subsequent to the plea, she could not persuasively do so. Instead, Lee asserts that counsel's statement resulted in the court's denial of her request for release for the three days prior to sentencing. Even were this so, Lee was released from confinement over five years ago. Accordingly, she is no longer under restraint due to any possible error resulting from her counsel's statement to the court. *See* RAP 16.4(b). Moreover, even were Lee able to demonstrate error, she fails to show that RCW 10.40.200(1) provides any substantive remedy, particularly the vacation of a conviction, as Lee requests here.

For each of the reasons set forth above, we conclude that Lee is not entitled to relief due to her counsel's statement to the court that an immigration hold was present in the public record.

V

Lee further asserts that her plea was involuntary because she was unaware that King County Code § 2.15.020 precludes county employees from honoring immigration detainer requests. Again, we disagree. Only a misunderstanding regarding the consequences of a guilty plea can render the plea involuntary. Even were Lee misinformed regarding whether she would be released from confinement if she posted bail, such misinformation does not involve the consequences of her

guilty plea. Accordingly, Lee's plea was not rendered involuntary by the asserted misunderstanding.

"A guilty plea is constitutionally involuntary when a defendant is misinformed about a direct consequence of pleading guilty." *In re Pers. Restraint of Reise*, 146 Wn. App. 772, 787, 192 P.3d 949 (2008). "A direct consequence of pleading guilty is one having a definite, immediate, and largely automatic effect on the sentence." *Reise*, 146 Wn. App. at 787. In contrast, collateral consequences are those "that are not 'automatically imposed' by the sentencing court, that do not 'automatically enhance' the sentence, or that do 'not alter the standard of punishment.'" *Reise*, 146 Wn. App. at 787 (quoting *State v. Ward*, 123 Wn.2d 488, 513-14, 869 P.2d 1062 (1994)). In other words, "[t]he distinction between collateral and direct consequences depends upon whether the consequence 'represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment.'" *In re Pers. Restraint of Quinn*, 154 Wn. App. 816, 836, 226 P.3d 208 (2010) (internal quotation marks omitted) (quoting *Ward*, 123 Wn.2d at 512). A defendant need not be advised of all collateral consequences of pleading guilty. *Quinn*, 154 Wn. App. at 836.

Here, Lee asserts that her counsel advised that, due to an immigration hold on Lee's record, she would not be released from confinement if she posted bail. According to Lee, her plea was rendered involuntary because she was unaware that King County Code § 2.15.020 prohibits the county jail from honoring federal immigration detainers. Had she known about this county code provision, Lee contends, she would have been released on bail and then chosen to go to trial. Thus, the argument goes, Lee's plea was rendered

involuntary because she was unaware that King County employees are prohibited from honoring federal immigration detainers.[9]

Lee's claim of error is premised on a misunderstanding of the voluntariness of a guilty plea. Only when a defendant is misinformed regarding a consequence of the plea is that plea rendered involuntary. *See, e.g., Quinn*, 154 Wn. App. at 836; *Reise*, 146 Wn. App. at 787. Here, Lee does not assert any misunderstanding regarding the consequences of her plea. Rather, she asserts that she would have chosen to go to trial had she been released from confinement prior to the plea hearing. Lee's desire to be released from confinement, however, demonstrates neither that she was misinformed regarding the consequences of her plea nor that, as a result, her guilty plea was rendered involuntarily. As Lee does not claim any misunderstanding regarding either direct or collateral consequences of the plea, she cannot demonstrate that her plea was involuntary.[10]

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[9] The underlying concern, demonstrated by the record but not acknowledged in Lee's briefing, is that she had overstayed the tourist visa with which she had entered the country. The immigration detainer was unrelated to the offense to which Lee pleaded guilty, and her plea counsel was not representing her with regard to any immigration matter. Nor could plea counsel guarantee that, were bail posted, it would not be forfeited and that Lee would not be removed from the country pursuant to the immigration detainer.

[10] In her reply brief, Lee additionally appears to assert that her plea was involuntary due to counsel's purported failure to interview witnesses and to seek dismissal of the original felony stalking charge. According to Lee, these purported misrepresentations impacted her decision to plead guilty to the unlawful imprisonment charge. However, again, Lee asserts no misunderstanding of the

Lee has failed to demonstrate that she is entitled to relief. Accordingly, we deny her petition.

/s/ Stephen J. Dwyer
Judge

WE CONCUR:

/s/ Bill A. Bowman
Judge

/s/ Cecily C. Hazelrigg
Acting Chief Judge

consequences of her guilty plea. Accordingly, she cannot establish that the plea was involuntary.

ORDER DENYING PETITION FOR REVIEW, SUPREME COURT OF WASHINGTON (JUNE 7, 2021)

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TSAI FEN LEE,

Petitioner.

No. 99453-6

Court of Appeals No. 78512-5-I

ORDER

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its June 4, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 7th day of June, 2021.

For the Court

/s/ Gonzalez
Chief Justice

OPINION AFFIRMING, COURT OF APPEALS FOR THE STATE OF WASHINGTON (NOVEMBER 16, 2020)

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TSAI FEN LEE,

Appellant.

No. 78512-5-I Division One

UNPUBLISHED OPINION

LEACH, J.—Tsai Fen Lee appeals her conviction for unlawful imprisonment. She claims her guilty plea was involuntary because the record does not contain sufficient factual support for this plea. We disagree and affirm.

BACKGROUND

Viewed in the light most favorable to the State, the record establishes these facts. Cassandra Mitchell is a yoga instructor who works in Seattle. Lee attended yoga classes at Mitchell's studio "over the past few years." Lee began harassing Mitchell using

social media. Mitchell attempted to "block" Lee's accounts, but Lee would quickly create duplicate profiles and resume the harassment. Mitchell relied on social media to promote her business. Mitchell decided she could not simply ignore or avoid Lee's cyber harassment.

Lee posted personal and inflammatory messages. She accused Mitchell's boyfriend of being a "murderer" and mocked the stillbirth of Mitchell's daughter. Lee also sent messages professing love for Mitchell even though they never had any kind of Citations and pin cites are based on the Westlaw online version of the cited material. intimate relationship. Lee later began posting defamatory accusations on the social media pages of yoga studios where Mitchell taught. Mitchell obtained a protection order against Lee but the harassment continued. Mitchell reported at least 10 protection order violations by Lee to the police.

On January 22, 2016, Lee came to Mitchell's yoga studio and attempted to participate in a class. Lee had been repeatedly told by Mitchell and other employees that she was not allowed on the studio premises. After Mitchell called 911 to report this violation, Lee's harassment escalated. She began sending Mitchell death threats telling her "I will have to kill you before I go to jail." Mitchell lived in constant fear that Lee would carry out her threats of physical harm. Mitchell had to stop teaching yoga classes due to Lee's behavior.

Based on this conduct, the State charged Lee with one count of felony stalking. Pursuant to an agreement with the State, Lee pleaded guilty to the amended charge of unlawful imprisonment. Lee

provided the following factual statement to express "in [her] own words" why she was guilty of the amended charge.

> I, Tsai Fen Lee, did, without intent to threaten, harm, frighten, or injure Cassandra Mitchell, knowingly prevented Cassandra Mitchell from leaving her yoga studio on or around March 27, 2016, in King County, Washington.

The trial court accepted Lee's guilty plea and sentenced her. Lee did not ask the trial court to allow her to withdraw her guilty plea. Lee timely appealed.

ANALYSIS

Lee claims her guilty plea was not voluntary because the record before the judge who accepted her plea did not contain sufficient evidence to show a factual basis for the plea. Specifically, Lee contends the record contains no evidence that she substantially restricted Mitchell's movement, no evidence that she acted knowingly in restricting Mitchell's movement, and no evidence that Lee's intimidation caused any restriction in Mitchell's movement. We disagree.

Before a court accepts a plea of guilt, it must be satisfied that the plea is supported by a sufficient factual basis. This rule protects the defendant by ensuring the admitted facts actually satisfy the elements of the crime and that the defendant understands what she is pleading guilty to.[1] Our Supreme Court has defined a sufficient factual basis

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[1] CrR 4.2(d); *State v. Arnold*, 81 Wn. App. 379, 383, 914 P.2d 762 (1996).

as the minimum evidence necessary for a jury to find guilt; the reviewing court itself need not be convinced of guilt beyond a reasonable doubt.[2] Sufficient evidence supports a jury verdict when, viewing the evidence in the light most favorable to the State, a rational juror could have found the essential elements of the crime proved beyond a reasonable doubt.[3] A factual basis can be established by "any reliable source," so long as the material relied upon is made part of the record at the time of the plea.[4] This means the court can rely on both the defendant's admissions and information supplied by the prosecution.[5]

A person commits the crime of unlawful imprisonment if they "knowingly restrain[] another person."[6] To "restrain" someone means to "restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty."[7] Restraint occurs "without consent" if a person accomplishes it by either force, intimidation, or deception.[8]

Lee first claims the record includes no evidence she substantially restrained Mitchell. The State

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[2] *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976); *State v. Saas*, 118 Wn.2d 37, 43, 820 P.2d 505 (1991).

[3] *State v. Luther*, 157 Wn.2d 63, 77-78, 134 P.3d 205 (2006).

[4] *State v. Osborne*, 102 Wn.2d 87, 95, 684 P.2d 683 (1984).

[5] *State v. Powell*, 29 Wn. App. 163, 167, 627 P.2d 1337 (1981).

[6] RCW 9A.40.040(1).

[7] RCW 9A.40.010(6).

[8] RCW 9A.40.010(6).

answers that Lee's own statement that she "knowingly prevented Cassandra Mitchell from leaving her yoga studio" provides sufficient evidence. Lee responds that this statement is insufficient because it does not show Mitchell could not have taken a different route or door to leave her studio. Evidence of a reasonable means of escape may be a defense to a charge of false imprisonment. But, this is a defense and not an element of unlawful imprisonment.[9] So, the State does not have to present evidence about the absence of a reasonable means of escape to provide sufficient evidence of restraint.[10] Lee's statement provides sufficient evidence of restraint.

Lee next claims that no evidence shows she acted knowingly. We disagree. In her statement quoted above, she says she acted knowingly.

Finally, Lee claims that evidence shows her intimidation of Mitchell caused the restraint. Lee correctly notes the State must show Lee accomplished Mitchell's restraint by either force, intimidation, or deception. The State makes no claim that Lee used force or deception. It contends that Lee's months of cyberstalking provide sufficient evidence of intimidation. Lee responds that her threats occurred after the unlawful imprisonment occurred and could not have caused an earlier event. But, as the State correctly notes, it need not rely on evidence of threats to prove intimidation, rather "a feeling of

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[9] *State v. Dillon*, 12 Wn. App. 2d 133, 145, 456 P.3d 1199, 1205-06 *review denied*, 195 Wn. 2d 1022, 464 P.3d 198 (2020).

[10] *State v. Dillon*, 12 Wn. App. 2d at 145.

inferiority or timidness could constitute intimidation."[11]

Lee's cyberstalking and other behavior before the charged event caused Mitchell enough apprehension to motivate her to obtain a protection order. Even if Lee did not intend to intimidate Mitchell, a reasonable person would know that Lee's presence outside the yoga studio would intimidate Mitchell because she had obtained a protection order and she repeatedly asked Lee not to contact her. From this evidence, a rational jury could find beyond a reasonable doubt that Lee restrained Mitchell by intimidation.

Lee also suggests her plea was not voluntary because she did not understand the elements of unlawful imprisonment. The record does not support this claim. Her statement on plea of guilty states the elements of unlawful imprisonment are set forth in the amended information, which she has discussed with her lawyer. During a colloquy with the court about Lee's plea, she agreed an interpreter had read every word of the information to her. She also agreed she had an opportunity to have the interpreter and her lawyer answer any questions she had. Lee suggests the court was required to include in its colloquy a discussion of the elements of unlawful imprisonment to ensure she understood each element. Lee has not cited to any authority for this proposition. Washington State courts have held that a constitutionally adequate plea colloquy does not require the defendant admit each individual element of a crime.[12]

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[11] *State v. Avila*, 102 Wn. App. 882, 889, 10 P.3d 486 (2000).

[12] *Matter of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993).

"Apprising the defendant of the nature of the offense need not 'always require a description of every element of the offense.'"[13]

CONCLUSION

We affirm. The record shows Lee's plea was voluntary.

