# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| STATE OF WASHINGTON,<br>Respondent,<br><br>v.<br><br>ROBERT CLAYTON WEBB,<br>Appellant. | No. 40697-7-II<br><br>UNPUBLISHED OPINION |

Van Deren, J. — Robert Webb pleaded guilty to second degree robbery. He argues that the trial court failed to inquire into his understanding of the rights he was waiving by pleading guilty, rendering his plea involuntary. We agree and remand to allow him to withdraw his plea.[1]

The State charged Webb with first degree robbery, with a firearm enhancement, alleging that he had taken a Jeep Cherokee from Richard Turner by gunpoint on November 11, 2009. He faced a minimum sentence of 91 months of confinement if convicted of that charge. As a result of negotiations, the State agreed to amend its information to charge Webb with second degree robbery and Webb agreed to enter a *Newton*[2] plea of guilty. Webb signed a statement of

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[1] A commissioner of this court initially considered Webb's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[2] *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976); *see also North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

defendant on plea of guilty. The trial court accepted his plea, found him guilty of second degree robbery, and sentenced him to 210 days of confinement, with credit for 64 days already served.

Webb now argues that his plea of guilty was not knowing, intelligent, and voluntary because the trial court did not perform an adequate inquiry into whether he understood the rights he was waiving by pleading guilty. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 82 P.3d 390 (2004); *In re Woods v. Rhay*, 68 Wn.2d 601, 605-06, 414 P.2d 601 (1966). He points to the brief colloquy conducted by the trial court:

> THE COURT: Robert Clayton Webb, are you fifty-five years old?
> The DEFENDANT: Yes, sir.
> THE COURT: And you're charged with robbery second degree, and that's to take personal property from another, Richard Turner, against his will by use or threatened use of force of violence or fear of injury.
> This is a quote, "Most Serious Offense," meaning a strike, which could result if you had three strikes in getting a life sentence.
> Your rights at trial are set out in paragraph 5. You give them up by pleading guilty, so you won't have a trial.
> The prosecuting attorney is going to make a recommendation in sentencing, and that is amend down to robbery second degree, free to argue in a three- to nine-month range; forfeit of a firearm.
> Standard fines, fees and costs.
> And a year of community custody. That's supervision after release from jail.
> You can be ordered to pay court costs, attorney's fees, a crime victim penalty, restitution, a [deoxyribonucleic acid] collection fee and a fine.
> You cannot legally possess any firearms with a felony on your record.
> If you're not a citizen of the United States [(U.S.)], you could be deported, excluded from the U.S. or denied citizenship.
> Has anyone threatened you or promised you a reward to make you plead guilty?
> THE DEFENDANT: No, sir.
> . . . .
> THE COURT: I agree [and f]ind the —
> . . . .
> — defendant guilty based