WE CONCUR:

/s/ J. Leach
Judge

/s/ J. Hazelrigg
Judge

/s/ J. Brennan
Judge

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13 *State v. Keene*, 95 Wn.2d 203, 207, 622 P.2d 622 (quoting *Henderson v. Morgan*, 426 U.S. 637, 645, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976)).

JUDGMENT AND SENTENCE FELONY (MAY 11, 2018)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No. 16-1-02293-2 SEA

JUDGMENT AND SENTENCE FELONY (FJS)

I. Hearing

I.1 The defendant, the defendant's lawyer, David Sho Ly, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Kayleigh Mc Neil-Victims advocate

II. Findings

There being no reason why judgment should not be pronounced, the court finds: 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 05/08/2018 by Plea of:

Count No.: 1 Unlawful Imprisonment
RCW: 9A.40.010(6) and 9A.40.040
Date of Crime: 07/29/2015-03/27/2016

2.4 SENTENCING DATA:

Sentencing Data	1
Offender Score	0
Seriousness Level	III
Standard Range	1-3 mos.
Total Standard Range	1-3 mos.
Maximum Term	5 yrs. and/or $10,000

IV. Order

4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

☒ Restitution to be determined at future restitution hearing on (Date) at m.

☒ Date to be set.

☒ Defendant waives right to be present at future restitution hearing(s).

4.2 OTHER FINANCIAL OBLIGATIONS:

Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

☒ (a) Court costs are waived;

☒ (b) Recoupment is waived;

☒ (c) VUCSA fine waived;

4.3 PAYMENT SCHEDULE:

The TOTAL FINANCIAL OBLIGATION set in this order is $ 600 Restitution may be added in the future. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☒ On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

☒ Interest is waived except with respect to restitution. RCW 10.82.090(2).

4.4 CONFINEMENT ONE YEAR OR LESS:

Defendant shall serve a term of confinement as follows,

1 months/days on count 1;

☒ in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): ☒ days determined by the King County Jail.

☒ Jail term is satisfied; defendant shall be released under this cause.

☒ 4.6 NO CONTACT:

For the maximum term of 99 years, defendant shall have no contact with Cassandra Mitchell-see civil anti-standing order.

Date: 5/11/18

Presented by:

/s/ Kathryn Childers
Deputy Prosecuting Attorney,
WSBA# 45231
Print Name: Kathryn Childers

/s/ Karen Matson Donohue
Judge
Print Name: Karen Matson Donohue

Approved as to form:

/s/ David Sho Ly
Attorney for Defendant,
WSBA# 49650
Print Name: David Sho Ly

FINGER PRINTS

RIGHT HAND FINGERPRINTS OF:

TSAI FEN LEE

DEFENDANT'S SIGNATURE: /s/ Tsai Fen Lee

DEFENDANT'S ADDRESS:

6145 NE Radford Dr Seattle WA 98115

Dated: 5/11/18

/s/ Karen Matson Donohue
JUDGE

ATTESTED BY: BARBARA MINER,

SUPERIOR COURT CLERK

By: /s/ Illegible
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA28951833

DOB: 10/07/1973

SEX: Female

RACE: Asian/Pacific Islander

APPENDIX B TO JUDGMENT AND SENTENCE, CRIMINAL HISTORY SCORING (MAY 11, 2018)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No. 16-1-02293-2 SEA

JUDGMENT AND SENTENCE (FELON) – APPENDIX B, CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 5/11/18

/s/ Karen Matson Donohue
Judge,
King County Superior Court

APPENDIX G TO JUDGMENT AND SENTENCING. ORDER FOR BIOLOGICAL TESTING AND COUNSELING (MAY 11, 2018)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No. 16-1-02293-2 SEA

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(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at (206) 477-5003 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

Date: 5/11/18

/s/ Karen Matson Donohue
Judge,
King County Superior Court

ORDER DENYING MOTION TO MODIFY, SUPREME COURT OF WASHINGTON (MARCH 6, 2024)

THE SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint of:
TSAI FEN LEE,

Petitioner.

No. 102333-2
Court of Appeals No. 84274-9-I

Before: Gonzalez, Chief Justice.

ORDER

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener, considered this matter at its March 5, 2024, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Deputy Commissioner's ruling is denied. DATED at Olympia, Washington, this 6th day of March, 2024.

For the Court

/s/ Gonzalez
Chief Justice

ORDER DENYING MOTION FOR RECONSIDERATION, COURT OF APPEALS OF THE STATE OF WASHINGTON (AUGUST 15, 2023)

COURT OF APPEALS OF
THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:
TSAI FEN LEE,

Petitioner.

Court of Appeals No. 84274-9-I

Before: Judge Stephen Dwyer

ORDER DENYING MOTION FOR RECONSIDERATION

The petitioner having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is hereby denied.

For the Court.

/s/ Stephen J. Dwyer
Judge

ORDER DENYING MOTION FOR RECONSIDERATION, COURT OF APPEALS OF THE STATE OF WASHINGTON (DECEMBER 28, 2020)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TSAI FEN LEE,

Appellant.

No. 78512-5-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Tsai-Fen Lee, having filed a motion for reconsideration herein, and a majority of the panel having determined the motion should be denied; now, therefore, it is hereby

ORDERED the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

/s/ J. Robert Leach
Judge

STATE'S REPLY TO PETITIONER'S MOTION FOR RECONSIDERATION (AUGUST 8, 2023)

COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION I

IN RE: PERSONAL RESTRAINT OF
TSAI FEN LEE

No. 84274-9

STATE'S REPLY TO PETITIONER'S MOTION FOR RECONSIDERATION

1. Identity of Moving Party

The State of Washington, respondent, asks for the relief designated in Part 2.

2. Statement of Relief Sought

On July 31, 2023, this Court filed an unpublished opinion denying Lee's personal restraint petition. Lee filed a motion for reconsideration the following day, and the Court called for a response. The State asks this Court to deny Lee's motion.

3. Grounds for Relief and Argument

A. The Statements Identified in Lee's Motion to Reconsider Do Not Implicate the Voluntariness of her Plea

The following exchange occurred during Lee's plea colloquy:

> The Court: All right. Ms. Lee . . . this statement here that you've adopted as your own, so you're aware that if you were to go to trial . . . the State would have to prove this statement beyond a reasonable doubt . . . Do you understand that?
>
> Ms. Lee: Yes.
>
> The Court: Okay. And you're giving up that right today?
>
> Ms. Lee: Yeah. I – yeah, I have no option, because my parents they are very old, and they want me to go home as soon as possible . . . And this is the only way I can go home as soon as possible.
>
> The Court: Okay . . . is the only reason you're pleading guilty today is so you can be released at . . . an earlier time.
>
> Ms. Lee: Yeah . . . Because I have been in jail for . . . almost four month. Okay. I want to go home.
>
> The Court: Okay. I think you need to take some time to talk to your attorney.
>
> Ms. Lee: But I plead guilty. Yeah, I plead guilty.
>
> . . .

> The Court: It is a choice, even though it isn't a choice. I mean, you could stay longer and have a right to trial.
>
> Ms. Lee: But my—I don't what—because my lawyer they don't want to bail me out, so I have to stay in jail.
>
> The Court: Right. But . . . you do have a choice in that you can choose to stay in jail longer and go to . . . trial . . . you can choose understanding what your chances are of actually winning at trial. Right? That those might not be so good. That the best thing is for you to . . . in consultation with your counsel . . . that the State is offering you an opportunity to plead to a crime that's not as serious as the original charge. And that you would be able to be released. So, you're having to balance that choice such that it is . . . So, I'm gonna give you a few more minutes to talk to your attorney . . .
>
> Ms. Lee: No, it is fine. I plead guilty.

VRP 14-17 (5/8/2018).

Lee argues that the bolded statements demonstrate that her plea was involuntary. Pet. Mot. for Reconsideration at 2. This is so, Lee asserts, because she would have gone to trial had defense counsel posted bail. *Id.* at 3. This Court already considered and rejected this argument. *PRP of Lee*, No. 84274-9 at 15.

As this Court previously observed, "Lee does not claim any misunderstanding regarding either direct or collateral consequences of the plea [and therefore]

she cannot demonstrate that her plea was involuntary. *PRP of Lee*, No. 84274-9 at 16. Like before, Lee has merely asserted that she would not have pled guilty in hindsight, not that she misunderstood the terms or consequences of the plea contract. *Id.* at 16 ("Lee's claim of error is premised on a misunderstanding of the voluntariness of a guilty plea").

Lee also suggests that her plea was entered under duress because she was desperate to leave the jail and reunite with her parents. Pet. Mot. for Reconsideration at 3. As previously noted, being "under great stress and possessed of a strong desire to leave the confines of the King County Jail" does not render a plea involuntary, nor does it create a manifest injustice. *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d 683 (1984). Moreover, a majority of this panel recently considered and rejected an almost identical argument in *State v. Sok*, No. 83759-1, 2023 WL 1103860 (2023 Unpublished).

Sok was held in-custody after being charged with second-degree assault. *Id.* at *1. Although Sok repeatedly sought release based on "his lack of criminal history and his young son's cancer diagnosis," he was ultimately unable to post bail. *Id.* The State eventually offered Sok a plea agreement that included the prospect of imminent release. *Id.*

During the subsequent plea colloquy, defense counsel stated that there were "legitimate legal issues" with the State's case, but that Sok had nonetheless decided to plead guilty "because he was in custody pending trial and was concerned about his son's illness." *Id.* at *2. The trial court accepted Sok's plea and imposed sentence the same day. *Id.*

Sok appealed, arguing that he "felt coerced into pleading guilty by the pressures of poverty, exorbitant bail, time already served in jail, the promise of no additional jail time, and the desire to promptly reunite with his ill son." *Id.*

This Court rejected Sok's argument, finding that incarceration, even when combined with his son's illness, did not render his plea inherently coercive. *Id.* In so holding, the court noted that the "Washington State Supreme Court has previously held that a guilty plea was voluntary even where a defendant asserted that he was 'coerced to plead guilty by his wife's threat to commit suicide if the case went to trial.'" *Id.* (citing *Osborne*, 102 Wn.2d at 96).

Sok is strikingly similar to Lee's case. Like in *Sok*, Lee claims her plea was coercive because she was held in-custody and wanted to reunite with her family — in this case elderly parents rather than a sick child. But if wanting to leave the King County Jail and see family is considered coercive, then every in-custody plea will become devoid of finality. The constitution does not require this result.

As is the case for many defendants, the decision to plead guilty was not an easy one for Lee. Nonetheless, she did not, and has not, identified any facts that would render her plea constitutionally defective. This Court should adhere to its analysis in *Sok* and deny Lee's motion.

B. This Court Should Decline to Reconsider Issues Raised For The First Time In Reply

Lee argues her attorney was ineffective because he failed to fully research the law regarding felony

stalking and should have moved to dismiss that charge. However, Lee did not raise this issue in her opening petition. Instead, this claim was raised for the first time in the Amended Reply Brief of Petitioner at 16, and again in Lee's *pro se* Reply Brief of Petitioner.

"An issue raised and argued for the first time in a reply brief is too late to warrant consideration." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Thus, this Court "do[es] not address matters raised for the first time in reply briefs." *State v. Wade*, ___ Wn. App. 2d ___, 532 P.3d 638, n.8 (2023).

Although raised for the first time in reply, this Court nonetheless considered and rejected Lee's argument:

> In her reply brief, Lee additionally appears to assert that her plea was involuntary due to counsel's purported failure to . . . seek dismissal of the original felony stalking charge. According to Lee, these purported misrepresentations impacted her decision to plead guilty to the unlawful imprisonment charge. However, again, Lee asserts no misunderstanding of the consequences of her guilty plea. Accordingly, she cannot establish that the plea was involuntary.

Lee, No. 84274-9 at 17, n. 10.

Lee has not provided any facts or authority to warrant reconsideration. Because it was raised for the first time in reply, the Court need not have addressed this issue in the first place. Having exercised its discretion to do so, the Court should adhere to its previously stated reasoning.

4. Conclusion

The State respectfully requests this Court deny Lee's motion for reconsideration.

This document contains 1,288 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of August, 2023.

By: /s/ Gavriel Jacobs
Gavriel Jacobs, WSBA # 46394
Senior Deputy Prosecuting Attorney
Attorney for the Respondent

LEE MOTION FOR RECONSIDERATION (AUGUST 1, 2023)

IN THE COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON

TSAI-FEN LEE,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

Court of Appeals No. 84274-9-I

Tsai-Fen Lee
Appellant
330 3rd Ave W #504
Seattle, Washington 98119
Ph:206-883-8407
Leetsaifen@gmail.com

I. Identity of Moving Party

Appellant, Tsai-Fen Lee, seeks the relief designated below.

II. Relief Requested

Appellant seeks reconsideration of this Court's decision issued on July 31, 2023 (Copy attached as Appendix A).

III. Reasons Why Relief Should Be Granted

A. The court has overlooked the colloquy in the plea hearing that Lee directed to court, "I have no option", and "this is the only way I can go home as soon as possible"

The Court's opinion states, "Lee's desire to be released from confinement, however, demonstrates neither that she was misinformed regarding the consequences of her plea nor that, as a result, her guilty plea was rendered involuntarily." Nevertheless, the Court overlooked the colloquy in the plea hearing that Lee directed to court, "I have no option", and "this is the only way I can go home as soon as possible." VRP 15. When the Judge explained to Lee, "It is a choice, even though it isn't a choice. I mean, you could stay longer and have a right to trial." Lee responded, "my lawyer they don't want to bail me out, so I have to stay in jail." VRP 16:10-15. 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 her legal and constitutional rights and of the consequences of her 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, 606, 414 (1966). Counsel's notes show that despite Ms. Lee's specific request to follow through on post her bail, counsel continuously refused to bail her out. Brief of Pet. Appendix C, Trial Counsel's Notes, at 13. Even though Lee said to counsel that she would rather transport to ICE and that she was the client, counsel had to obey her decision, counsel constantly refused to let her out of jail by posting her bail. After repeatedly unsuccessful attempts, Lee felt

that there was no way for her to get out of custody other than pleading guilty. The plea and conviction entered as a result of the duress Ms. Lee felt under the circumstances. A guilty plea is involuntary and invalid if it is obtained by mental coercion overbearing the will of the defendant." *State v. Williams*, 117 Wn. App. 390, 398, 71 P.3d 686, 690 (2003).

B. Lee has suffered from ineffective assistance of counsel that meets Strickland standard

The Court has not addressed its opinion on very little investigation was done by trial counsel whose ineffective performance meets Strickland standard.

1. Lee's act does not amount to the crime charged

Lee's personal restraint petition raises that trial counsel's notes reveal very little investigation, including no witness interviews, was done before advising Ms. Lee to plead guilty. Brief of Pet. at 46. Amended Reply brief further argues that trial counsel failed to investigate the law regarding felony stalking.

Stalking

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person;

. . .

> (f) "Repeatedly" means on <u>two</u> or more separate occasions. RCW 9a.46.110 (emphasis added)

Ms. Lee was not served with the restraining order until 2/13/16. Only one of the incidents listed on the Certification occurred after that date. Counsel should have filed a motion to dismiss the charges due to this information. (CP 7) Amended Reply Brief of Pet. at 16.

Lee's pro se reply brief stresses that she suffers from ineffective assistance of counsel that meets *Strickland* standard. Under *Strickland*, to prevail on a claim of ineffective assistance, an appellant must demonstrate "a reasonable probability that, but for counsel's [deficient performance] the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Pro Se Reply Brief of Pet. at 11.

2. Lee's public defender planned on filing a motion to dismiss the charge, whereas trial counsel failed to do so.

Before Lee reached her family in Taiwan, the public defender Kevin McCable was assigned Lee's case. Kevin McCable directed to Court at the arraignment hearing on January 23, 2018 that, "I don't believe that it's probable cause that the crime of stalking has occurred. The reason I say that is because this statute is worded in the conjunctive and indicates that the stalking must violate the Protection Order, uh, and, when I read the Certification, only one of the incidents that the Certification lists occurs after the date of service of the order . . . . " "And, I believe, in order to be stalking, it has to be multiple." "And, then we'll do whatever motion is, whether, you know, NAP Step might be appropriate on the Motions Calendar, or it

might be appropriate on the Trial Calendar. We'll see." Pro Se Reply Brief of Pet. Appendix D, at 4-6.

Supreme Court has explained that "an attorney's ignorance on a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." The Court held in *Strickland v. Washington*, 466 U.S. 668 (1984), that counsel is constitutionally ineffective when his errors affect the outcome of the proceeding.

IV. Conclusion

For the reasons stated above, appellant Lee asks this court to reconsider its decision of July 31, 2023, and to conclude that her plea was not made voluntarily.

This document contains 987 words, excluding the parts of the document exempted by the word count by RAP 18.17.

Respectfully submitted this 1st day of August 2023.

Appellant,

/s/ Tsai-Fen Lee

PLEA HEARING TRANSCRIPT
(MAY 8, 2018)

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

Heard in: Cause No.: 16-1-02293-2 SEA

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TSAI FEN LEE,

Appellant.

To be filed in: Cause No.: 78512-5-I

Before: Hon. Catherine MOORE, Judge.

VERBATIM REPORT OF PROCEEDINGS
(FROM TAPED PROCEEDINGS)
VOLUME I

BE IT REMEMBERED that the foregoing and numbered proceeding was heard on May 8, 2018, before THE HONORABLE CATHERINE MOORE, Judge.

SAMUEL LEE, Deputy Prosecuting Attorney, 516 3rd Ave, Suite W554, Seattle, WA 98104, appearing on behalf of the Plaintiff;

DAVID LEE, Attorney at Law, 19303 44th Avenue W, Lynnwood, WA 98036, appearing on behalf of the Defendant, who also appeared.

(Proceedings transcribed by: Jan Van't Zelfde)

WHEREUPON, the following proceedings were had and done, to wit;

[. . .]

[May 8, 2018 Transcript, p. 4]

(Defendant present)

MR. S. LEE: Your Honor, Samuel Lee on behalf of the State. This matter will be number six, Tsai Fen Lee. Cause Number 16-1-02293-2. Ms. Lee is present in custody assisted by Madam Interpreter.

INTERPRETER: Good afternoon, Your Honor. Interpreter Adrienne Bradley, B-R-A-D-L-E-Y, is Washington court certified Mandarin interpreter permanently sworn under OAC.

THE COURT: Good afternoon.

INTERPRETER: Thank you, Your Honor.

THE COURT: Thank you for being here. All right. You may proceed.

MR. S. LEE: And, Your Honor, at this time the anticipation is a guilty plea as amended. The initial charge of one count of felony stalking. Pursuant to plea negotiation and inputs of the victim, Your Honor, we are asking, at this time, to amend the information to one count of unlawful imprisonment. I'm handing forward that motion and order, asking Counsel to acknowledge prior receipt of the amended information, waive formal reading and enter a provisional (inaudible).

THE COURT: Thank you.

MR. D. LEE: Good afternoon, Your Honor. For the record David Sho (phonetic) Lee on behalf of Ms. Tsai Fen Lee, who is to my left and currently in custody. Um, we've acknowledged receipt of the amended information. We will go ahead and waive formal reading and enter into a plea of guilty for unlawful imprisonment.

THE COURT: All right. Thank you. May I see the certification? All right. Is this a bar plea or? I'm sorry. I'm missing the, uh, restricting the movement.

MR. S. LEE: Your Honor, I do apologize. I'm not familiar with the specific facts of this case.

THE COURT: Counsel, can you direct me to where this — this March 20 — where these acts are alleged?

MR. D. LEE: Um, Your Honor, yeah, there is an allegation, um, regarding how there was statements made. Which then caused the alleged victim to not enter into the yoga studio.

THE COURT: Okay. There it is. Thank you. Sorry. Took me a little time to see that. All right. Having reviewed certification of probable cause there does appear to be a factual basis for the amended information. State has demonstrated good cause for the filing, uh, of an amended information. Ms. Lee is not prejudice in any substantial right. And State is allowed to file the amended information. Thank you. You may proceed.

MR. S. LEE: Thank you, Your Honor. Good afternoon, Ms. Lee. Uh, I have in my hand a document entitled statement of Defendant on plea of guilty to felony non-sex offense. Do you have a copy of this in front of you?

MS. LEE: Yes.

MR. S. LEE: And because we are recording, I need both you and your interpreter to speak up, so that the microphone catches your statements. So, do you recognize this document?

MS. LEE: Yes.

INTERPRETER: Yes.

MR. S. LEE: All right. Did you have the chance to go through it front to back with your attorney?

MS. LEE: Yes. Yeah.

INTERPRETER: Yes. Yeah.

MR. S. LEE: And did your interpreter read every word of this document to you?

MS. LEE: Mm hmm. Yes.

INTERPRETER: Yes.

MR. S. LEE: And did your interpreter and counsel have a chance to answer any questions you might've had about this document?

MS. LEE: Yeah. Yes.

INTERPRETER: Yes.

MR. S. LEE: So, at any time today, if you have any questions, please interrupt me. Direct your questions to your attorney and your interpreter. Okay.

MS. LEE: Okay.

INTERPRETER: Yes.

MR. S. LEE: So, for the record, is your true and correct name Tsai Fen Lee?

MS. LEE: Yes.

INTERPRETER: Yes.

MR. S. LEE: Is your date of birth Oct 7th, 1972?

MS. LEE: Yes. Correct.

INTERPRETER: Yes. Correct.

MR. S. LEE: All right. And you've gone through the sixteenth grade?

MS. LEE: Yeah.

INTERPRETER: Yeah.

MR. S. LEE: Any — do you have a college degree?

MS. LEE: Yeah, college. Yeah.

INTERPRETER: Yes.

MR. S. LEE: Oh, do you read, write, and understand the English language?

MS. LEE: Yeah.

INTERPRETER: Yeah.

MR. S. LEE: Oh, and is your interpreter here just as—

MS. LEE: Because I am not a native speaker, so I need an interpreter.

MR. S. LEE: Understood. So, you feel more comfortable having your interpreter going through this —

MS. LEE: Yeah.

MR. S. LEE: — go through this with you?

MS. LEE: Yeah. Please.

MR. S. LEE: Okay. And do you understand that at this time you're being charged with a crime of unlawful imprisonment?

MS. LEE: Yes.

INTERPRETER: Yes.

MR. S. LEE: You understand the elements of that crime and what the State would have to prove if we went to trial?

MS. LEE: Yeah.

INTERPRETER: Yes.

MR. S. LEE: Paragraph five on the next page, there's a number of important trial rights, which include the right to a speedy and public trial by an impartial jury, the right to remain silent before and during trial, and the right to refuse to testify against yourself. The right at trial to testify, hear and question witnesses who testify against you.

The right at trial to have witnesses testify for you. The right to be presumed innocent until charges are proven beyond a reasonable doubt. The right to appeal a determination appealed after a trial.

Do you understand by pleading guilty today, you are giving up each and every single one of those rights as to the crime you're being charged with?

MS. LEE: Yeah. I understand.

INTERPRETER: Yes, I understand.

MR. D. LEE: All right. Counsel, can you speak a little bit slower —

MR. S. LEE: Sorry.

MR. D. LEE: — so that Madam Interpreter can interpret fully.

MR. S. LEE: Understood.

INTERPRETER: Thank you, Counsel.

MR. D. LEE: Thank you.

MR. S. LEE: Do you understand that the crime you're being charged with carries a standard range of one to three months, a five-year maximum term, and $10,000 maximum fine.

MS. LEE: Yeah.

INTERPRETER: Yeah.

MR. S. LEE: Now, throughout this document there are a number of stricken paragraphs with initials T.L. next to them. Am I pointing to a copy of your initials or example of your initials at the top of page three?

MS. LEE: Yes, that's my initial.

INTERPRETER: Yes, that's my initial.

MR. S. LEE: Do you — do you understand that the stricken and initialed paragraphs do not apply to you?

MS. LEE: Yes, I understand.

INTERPRETER: Yes, I understand.

MR. S. LEE: So, we are setting over sentencing. Do you understand that if you're convicted of any new crimes before sentencing or any additional criminal histories discovered will (inaudible) your sentence range and the State's recommendations may increase?

MS. LEE: Yeah, I understand.

INTERPRETER: Yes, I understand.

MR. S. LEE: If that were to happen, that would not be a basis for you to withdraw your plea.

MS. LEE: Yes.

INTERPRETER: Yes.

MR. S. LEE: All right. Do you understand that in addition to sentencing you to confinement the Judge will order you to pay $500 to the victims' compensation fund assessment and a $100 DNA fee?

MS. LEE: Yeah, I know that.

INTERPRETER: Yes, I know that.

MR. S. LEE: Do you understand that the State's recommendation will be as follows, one month of your sentence with credit for time served in King County Jail. Mandatory fine and fees. Agree no

contact order for life with Cassandra Mitchell (phonetic) and her child?

MS. LEE: Yeah. Yeah. Yeah. I agree.

INTERPRETER: Yes. I agree.

MR. S. LEE: All right. And is this an agreed upon recommendation?

MS. LEE: Yeah, I said that.

INTERPRETER: Yes. I said that.

MR. S. LEE: Do you understand that the Judge doesn't have to follow anybody's recommendation and can actually sentence you up to anything to the maximum that we previously discussed?

MS. LEE: Mm hmm. Yes.

INTERPRETER: Yes.

MR. S. LEE: Now, I'm not asking if you are a U.S. citizen, but if you are not a U.S. citizen, a guilty plea could result in deportation, exclusion to the admission to the U.S. with Naturalization. Do you understand that?

MS. LEE: Yes, I understand.

INTERPRETER: Yes, I understand.

MS. S. LEE: Do you understand that you'll be required to provide a biological sample of your DNA for identification purposes?

MS. LEE: Yeah, I understand.

INTERPRETER: Yes, I understand,

MR. S. LEE: Do you understand that a guilty plea will result in the revocation of your right to own, possess, or have in your control any firearm unless

your right to do so is restored by the appropriate court?

MS. LEE: Yeah.

INTERPRETER: Yes.

MR. S. LEE: Do you understand that you will be rendered ineligible to vote until that right is restored in a manner provided by law by pleading guilty?

MS. LEE: Yeah.

INTERPRETER: Yes.

MR. S. LEE: All right. So, I'm flipping to paragraph eleven, which asks for a brief statement as to what makes you guilty of this crime. And it reads, "I, Tsai Fen Lee, did without intent to threaten harm, threaten, or injury to Cassandra Mitchell, knowingly prevented Cassandra Mitchell from leaving her yoga studio on or around March 27th, 2016 in King County Washington." Now, regardless of who wrote that statement, do you adopt that statement as your own?

MS. LEE: Yes, that is my statement.

INTERPRETER: Yes, that's my statement.

MR. S. LEE: All right. Is it a true and correct statement?

MS. LEE: Um, yeah.

INTERPRETER: Um, yeah.

MR. S. LEE: And just going back a little. Did you read this — this entire document, did your attorney read this entire document, or did you both read through it together?

MS. LEE: Both. We both read it.

INTERPRETER: We both read it.

MR. S. LEE: So, am I pointing to your signature above the line defendant towards the bottom of page fourteen?

MS. LEE: Yeah. That is my signature.

INTERPRETER: Yes, that's my signature.

MR. S. LEE: And throughout this process, did anybody threaten you, in any way, to get you to plead guilty?

MS. LEE: No.

INTERPRETER: No.

MR. S. LEE: Did anybody make any promises other than the State's agreed upon recommendation to get you to plead guilty today?

MS. LEE: Uh, no.

INTERPRETER: No.

MR. S. LEE: So, at this time, do you have any outstanding questions?

MS. LEE: No, I have no questions.

INTERPRETER: No, I have no questions.

MR. S. LEE: So, to one count of unlawful imprisonment, how do you plead; guilty or not guilty?

MS. LEE: I plead guilty.

INTERPRETER: I plead guilty.

MR. S. LEE: And, Your Honor, I do ask that you accept Ms. Lee's guilty plea. I do believe she's entering into it knowingly, intelligently, and voluntarily.

I'm handing forward the statement as well as the felony plea agreement, which is on the back.

THE COURT: Thank you. Are you prepared to go to sentencing today?

MR. S. LEE: No, Your Honor.

THE COURT: Is that 'cause you haven't notified the victim?

MR. S. LEE: Your Honor, I'm not sure why we are not ready to proceed to sentencing at this time.

THE COURT: Okay.

MR. S. LEE: But we do have sentencing.

THE COURT: Well, I was — she's been — she's served 115 days already, uh, for what's going to be a 30-day sentence.

MS. LEE: So, can we do sentencing right now?

INTERPRETER: Can we do sentencing right now?

MR. S. LEE: I apologize for not having more information, Your Honor.

MADAM CLERK: The sentencing date is set for this Friday.

THE COURT: This Friday. Okay. Well, that's good. All right. Ms. Lee, um, this statement here that you've adapted as your own, so you're aware that if you were to go to trial, you would — the State would have to prove this statement beyond a reasonable doubt, which is our highest burden of proof. Do you understand that?

MS. LEE: Yes.

THE COURT: Okay. And you're giving up that right today?

MS. LEE: Yeah. I — yeah, I have no option, because my parents they are very old, and they want me to go home as soon as possible.

THE COURT: I'm so sorry, I'm not able to hear you.

INTERPRETER: Yes. I don't have other choice because my parents both are very old, and they wanted me to go home as soon as possible.

THE COURT: Okay.

MS. LEE: And this is the only way I can go home as soon as possible.

THE COURT: Okay. Um, is the only reason you're pleading guilty today is so you can be released at an earlier —

MS. LEE: Yeah.

THE COURT: — an earlier time?

MS. LEE: Because I have been in jail for — for almost four month. Okay. I want to go home.

THE COURT: Okay. I think you need to take some time to talk to your attorney.

MS. LEE: But I plead guilty. Yeah, I plead guilty.

THE COURT: Okay.

MR. D. LEE: Your Honor, it's — you know, understandably that she gets emotional, considering how long she's been, um, in custody for. Um, her parents did come to visit her on two separate occasions.

MS. LEE: They fly here — I think their flight is almost (inaudible) from Taiwan.

THE COURT: Okay. Well, so I just want you to know — you're making that —

MS. LEE: Yeah. I know.

THE COURT: It is a choice, even though it isn't a choice. I mean, you could stay longer and have a right to trial.

MS. LEE: But my — I don't know what — because my lawyer they don't want to bail me out, so I have to stay in jail.

THE COURT: Right. But, I guess, what I'm trying to say is you — you do have a choice in that you can choose to stay in jail longer and go to —

MS. LEE: I go —

THE COURT: — trial.

MS. LEE: I go —

THE COURT: Just let me finish. Okay. Or you can choose understanding what your chances are of actually winning at trial. Right? That those might not be so good. That the best thing is for you to, in — in consultation with your counsel, um, that the State is offering you an opportunity to plead to a crime that's not as serious as the original charge. And that you would be able to be released. So, you're having to balance that choice such that it is. Yeah. So, I'm gonna give you a few more minutes to talk to your attorney. Um, just —

MS. LEE: No, it is fine, I plead guilty.

THE COURT: You are pleading guilty. Okay.

MR. D. LEE: Your Honor, we've gone over her options. Um, as well as this plea form. This is the third time that we have gone, um, over this. You know, she understands what she is getting herself into. Um, but, you know, Defense Counsel also understands that she's very emotional.

THE COURT: Well, not surprisingly, she's been in jail for 115 days on a charge that

MS. LEE: Because I don't know —

THE COURT: — carries a maximum of three months. It's a first-time offense, so.

MS. LEE: Yeah. So, I don't know. Please my —

THE COURT: That's okay. Do you wish to plead — do you wish to maintain your plea of guilty today? Your sentencing is going to be on Friday.

MS. LEE: Yeah. I just want to get — get out of jail and go home.

THE COURT: Okay. And you understand, though, that this — this is now going to be on your record. You're now going to have a criminal record. You could still have a criminal record if you went to trial and lost.

MS. LEE: Mm hmm. Yeah.

THE COURT: But you're giving up that opportunity to potentially be found not guilty.

MS. LEE: I don't know.

THE COURT: Potentially.

MS. LEE: I don't know. Because —

THE COURT: But that would require you having to stay in jail until you get your trial date.

MS. LEE: But because I am in jail, I cannot fight for myself. I mean, I cannot find information by myself. I have to listen to what lawyer told me. And, yeah, this is my situation.

THE COURT: Mm hmm.

MS. LEE: Because I can — I want to fight for myself, but I can't, because I'm in jail. So, the only way I can fight for myself is if I get out of jail. But if I get out of jail, I have to plead guilty. And if I plead guilty, I have to go home. Yeah. So, it's very complex.

THE COURT: Mm hmm. It is very complex.

MS. LEE: Yeah.

THE COURT: So, you have to tell me what your choice is.

MS. LEE: I want to go home, because my parents, they are 70 years old, and I want to go home with them.

THE COURT: Okay. And to do that, that means you have to be — you have to plead — maintain your plea of guilty. Give up your right to challenge it and have the conviction on your record.

MS. LEE: Mm hmm.

THE COURT: You can make that choice. Yeah. That's —

MR. S. LEE: Your Honor, if we could have Madam Interpreter, just for the record, translate what Your Honor said.

INTERPRETER: So, the — the part that I don't understand is this criminal record on me, how much impact it's going to be. I don't understand if I travel to other country, is it going to be impacting in some way?

THE COURT: Well, I'm gonna let you take a few minutes to talk to your attorney about the implications of a criminal record. We'll take a few minutes here. Okay.

MR. D. LEE: Thank you, Your Honor.

THE COURT: Yeah.

(WHEREIN THE COURT WAS IN RECESS FROM 3:18:55 P.M. TO 3:35:55 P.M.)

MR. S. LEE: Tsai Fen Lee matter. Cause Number 16-1-02293-2.

THE COURT: Does he have his order of release. Yeah. Okay.

MR. S. LEE: Your Honor, again —

THE COURT: Okay.

MR. S. LEE: — Ms. Lee is present in custody with Counsel and Madam Interpreter.

THE COURT: Okay. So, um, go — go ahead, Counsel.

MR. D. LEE: Um, back on the record, Your Honor. David Sho Lee, uh, counsel of record for Ms. Tsai Fen Lee, who is to my left. Um, I have taken some time to speak with Ms. Lee. I believe she is ready to enter into a plea today.

THE COURT: All right. Ms., um, Lee, you've had an opportunity to speak with your attorney. Do you have any questions for the Court about what it

means to have — you're going to have a felony conviction on your record; do you understand that?

MS. LEE: I have no questions.

THE COURT: You have no questions. Okay. So — so you understand that you were charged with, um, a B felony. And that the plea agreement they've reduced it to a C felony. Did your lawyer explain that to you?

MS. LEE: Um, no, I didn't know about that.

THE COURT: Okay. So, you — you were originally looking at a much longer period of time for a sentence.

MR. D. LEE: Om, Your Honor, I did go over the sentencing guidelines with, uh, Ms. Lee for the original charge.

THE COURT: Okay. So, the State has offered you the opportunity to plead to a lesser charge and receive less time on the sentencing. If you were to withdraw your plea today, the State would proceed on the original charge. If — which — if you went to trial, and you were convicted, you would be looking at more time. Okay.

So even though the Court could — your lawyer could make a request that, you know, you'll be released pretrial and you would be free to, um, be released from jail pending trial, you would be going to trial on the original charge, which would, as I said, if you were found guilty, you could receive more time than you are getting — going to get on this charge. Do you understand that?

MS. LEE: Yeah. I understand.

THE COURT: Okay.

INTERPRETER: Yes, I understand.

THE COURT: So, you are getting something in exchange.

MS. LEE: Yeah.

THE COURT: Yeah. Okay. Um, with — do you have any other questions for the Court?

MS. LEE: Um, I'm not sure, because, you know, I had been in jail for almost four month. And I'm not sure if I can do release today?

THE COURT: Okay. So that was the other thing. Um, is there — can you send an email and find out why we can't do sentencing today?

MR. D. LEE: And, Your Honor, Defense would be fine if sentencing proceeded today. Um, but I — you know, we do realize that the State wants to get in contact with the alleged victim, in case the alleged victim would like to appear, or say something, or submit —

THE COURT: I just want him to confirm that that is the reason why we're not going to sentencing.

MR. D. LEE: Yes, Your Honor.

THE COURT: Yeah. All right.

MR. S. LEE: Your Honor, while we are waiting for a response, I forgot to ask Counsel if he had discharged his duties under (inaudible)?

MR. D. LEE: Um, yes, Your Honor. For the record, um, you know, we are aware of possible adverse,

um, immigration consequences that might occur. Um, we have done our legal research, as well as consulted with a criminal immigration specialist, um, to see what, if any, negative impact this plea resolution would have on Ms. Lee's immigration status. And so, we've also tried to find ways of minimizing the effects to the best that we can. Um, and we have advised Ms. Lee accordingly.

MR. S. LEE: And, Your Honor, I do have verification from Ms. Childers who's negotiating (inaudible) this that it is, in fact, we need to have an opportunity to notify the victim and have an opportunity to respond.

THE COURT: Okay. All right. So, Ms. Lee, the reason that we can't go to sentencing today is because the victim is entitled to be notified of your sentencing date. And to either provide a written letter, or to come to court, or say they don't — they're not concerned. But they have that right to know and to respond. And they haven't been notified yet. Okay. But your sentencing date is set for this Friday. So, you just have a few more days. Okay.

All right. Um, so based on all of our, um, discussions, and your opportunity to — to talk to your attorney further. Um, the fact that you've now said you have no questions for the Court, um, I am going to find under Cause Number 16-1-02293-2 Seattle designation you still wish to maintain your plea of guilty?

MS. LEE: Yeah. I still maintain.

THE COURT: Yes?

MS. LEE: Yeah, I still maintain —

THE COURT: Okay.

MS. LEE: — the plea of guilty.

THE COURT: So, I am going to find your plea of guilty to be knowingly, intelligently, and voluntarily made within the broad understanding of that word. Um, that you understand the charges and consequences of your plea. And finding there is a factual basis for the plea. And that you are guilty as charged. And we're gonna set your sentencing date for Friday.

MR. S. LEE: Your Honor, I am handing notice of the sentencing date for May 11th, 2018 at 1:45 p.m. before the Honorable Judge Donohue, courtroom West 965. Ms. Lee, this is the only copy of the notice that you'll receive, and your appearance is mandatory.

MR. D. LEE: Thank you, Your Honor. Oh, we acknowledge receipt of the notice of sentencing date. I'm handing it to Ms. Lee.

THE COURT: Okay. All right. Thank you very much, Ms. Lee.

MR. D. LEE: Um, Judge Moore, um, Ms. Lee has a request. I — I believe she has mentioned it on the record already. Um, given that the Court acknowledges that she has been in custody for about 115 days —

THE COURT: Mm hmm.

MR. D. LEE: — um, whether the Court would allow her to be released today, and then she appear for her sentencing this Friday?

MR. S. LEE: Your Honor, I'm just going to double check with the recommendation. Oh, I thought I had read — if I can just have a second, to —

THE COURT: Sure. Does she have some place to stay?

MR. D. LEE: Um, I don't believe she does, Your Honor. And, Your Honor, as an officer of the court, I do have disclose that it's my understanding that, um, from the King County Jail employees that there is some sort of immigration hold, um, in her record. So, I do think I should let the Court know about that, as an officer of the court.

THE COURT: Okay.

MR. D. LEE: But it is her, um — you know, I — defense — as her defense counsel, I do understand —

THE COURT: Right.

MR. D. LEE: — that she would like to be released from King County Jail. And so, I'm just making this request on her behalf —

THE COURT: Okay.

MR. D. LEE: — in front of the Court.

THE COURT: All right.

MR. S. LEE: And, Your Honor, um, perhaps I could ask the Court to see the statement one more time. I'm not sure if it was written in there. I do remember reading on one of these statements that —

THE COURT: I know. I do, too.

MR. S. LEE: — so —

THE COURT: I can't remember which one —

MR. S. LEE: — uh, I just want to double check —

THE COURT: — it was.

MR. S. LEE: — that it is not in violation of the agreement.

THE COURT: Um, well, I don't want to — oh. It was the last one we had. It was Mr. Tankersly (phonetic), uh, where he wasn't supposed to be released —

MR. S. LEE: Understood.

THE COURT: — pre-sentencing, but since we did sentencing today.

MR. S. LEE: And, Your Honor, if I can just ask for, um, a little bit of time. Ms. Childers actually wants to come up and address this.

THE COURT: I'm — I'm actually going to deny the request. Um, I understand you don't have a place to go. Um, I — I think there might be an immigration hold. Um, and we're looking at — what's today. Tuesday, so basically three more days. So, I don't want to release you, and then have something — have you not come back for some reason. In which case I'd have to — I'm sorry. I would have to issue a bench warrant, and I don't want to do that.

And I don't even know if I — even if I order you released, if there's an immigration hold, they're not going to release you. Okay. So, I have to deny your request at this point. Um, and I'm very sorry. Okay. But just hang in there. Friday.

Okay. Hopefully. Although if you have a hold, I don't know. Okay. Thank you very much.

MR. D. LEE: Thank you —

(END AT 3:46:29 P.M.)

ARRAIGNMENT OF TSAI-FEN LEE
(JANUARY 23, 2018)

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR
THE COUNTY OF KING

IN RE: STATE OF WASHINGTON

v.

TSAI-FEN LEE

16-1-02293-2 SEA

Present at Arraignment:
Judge: John Chun
Court Clerk: Shaylynn Nelson
David Ryan, Deputy Prosecuting Attorney;
Kevin McCabe, Defense Attorney; Adrian Bradley,
Mandarin Interpreter; Tsai-Fen Lee

Official Transcript of Interview by
Pearson Transcription, LLC

UNKNOWN MALE: We're addressing bail, today?

UNKNOWN MALE: No.

UNKNOWN MALE: (Inaudible).

JUDGE CHUN: What's the Case Number?

UNKNOWN MALE: Uh, the ca-, it's number nine on the calendar, and the Case Number is 16-1-02293-2 SEA. And, Mr. McCabe says bail is reserved.

DPA. RYAN: This is State of Washington versus Tsai-Fen Lee. The Cause Number is 16-1-02293-2 SEA. Ms. Lee is assisted today by a Mandarin-speaking interpreter who I'll ask to introduce herself and her credentials.

MS. BRADLEY: (Speaking Mandarin).

MR. MCCABE: Your Honor.

MS. BRADLEY: Good morning, Your Honor.

JUDGE CHUN: Good morning.

MS. BRADLEY: For the record, Interpreter Adrian Bradley, B-R-A-D-L-E-Y, is Washington Court certified Mandarin interpreter, formally sworn under ALC.

DPA. RYAN: Ms. Lee is represented by Kevin McCabe, and I'm Dave Ryan for the State.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: Ma'am, is your name Tsai-Fen Lee?

MS. BRADLEY: (Speaking Mandarin).

MS. LEE: Yeah.

MS. BRADLEY: Yeah.

DPA. RYAN: I'm gonna provide several documents to you through your attorney this morning.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: The first document is titled Information.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: It charges you in count one with felony stalking.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: It lists the date of the offense between July 29th of 2015 and March 27th of 2016.

MS. BRADLEY: (Speaking Mandarin).

MR. MCCABE: Your Honor, we acknowledge receipt and waive to the formal reading and ask that a plea of not guilty be entered. We will reserve motions on release.

MS. BRADLEY: (Speaking Mandarin).

JUDGE CHUN: The not guilty plea is entered.

DPA. RYAN: I'm providing a proposed case scheduling order. Two Tuesdays from today would be the 6th of February of 2018. That's the case scheduling date the State's proposing. This and some other orders that I'm going to list in a moment include a section at the bottom, uh, for interpreter endorsement, that they've been interpreted to the defendant.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: Here's the procedure I'm gonna propose. Let me describe the orders to the Court on the record, provide them to Mr. McCabe and his client and the interpreter, and give them the opportunity, off the record, to go through that interpretation while Your Honor is taking care of some other matters and then, unless Mr. McCabe identifies something about them that needs to come back on the record, uh, it would certainly be acceptable to the State to have Mr. McCabe just file those documents with Your Honor's clerk.

MS. BRADLEY: (Speaking Mandarin).

JUDGE CHUN: Mr. McCabe, does that work for you?

MS. BRADLEY: (Speaking Mandarin).

MR. MCCABE: No objection.

JUDGE CHUN: Okay.

DPA. RYAN: So, the first of those orders is the Case Scheduling Order.

MS. BRADLEY: (Speaking Mandarin).

MR. MCCABE: Okay. And, I'm not gonna have an objection to the date, um, on the Case Scheduling Order.

DPA. RYAN: Ms. Wyatt filed this case and prepared a Stalking No Contact Order in an original, which is for signatures and filing.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: That also includes the interpreter endorsement portion at the bottom.

MR. MCCABE: So, as to that order, um, you know I, I took a look. I believe there's already, uh, an order in place that goes through 2020, so this is largely academic. But, my reading of this Certification for Determination of Probable Cause, although Probable Cause to, uh, the, I mean, there's been a determination by a neutral magistrate that probable cause exists. I assume that it's probable cause that a crime has occurred. I don't believe that it's probable cause that the crime of stalking has occurred. The reason I say that is because this statute is worded in the conjunctive and indicates that the stalking must violate the Protection Order, uh, and, when I read the Certification, only one of the incidents that the

Certification lists occurs after the date of service of the order.

MS. BRADLEY: (Speaking Mandarin).

MR. MCCABE: And, I believe, in order to be stalking, it has to be multiple.

MS. BRADLEY: (Speaking Mandarin).

DPA. RYAN: So, as the deputy covering the case that Ms. Wyatt filed, uh, my, my proposal would be, if I'm hearing what sounds to my ear like a NAP Step Motion, my proposal would be that we have a full argument about this on the Motion Calendar rather than, like, superficial coverage on the Arraignment Calendar.

MS. MCCABE: And tha-, and tha-, and that's fine with me. My major point is that I do not want to sacrifice this, this argument by acceding to this particular order. So, um, what I would propose is that we reserve the Court's, the Court reserve its ruling on this order until that hearing occurs.

DPA. RYAN: The Court can recall an order anytime.

MR. MCCABE: Well, I've noted my objection.

JUDGE CHUN: Yeah.

MR. MCCABE: You, you, you understand the, the.

JUDGE CHUN: I, uh, I do. I do.

MR. MCCABE: Yeah.

JUDGE CHUN: So, I, I, uh, I think Mr. Ryan is correct. I can recall it, so I'm gonna enter it.

MR. MCCABE: All right.

JUDGE CHUN: And, then, and then we'll hear from you on that motion.

MR. MCCABE: And, and, I'll, I'll, I'm happy to go through that with, uh, with my client.

JUDGE CHUN: Thank you.

MR. MCCABE: And, then we'll do whatever motion is, whether, you know, NAP Step might be appropriate on the Motions Calendar, or it might be appropriate on the Trial Calendar. We'll see.

JUDGE CHUN: Okay. Thank you.

DPA. RYAN: Corresponding with that order, Ms. Wyatt prepared an order directing the defendant to surrender any firearms that she has, and, uh, the State is also conceding the defendant's Fifth Amendment privilege based on a prior order.

MR. MCCABE: And, I, I'm happy that the State, or I'm grateful that the State is conceding the, the, the Fifth Amendment privilege. Um, I note that this is not a crime of domestic violence, nor is it a sex offense. It is a, a Class B, nonviolent. Have matters changed? Is there now authorization for such an order on Class B, nonviolents?

DPA RYAN: The, the Stalking Protection Order specifically references RCW941800, and, again, if we need to have a, if we need to have a motion hearing about the validity or applicability of that statue, I.

MR. MCCABE: Well, I assume that most of the time, I assume that most of the time, the facts of the case would, would be either of the domestic violence

nature or of a sex nature, but the crime itself is neither.

DPA. RYAN: So, we, we can have an extended argument about, uh, the reach of RCW941800, uh.

MR. MCCABE: Well, we should at least look at the, the, you know, before we start signing orders, we should at least look at the statute.

DPA. RYAN: Yeah. I mean, the cite-.

JUDGE CHUN: I'm sorry. I can't tell who's turn it is to talk.

DPA. RYAN: Give me the cite. Ni-, RCW9.

MR. MCCABE: Point 41? And, Counsel, where are you saying that the, that the authority for the order? Which subsection?

DPA. RYAN: So, I'm gonna continue directing my comments to the Court. Um, as I'm, as I'm covering the arraignment of the stalking charge that Ms. Wyatt filed, I did not come prepared to make an extended argument about the applicability of RCW941800 to stalking charges. Um, I, I, I, I certainly understand, I certainly understand the question, and I'd be glad to research that and come back to the Court. Um, it's. So, that, that's all I can tell the Court.

MR. MCCABE: The only citation to, uh, to statutory authority here is 9.41040, Subsection 2, um, or 9.41.810. I'm reasonably sure that 810 is the catch-all that, that declares any, um, violation of 9.41 to be a misdemeanor unless otherwise noted. I honestly don't remember whether 04 or 02 establishes the elements that are necessary in

order to issue an order or not. I just don't remember off the top of my head.

JUDGE CHUN: All right. Well, I don't want to make a ruling here on superficial analysis, so I'm, I'm not gonna enter this order, but I'll let you guys bring it up.

DPA. RYAN: Okay.

JUDGE CHUN: Later.

MR. MCCABE: And, um, so.

DPA. RYAN: Let's see. So, the No Contact Order the Court is gonna issue, I understand.

JUDGE CHUN: Yes. Yes.

MR. MCCABE: And, I'll need to review that with my client.

DPA. RYAN: And, the Firearms Order is reserved. Just recycle this.

JUDGE CHUN: Thank you.

DPA. RYAN: Um.

MR. MCCABE: Yeah.

DPA. RYAN: Then you're gonna file the orders?

JUDGE CHUN: Right. I'm gonna.

DPA. RYAN: All right.

JUDGE CHUN: Go back and.

MR. MCCABE: Thank you, Your Honor. Thank you Counsel.

DPA. RYAN: Thank you.

SENTENCE HEARING TRANSCRIPT
(MAY 11, 2018)

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No. 16-1-02293-2 SEA

HEARING BEFORE THE HONORABLE KAREN DONOHUE

2:12:45-2:27:04 and 2:37:30-2:43:41
May 11, 2018
526 Third Avenue, Room C-203
Seattle, Washington

MS. CHILDERS: Yes, Your Honor. This is Tsai-Fen Lee.

THE COURT: We're ready for Ms. Lee.

MS. CHILDERS: 16-1-02293-2, Seattle designation.

THE COURT: All right. This matter's being interpreted. The interpreter, please identify yourself for the record.

THE INTERPRETER: Good afternoon, Your Honor. For the record, Adrienne Bradley, B-R-A-D-L-E-Y, is Washington Court Certified Interpreter, sworn under oath.

THE COURT: All right, thank you. And I'm sorry. You're interpreting?

THE INTERPRETER: Mandarin.

THE COURT: Mandarin. Thank you.

MS. CHILDERS: Your honor, Kathryn Childers for the State. The defendant is present in custody represented by Counsel, Mr. Ly. We are here today for sentencing.

Your Honor, this is an agreed recommendation. It was originally filed as felony stalking and reduced to unlawful imprisonment pursuant to the negotiations. There's an agreed recommendation of one month with credit for time served. I believe that Ms. Lee has served well over one month. It's actually closer to four months.

This is her first brush with the criminal system, and so she has no prior criminal history. There's a seriousness level of three, an underscore of zero. Otherwise, Ms. Lee also has an agreed civil anti-stalking order for a lifetime or since we have to have an end date of 99 years, and that has been prepared using a civil case number and is ready for entering today if Your Honor imposes that.

I have provided the copy to counsel for him to use Madam Interpreter's services to explain to his client if Your Honor does order that.

THE COURT: Okay.

MS. CHILDERS: The victim is in support of the No Contact Order and it also involves her minor child who is listed in the No Contact Order.

THE COURT: And is Ms. Mitchell here today?

MS. CHILDERS: She is not here. Ms. McNiel is present in the back of the courtroom. She is the victim advocate and assigned to this case.

Otherwise, this has mandatory financial obligations of $500 and a $100 DNA fee. I do not have any restitution information at this time. If that becomes available, I'll seek a hearing within the statutory time period. And this does—also does not include any mandatory community custody of any kind, as Ms. Lee does not have any prior criminal history, and this is not domestic violence.

THE COURT: Thank you.

MS. CHILDERS: Thank you.

THE COURT: All right. Mr. Ly, good afternoon.

MR. LY: Good afternoon, Your Honor. For the record, David Sho Ly, on behalf of Ms. Tsai-Fen Lee, who is to my right and currently in custody.

Your Honor, as the State had indicated, this is an agreed recommendation. This matter has been a rude awakening for Ms. Lee. Ever since she has been arrested and put into custody since the beginning or more like the middle of January this year, she's taken this matter very seriously. She doesn't intend to be before the Court again for any reason.

Besides having a significant impact on Ms. Lee, this matter also has a significant impact on her family, namely, her parents, who actually had flown from Asia to Seattle on two separate occasions to meet with Ms. Lee and also handle some miscellaneous affairs that arose because of her in—her custody in King County Jail.

Given the amount of time that she's already served and the party's agreed recommendation of one month, Ms. Lee would ask the Court to immediately release her under this cause number. And also because the State is not asking for the imposition of any non-mandatory fees, fines, or assessments, that Ms. Lee would also ask that the Court waive these non-mandatory fees, fines, assessments as well.

Thank you, Your Honor.

THE COURT: Thank you.

Good afternoon, Ms. Lee. Is there anything that you'd like to say before I proceed with sentencing?

THE DEFENDANT: No, Your Honor. I don't have issue.

THE COURT: All right. Well, I read the pre-sentence statement packet of information from the State, which includes the amended information, the SPD case investigation report, Certification for Determination of Probable Cause, the Plea Agreement, the Sentencing Reform Act Score Sheet, the State's Sentence Recommendation, and Appendix B.

I also reviewed Mr. Ly's pre-sentence report. And I hope Mr. Ly is correct, Ms. Lee, that this is a

wake-up call for you. The behavior that was described was probably very frightening for Ms. Mitchell. And I hope that you take this seriously and don't engage in any similar type of behavior in the future.

I'll go ahead and follow the recommendation. Impose one month in custody in King County Jail, give you credit for the time that you have served. I am going to impose an agreed—or a civil lifetime anti-stalking order, prohibiting you from having contact with Cassandra Mitchell and her minor child. You are to have no law violations, a mandatory victim penalty assessment of $500, provide a sample of your DNA, pay the DNA collection fee.

As a result of this—it may have already occurred—you need to provide a DNA sample. And also as a result of this, you will lose your right to vote, as well as the right to possess firearms or ammunition.

I will sign an order for immediate release, given the amount of time that you've spent in custody.

Do you have any questions, Ms. Lee, about the terms of the sentence?

THE DEFENDANT: No, Your Honor, I don't have any questions.

THE COURT: I also waive any other court fees and interest on the $600.

MR. LY: Thank you, Your Honor.

MS. CHILDERS: And, Your Honor, it may have been noted, and I apologize if I missed it. Is counsel

asking that his client's presence be waived at future restitution hearing?

THE COURT: I'm sorry, I forgot to say that. First of all, you will need to pay restitution in an amount to be determined. The State will need to provide you with proof of the amount of the restitution within 180 days of today's date. If you don't hear from them, that condition will go away. If you do hear from them, there is—you do have a right to have a hearing where the Court would set the restitution amount. Mr. Ly, do you waive her presence at that hearing?

MR. LY: Yes, Your Honor, we do waive her presence for any future restitution hearing.

THE COURT: Thank you.

MS. CHILDERS: I've completed a felony judgment case, I believe to enforce Your Honor's oral ruling. I've provided that to counsel. I'm also providing to the Court the Appendix B and the Exhibit D for a DNA assessment.

MR. LY: And then, Your Honor, Madam Interpreter is going over the Order of Judgment Sentence with this Ms. Lee.

THE COURT: Thank you.

MS. CHILDERS: I'm also handing forward an Order of Immediate Release, and the law enforcement information to go along with the civil no-contact order.

MR. LY: Your Honor, we're handing up a sign, judgment and sentence balance.

THE COURT: Okay.

Since we have another matter, I'm wondering if maybe the interpreter and Ms. Lee could go over some of these documents in the jury box, and then we can come back on the record.

MR. LY: I'm sure we can do that, Your Honor.

THE COURT: Okay. Thank you. Appreciate that.

(Adjourned at 2:27:04 P.M., recommenced at 2:37:31 P.M.)

A. Okay. We're back on the record on Tsai-Fen Lee 1-6-102293-2. Okay.

All right. I've been handed the Notice of Rights on Appeal and rights pursuant to RCW 10.73. Ms. Lee, did you go over these rights with the interpreter?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have a signed document? Do you understand, then, that you have a right to appeal your conviction?

THE DEFENDANT: Yes.

THE COURT: And that this notice must—your Notice of Appeal must be filed within 30 days of today's date. Once that—you can collaterally attack the conviction, but if you do so, it must occur within one year of today's date.

I'm also signing the Notice of Ineligibility to Possess Firearm and Loss of Right to Vote. It's also been signed by Ms. Lee, in which she acknowledges her right to vote has been lost, and that she understands she needs to come before a court in order to have that right restored.

Now, with regard to the order for protection lifetime or 99 years, I will go ahead and sign that. That is Case No. 15-2-18274-9.

Ms. Lee, you are to have absolutely no contact whatsoever with Ms. Mitchell or her child whose initials are M.R.M.B. Any violation of this would be a new crime. And you need to make sure that you do not email her, do not call her, do not go to her home or within 500 feet of where she works, lives, where the child goes to school. As I said, any violation of this would be a new criminal law violation.

Do you have any questions about this?

THE DEFENDANT: No, I don't have questions.

THE COURT: Okay.

Okay. I think that concludes this matter then. Thank you.

THE CLERK: Oh, did we get a plea to perform it?

THE COURT: No. Oh, sorry. We do not have that.

MR. LY: No. We're taking that right now, Your Honor.

THE COURT: Thank you.

MR. LY: Your Honor, I'm handing up the fingerprint form for Ms. Lee.

THE COURT: Thank you, Mr. Ly.

Okay, thank you.

MS. CHILDERS: Thank you.

MR. LY: Thank you, Your Honor.

(Audio ends at 2:43:42 P.M.)

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO FELONY NON-SEX OFFENSE (STTDFG) (MAY 8, 2018)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No.16-1-02293-2 SEA

1. My true name is Tsai Fen Lee
2. My date of birth is 10/07/1973
3. I went through the 16th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a)I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is David Sho Ly

(b)I am charged with the crime(s) of Unlawful imprisonment The elements of this crime(s) are set

forth in the information/ ✓amended information, which is incorporated by reference and which I have reviewed with my lawyer.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to testify and to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to	Maximum Term

		Standard Range	
1	1 month-3 months	N/A	5 years $ 10,000.00

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase or a mandatory sentence of life imprisonment without possibility of parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this charge is binding on me.

(e) In addition to sentencing me to confinement, the judge will order me to pay $500 as a victim's compensation fund assessment and a $100 DNA fee. If this crime is a felony drug violation of RCW Chapter 69.50, the judge will impose an additional fine of $1000 ($2000 if this is not my first such conviction)

unless the judge finds that I am indigent. If this crime is a violation of RCW 69.50.401 relating to synthetic cannabinoid, the judge will impose an additional fine of at least $10,000 pursuant to RCW 69.50.430, unless the judge fords that I am indigent. If this crime resulted in injury to any person or damages to or loss of property, the judge will order-me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, attorney fees, and other costs and fees, and place other restrictions and requirements upon me. Furthermore, the judge may place me on community custody.

(f) In addition to confinement, if the total period of confinement ordered is more than 12 months, the judge will sentence me to the following period of community custody, unless the judge finds substantial and compelling reasons to do otherwise:

(g) The prosecuting attorney will make the following recommendation to the judge: - one month agreed sentence (with credit for time served in King County Jail)

-mandatory fines,

-agreed no contact order for life for Cassandra Mitchell and her child

✓ prosecutor will make the recommendation stated in the plea Agreement and State's Sentence Recommendation, which are incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must

impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so or both parties stipulate to a sentence outside the standard range. If the judge goes outside the standard range, either I or the State can appeal that sentence to the extent to which it was not stipulated. If the sentence is within the standard range, no one can appeal the sentence.

(m) If this offense is a felony firearm offense as defined by RCW 9.41.010, (including any felony committed while armed with a firearm, drive-by shooting, unlawful possession of a firearm, theft of a firearm, and possession of a stolen firearm) and the judge may impose a requirement that I register with the sheriff in the County where I reside, for a period of four years from sentencing or from my release from confinement for this offense, whichever is later, in compliance with RCW 9.41.333. If this offense, or an offense committed in conjunction with this offense, involved sexual motivation, was committed against a child under 18, or was a serious violent offense, the judge must impose this registration requirement. If it is later determined by the appellate courts that the facts required to order registration have not been properly established, any firearm offender registration requirement will be stricken.

(o) Government assistance may be suspended during any period of confinement.

(u) The judge may sentence me as a first-time offender instead of imposing a sentence within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as 90 days of confinement plus all of the conditions described in paragraph (6)(e). The judge also may require me to

undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. In addition, I may be sentenced to up to 6. months or, if treatment is ordered, 12 months of community custody, [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge TL .]

(y) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.

(aa) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(bb) I will be required to provide a biological sample for purposes of DNA identification analysis.

[If not applicable, this paragraph should be stricken and initialed by the defendant and the judge TL .]

(ee) This plea of guilty will result in the revocation of my right to possess, own, or have in my control any firearm unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must immediately surrender any concealed pistol license. RCW 9.4.1.040.

(ff) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled.

(kk) If I have Washington State volunteer fire-fighters vehicle license plates, I must surrender those license plates at the time this plea is entered.

7. I plead guilty to the crime(s) of Unlawful imprisonment as charged in the information/ ✓ amended information, including all charged enhancements and domestic violence designations. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s), including enhancements and domestic violence relationships, if they apply. This is my statement:

    I, Tsai Fen Lee, did, without intent to threaten, harm, frighten, or injure Cassandra Mitchell, knowingly prevented Cassandra Mitchell from leaving her yoga studio on or around March 27, 2016, in King County, Washington.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

/s/ Tsai Fen Lee
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

/s/ David Sho Ly
DEFENDANT'S LAWYER
Print Name: David Sho Ly
WSBA#49650

/s/ Kathryn Childers
PROSECUTING ATTORNEY
Print Name: Kathryn Childers
WSBA# 45231

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

☒ (a) The defendant had previously read; or

☒ (b) The defendant's lawyer had previously read to him or her; or

☒ (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 8th day of May, 2018

/s/ Illegible
JUDGE

I am a Washington State court certified interpreter or, have been found otherwise qualified by the court to interpret in the Mandarin language and I am fluent in that language, which the defendant understands. I have interpreted this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 8 day of May, 2018

/s/ Adrian Bradley
INTERPRETER
Print Name: Adrian Bradley

[If bilingual Spanish form is used.] I am a Washington State court certified interpreter for the Spanish language. I have provided in this form a written Spanish translation of the portions of the form completed in English by the defendant or the defendant's attorney. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

1ST AMENDED INFORMATION

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

TSAI FEN LEE,

Defendant.

No. 16-1-02293-2 SEA

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse TSAI FEN LEE of the following crime[s]: Unlawful Imprisonment, committed as follows:

Count 1 Unlawful Imprisonment

That the defendant Tsai Fen Lee in King County, Washington, between July 29, 2015 and March 27, 2016 , did knowingly restrain Cassandra L Mitchell, a human being by knowingly restricting that person's movements in a manner that interfered substantially with his or her liberty, knowing that the restriction was without consent and knowing that the restriction was without legal authority;

Contrary to RCW 9A.40.010(6); RCW 9A.40.040, and against the peace and dignity of the State of Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

By:

/s/ Kathryn Childers
WSBA #45231
Deputy Prosecuting Attorney

Daniel T. Satterberg,
Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 477-3742 FAX (206) 205-6104

SEATTLE POLICE DEPARTMENT
CASE INVESTIGATION REPORT
(APRIL 5, 2016)

Case Investigation Report: 16-113300

Certification for Determination of Probable Cause

That Pam McCammon is a Detective with the Seattle Police Department and has reviewed, the investigation conducted in Seattle Police Department Case number 16-113300. There is probable cause to believe that TSAI FEN LEE (10/07/1973) committed the crime of Felony Harassment/Felony Stalking/ Violation of Stalking Protection Order within the City of Seattle, County of King, State of Washington. This belief is predicated on the following facts and circumstances.

Cassandra Leigh Mitchell (8/14/1976) is a Yoga Instructor and teaches at the Urban Yoga Spa at 4th AV and Stewart Street in Seattle, Washington. Tsai Fen Lee is a former student of Mitchell's at the Spa over the past few years.

The two have not had an intimate relationship of any kind.

In July 2015 S/ Tsai Lee began harassing V/ Cassandra Mitchell via Face book and Instagram. Mitchell has been able to avoid S/ Lee on a personal level with social media but she does 'use social media for work purposes. After enduring harassing messages for months V/ Mitchell tried to "block" Lee from social media she uses for work but S/ Lee has signed in with other user names such as; Lynes_Lee,

Wendi Lee and Lynes Lee and been able to continue the harassment.

As of today 4/5/16 there are (10) SPD reports documenting S/ Lee's harassment and continued violations of the Stalking Protection Order issued by King County Superior Court.

Order #15-2-18274-9 SEA, Issued 9/1/2015 Expires 9/1/2020. Served 2/13/2016 by Officer M. Newsome #7556.

Some of the cases are highlighted below:

Incident #259635 (7/29/15) V/ Mitchell reports that a former student, Tsai Fen Lee constantly sends her emails, texts and Face Book messages. The most recent messages have harassed Mitchell about the loss of her baby (still born) due to "STD's". S/ Lee refers to V/ Mitchell's boyfriend as a "murderer".

V/ Mitchell blocks S/ Lee on social Media but the suspect creates new accounts and posts messages on V/ Mitchell's business page.

Incident #15-294926 (8/23/15) V/ Mitchell reports continued emails, texts and Facebook harassment by S/ Tsai Fen Lee. Mitchell states that the constant harassment is interfering with the promotion of her business.

Mitchell told Officer's there is a temporary protection order, she showed them a copy of the order.

Officer Bedford checked the order in the system and found the status of the order had not been served.

Incident #15-444231 (12/24/15) V/ Mitchell reported receiving email messages from S/ Lee. The

messages contain statements like "I love you every day", "Miss you . . "

V/ Mitchell again reports she has tried blocking S/ Lee from social, media accounts but Lee is able to bypass the block by signing in under other usernames.

S/ Lee used Instagram this date to send Mitchell a message asking her to "come visit her in the Grand Hyatt hotel in Seattle".

V/ Mitchell removed the Instagram app from her cell phone in order to stop the messaging from the suspect (Lee).

Officer Steven's called S/ Tsai Fen Lee (415 602-2678) at Mitchell's request. Lee did not respond to the Officer's call but instead sent another message to V/ Mitchell saying "Thanks for calling the police".

Incident #15-323782 (9/15/15) V/ Mitchell reported receiving Instagram and Face book requests from S/ Lee, Skype messages, face book messages through Mitchell's business page, phone calls and Slandering comments on social media at both studios where V/ Mitchell works. On '1/22/16 at approximately 1724 hours Officer's responded to the Urban Yoga Spa (4th AV and Stewart Street) to a Violation of a Stalking Protection Order. S/ Tsai Lee was inside the Spa participating in a class. Mitchell stated that she has repeatedly advised Lee not to contact her or show up at her work place. Spa employees stated that Lee has been told numerous times that she is not welcome at the Yoga studio/spa.

Officer M. Newsome #7556 verified the court order with data was valid and the order clearly stated Lee was prohibited from contacting Mitchell, to include

showing up at her place of work. Lee was arrested for harassment (SMC I 2A.06.040).

Officer Newsome personally served the court order to Lee. Lee said she understood and signed the order.

On 3/27/16 Incident #16-113300 V/ Mitchell reports continued harassment and now some of the messages to Mitchell include death threats.

S/ Lee states "I will have to kill you before I go to jail", "I am going to kill you don't refund my fucking money!!!!!!", and "I will just go to. Queen Anne and kill you if I don't *see* my money back!!"

V/ Mitchell lives in fear and is constantly "looking over her shoulder". She has not been able to teach her classes for the past two days because of the threats that have been made. Cassandra Mitchell believes S/ Tsai Fen Lee will harm her and she lives in fear.

> Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to the best of my knowledge and belief. Signed and dated e this 5th day of April 2016, at Seattle, Washington.

/s/ Pam McCammon
5474

Cause No. 16-1-02293-2 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR CONDITIONS OF RELEASE (APRIL 8, 2016)

The State incorporates by reference the Certification for Determination of Probable Cause prepared by Detective Pamela K McCammon of the Seattle Police Department for case number 2016-113300.

I, Kimberly L. Wyatt, Deputy Prosecuting Attorney - Senior Specialist, declare that I have reviewed the Certification, discovery, and defendant's criminal history; I further declare that according to the Stalking Protection Order records associated with this defendant (15-2-18274-9), the defendant was served with notice of the final Stalking Protection Order on January 22, 2016, by SPD Officer Matt Newsome. Additionally, according to SPD incident report 16-58880, on February 18, 2016, the victim reported a stalking protection order violation when the defendant was standing on the corner of the street near the yoga studio. The victim reported that the defendant was looking at her.

Under penalty of perjury of the laws of the State of Washington, I, Kimberly L. Wyatt, Deputy Prosecuting Attorney - Senior Specialist, certify that the foregoing is true and correct. Signed and dated by me this 8th day of April, 2016.

/s/ Kimberly L. Wyatt
WSBA #31941

Pursuant to CrR2.2(b)(2)(ii), the State requests bail set in the amount of $150,000.00. The defendant was a former yoga student and our victim was her instructor. They have never been in a dating relationship. The victim had made 11 SPD incident reports in the past 9 months. The victim obtained a Stalking Protection Order and the defendant continues to violate the order. Initially, the defendant's contact was harassing and annoying, but did not involve direct threats (the defendant would send repeated texts and messages on social media, despite the victim blocking the defendant's contact information). In some of the messages, the defendant would profess her love for the victim. The defendant also attacked the victim's boyfriend, calling him a "murderer." After the stalking protection order was obtained and served, the defendant escalated in her contact. Recently, the defendant threatened to kill the victim, "I will have to kill you before I go to jail."

The defendant has no known criminal history.

The State requests a Stalking No Contact Order for the victim's protection. The State also requests that the defendant be ordered to have no contact with Urban Yoga Spa (victim's employer). The State also requests that the defendant be ordered to not possess any weapons or firearms.

Signed and dated by me this 8th day of April, 2016.

/s/ Kimberly L. Wyatt
WSBA #31941
Deputy Prosecuting Attorney
Senior Specialist

FELONY PLEA AGREEMENT
(MAY 1, 2018)

Date of Crime: July 29, 2015 to March 27, 2016

Defendant: TSAI FEN LEE

Date: May 1, 2018

Cause No: 16-1-02293-2 SEA

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea.

The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) 1 of the ☒1st amended information.

☒ REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMESSENTENCING STIPULATION: In accordance with RCW 9.94A.530, the parties have my, stipulated that the following are real and material facts court may consider for purposes of this sentencing:

☒ The facts set out in the certification(s) for determination of probable cause and prosecutor's summary.

☒ RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(son charged counts and

The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a drug offender or parenting sentencing alternative.

The defendant agrees that any attempt to withdraw the Defendant's guilty plea(s), or any attempt to appeal or collaterally attack any conviction or agreed sentence under this cause number or any cause number that is part of this indivisible agreement will constitute a breach of this agreement.

CRIMINAL HISTORY AND OFFENDER SCORE:

a. ☒ The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s)Appendix A), offender score, and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing, or violates the conditions of release. If the defendant violates any other provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial delay, statutes of limitation, mandatory joinder requirements, or double jeopardy. This agreement does not preclude the defen-

dant challenging whether a violation or breach of this agreement has occurred.

/s/ Tsai Fen Lee
Defendant

/s/ Kathryn Childers
Deputy Prosecuting Attorney 45231

/s/ David Sho Ly
Attorney for Defendant

/s/ Illegible
Judge, King County Superior Court

UNLAWFUL IMPRISONMENT

RCW 9A.40.040

CLASS C* — NONVIOLENT

OFFENDER SCORING RCW 9.94A.525(7)

If it was found that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, use the General Nonviolent Offense with a Sexual Motivation Finding scoring form on page 193.

If the present conviction is for a felony domestic violence offense where domestic violence was plead and proven, use the General Nonviolent Offense Where Domestic Violence Has Been Plead and Proven scoring form on page 191.

ADULT HISTORY:

Enter number of felony convictions x 1 =

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 1 =

Enter number of nonviolent felony dispositions x1/2 =

OTHER CURRENT OFFENSES:

(*Other current offenses that do not encompass the same conduct count in offender score*)

Enter number of other felony, convictions x 1 =

STATUS:

Was the offender on community custody on the date the current offense was committed? (if yes) + 1 =

Total the last column to get the Offender Score (Round down to the nearest whole number)

SENTENCE RANGE

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
LEVEL III	2 m 1 - 3	5 m 3 - 8	8 m 4 - 12	11 m 9-12	14 m 12 +- 16	19. 5m 17-22	25. 5m 22-29	38 m 33 - 43	50 m 43 - 57	55. 5m 51-60*

- ✓ For gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 186 for standard range adjustment.
- ✓ For deadly weapon enhancement, see page 190.s
- ✓ For sentencing alternatives, see page 177.
- ✓ For community custody eligibility, see page 187.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 183.

The Caseload Forecast Council is not liable for errors or omissions in the manual, for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual, or for any other written or verbal information related to

adult or juvenile sentencing. The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Caseload Forecast Council.

STATE'S SENTENCE RECOMMENDATION (FELONIES COMMITTED ON OR AFTER 7/1/2000; SENTENCE OF ONE YEAR OR LESS)

Date of Crime: July 29, 2015

Defendant: TSAI FEN LEE

Date: May 6, 2018

Cause No: 16-1-02293-2 SEA

The State recommends that the defendant be sentenced to a term of confinement as follows:

1 Months on Count 1;

This term shall be served:

☒ in the King County Jail or if applicable under RCW 9.94A.190(3) in the Department of Corrections

☒ This is an agreed recommendation.

REASONS FOR NOT RECOMMENDING NON-JAIL ALTERNATIVE SENTENCE: ☒ other *defendant has already served standard range*.

☒ NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: *victim and victim's minor child. Agreed civil lifetime anti-stalking order*

☒ NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: victim and victim's minor child. Agreed civil lifetime anti-stalking order

MONETARY PAYMENTS: Defendant shall make the following monetary payments pursuant to RCW 9.94A.753 and RCW 9.94A.760. Mandatory $500 Victim Penalty Assessment and $100 DNA collection fee.

☒ Restitution as set forth in the "Plea Agreement" page and

MANDATORY CONSEQUENCES: HIV blood testing (RCW 70.24.340) for any sex offense, prostitution related offense, or drug offense associated with needle use. DNA testing (RCW 43.43.754). Revocation of right to possess a FIREARM (RCW 9.41.040). DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420). REGISTRATION: ALL persons convicted of sex offenses and some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.44.130.

/s/ Kathryn Childers
WSBA#45231
Deputy Prosecuting Attorney

SECOND PROTECTION HEARING TRANSCRIPT (SEPTEMBER 1, 2015)

IN RE: CASSANDRA MITCHEL

v.

TSAI-FEN LEE

15-2-18274-9 SEA

Present at Hearing:
Judge: Catherine Shaffer
Bailiff: Brittany Harris
Court Clerk: Rianne Rubright / Matthew Menovcik
Cassandra Mitchell

Official Transcript of Interview by
Pearson Transcription, LLC

JUDGE SHAFFER: In Court for you. Who's here? I'm ready to go, um, a little bit quicker so that we can try to move you folks along faster. Is there anyone here who set over your last hearing to get service on the person you want a order against who has not yet gotten service? Not yet gotten service? Right. Everybody here has service on the opposing party that's brought an order? Good. Okay. Is there anybody here who has service on the opposing party and doesn't see that person, the opposing party, here? Okay. I'm gonna ask this woman here in the front row, to come on up first. And, can you tell me who you are?

MS. MITCHELL: Cassandra Mitchell.

JUDGE SHAFFER: Thank you, Ms. Mitchell. Thanks Brittany. Okay. So, you served, um.

MS. MITCHELL: (Inaudible).

JUDGE SHAFFER: The respondent. Can you show me the Proof of Service on Lee, here?

MS. MITCHELL: I just mailed it in. I didn't have anything in return to.

JUDGE SHAFFER: When did you get the service, then?

MS. MITCHELL: I believe it, it was, uh, not, not this last Sunday, but the Sunday before. So, the.

JUDGE SHAFFER: Okay.

MS. MITCHELL: 23rd.

JUDGE SHAFFER: Okay. So, we need Proof of Service. You didn't keep a copy?

MS. MITCHELL: I mailed.

JUDGE SHAFFER: Of it?

MS. MITCHELL: All I ha-, I just gave, there's a piece of paper that you give to the person that's gonna serve it.

JUDGE SHAFFER: Right.

MS. MITCHELL: And then, they mail that in.

JUDGE SHAFFER: Right.

MS. MITCHELL: Or I mail that in and that's, that's all I, that's.

JUDGE SHAFFER: Okay. The person that you had serve it, who was it?

MS. MITCHELL: It was Eliana Perez.

JUDGE SHAFFER: Okay. And, did Ms. Perez give you a copy of her Confirmation of Service?

MS. MITCHELL: Yeah. But I was told to mail that in. I mailed it in.

JUDGE SHAFFER: But you didn't keep your own copy?

MS. MITCHELL: I didn't. No, I didn't.

JUDGE SHAFFER: Okay. Let's set your case over. I'll extend your order another week, but you need to give us Proof of Service. I can't just take your word for it that some-.

MS. MITCHELL: So, wh-?

JUDGE SHAFFER: Somebody will get it.

MS. MITCHELL: So, when I mailed that in, is there a way to get a copy of that?

JUDGE SHAFFER: Make a copy before you mail it. Okay?

MS. MITCHELL: So.

JUDGE SHAFFER: Or after it arrives here, if it does.

MS. MITCHELL: Right.

JUDGE SHAFFER: Then we can make a copy then.

MS. MITCHELL: So, can I go back to Room 325, and hopefully, they wi-, will they be able to help me?

JUDGE SHAFFER: Okay. So, here's the thing. Okay. I don't know what happened in the mail. Okay? And, I don't know what another office is gonna do. I can tell you that when something arrives for filing, it goes into the Court file. Whether it's

there or not depends on whether it got here. Okay? I can't issue an order, though, based on you.

MS. MITCHELL: I understand that.

JUDGE SHAFFER: Telling me.

MS. MITCHELL: But where do I go?

JUDGE SHAFFER: Can you stop?

MS. MITCHELL: To find out if?

JUDGE SHAFFER: Interrupting me?

MS. MITCHELL: To find out it if it was received?

JUDGE SHAFFER: Do you think you can stop interrupting me?

MS. MITCHELL: Mm-hmm (affirmative).

JUDGE SHAFFER: Great. Okay. So, here's what I'm gonna do. I'm gonna re-issue your order. Okay? You're gonna come back with Proof of Service next time. All right?

MS. MITCHELL: I'm not gonna be able to get her served again. This is just a crazy situation. I don't even know this woman.

JUDGE SHAFFER: I realize that. Okay. But look, you don't, if I gave you an order, it wouldn't be.

MS. MITCHELL: I understand.

JUDGE SHAFFER: You're having, you're having a problem listening. Can you listen? Okay. Even if I gave you an order, it wouldn't be enforceable without Proof of Service. You have to have Proof of Service. That's why it got set over last time.

MS. MITCHELL: I understand that.

JUDGE SHAFFER: Bring it to.

MS. MITCHELL: I thought.

JUDGE SHAFFER: Bring it.

MS. MITCHELL: That's what that was.

JUDGE SHAFFER: To Court. Bring it to Court with you. All right? Great. Okay. All right. I'm re-issuing the order. Brittany, when's the next calendar that we can bring Ms. Mitchell in for? Do we have Proof of Service?

MS. RUBRIGHT: (Inaudible).

JUDGE SHAFFER: Can I see that whatever we have (inaudible) Proof of Service? I don't have anything in this file on proof. Hang on one second. Let's see what we can find. Maybe it arrived. That would be good. (Inaudible) did we find something? Brittany? Do we have something or not? Thanks. All right. Yeah, we have Proof of Service. All right. I'm gonna issue your order. Okay. All right. Can I have the order, please? For Ms. Mitchell? (Inaudible). (Inaudible), I can't really issue a full order at this point. Okay. So, Ms. Mitchell. Give me your completed order. Okay? Just step over the one side and get it completed. I have your Proof of Service. You're set to go. I just need to get the order entered. All right? Okay.

FIRST PROTECTION HEARING TRANSCRIPT (AUGUST 11, 2015)

IN RE: CASSANDRA MITCHEL

v.

TSAI-FEN LEE

15-2-18274-9 SEA

Present at Hearing:
Judge: Douglass North
Bailiff: Teri Bush
Court Clerk: Jon Schroeder
Cassandra Mitchel

Official Transcript of Interview by
Pearson Transcription, LLC

JUDGE NORTH: And, Ms. Lee is not here, I gather? Okay. You know what she looks like so you, you, you would be able to tell if she was here in (inaudible)?

MS. MITCHEL: I would know if she was here.

JUDGE NORTH: Okay. And, wh-, I gather that she has been harassing you, so, um, it looks like you're entitled to a, for an order here. Um, do you have a, a, an order form there, uh, uh, Terry?

MS. BUSH: Mm-hmm (affirmative). (Inaudible) for protection on the stalking.

JUDGE NORTH: Okay. Well, no, no. This, this is gonna be a permanent order, because, the, the, is, um, uh, she, oh, I'm sorry. There is no service in this one, is there? So, so, so we do need to re-issue a temporary. Yeah. I had forgotten that we don't have service in this. Um, so, you haven't been able to get service on her yet, I gather, Ms. Mitchell?

MS. MITCHEL: Uh, no. I don't know her, personally, at all. So, I was able to dig up an address, her real birthdate, her real name.

JUDGE NORTH: Un-hum (affirmative).

MS. MITCHEL: By a credit card that she used at one of my studios.

JUDGE NORTH: I see. 'Cause you do, you in-.

MS. MITCHEL: I teach.

JUDGE NORTH: Instruct (inaudible).

MS. MITCHEL: Yoga.

JUDGE NORTH: Yoga. I see.

MS. MITCHEL: And, she was a yoga student, and then she started basically cyberstalking me, and she was asked to stop coming to the studio. She tried to play games and would, like, come when the different manager was there, and then she, when, when, it just is, if I could get something longer than a year, because I don't think she's going away.

JUDGE NORTH: Well, I, I can't give you, all I can do is get you a temporary one for a couple weeks, two, two or three weeks out. Um, 'cause you gotta get service on her.

MS. MITCHEL: The last message that she sent me was a picture of a flight itinerary to San Francisco. I think that's where she is now.

JUDGE NORTH: I see. Because, see, the thing is, is that, that I can't do anything, issue anything more than a temporary order, unless you get service on her, because she is entitled to service. I mean, I can't. But otherwise, people get all kinds of orders. The (inaudible) doesn't.

MS. MITCHEL: Right.

JUDGE NORTH: Know what, what, what's going on. And so, she has to have an opportunity to know that it's in Court and have an opportunity to respond. Um, so, um, you know, I mean, hopefully she's gone to San Francisco and won't come back, and you won't have to.

MS. MITCHEL: She's.

JUDGE NORTH: Deal with her.

MS. MITCHEL: Harassed me.

JUDGE NORTH: Anymore, but.

MS. MITCHEL: In San Francisco before.

JUDGE NORTH: Ah-ha (affirmative).

MS. MITCHEL: It's, where she is in the world doesn't stop her from being on a computer.

JUDGE NORTH: Yeah. Well, I mean, I gue-, guess there is always the possibility of unplugging from the computer or at least from (inaudible).

MS. MITCHEL: It's kind of my business.

JUDGE NORTH: Ah-ha (affirmative).

MS. MITCHEL: It's kind-, it's really, shoots me in the foot if I can't use social media to promote my business.

JUDGE NORTH: So, um, ordinarily I would go out two weeks, but we can go three or four if you want, but I can't go really any longer than that, um, when it, you know, you gotta get.

MS. MITCHEL: Can she?

JUDGE NORTH: Service.

MS. MITCHEL: Be served in San Francisco? I mean, is there any?

JUDGE NORTH: Well, yeah. I mean, you, but, you'd.

MS. MITCHEL: Is that something?

JUDGE NORTH: Have to, you'd have to.

MS. MITCHEL: I could do?

JUDGE NORTH: You'd have to hire a.

MS. MITCHEL: Hire somebody?

JUDGE NORTH: Private process server to, to do that because there's no, you know, the, what we use here in terms of public service is the King County Sheriff.

MS. MITCHEL: I'm understanding.

JUDGE NORTH: Yeah.

MS. MITCHEL: I wasn't, I wasn't even aware whether she had been served or not.

JUDGE NORTH: So, I'll run it out until September 1st, and obviously you need to try and get, um, service on her. You live in the city limits of Seattle?

MS. MITCHEL: Yes, I do.

JUDGE NORTH: So, I don't know if you can figure out some way to find out where and when she's, I mean, if you could, I don't know, get some friend to, to communicate with her and find out that she's gonna be at a certain place at a certain time, and you can get the police or the sheriff to serve her with a copy of the order at that time, but you, you have to figure out some way to get her served.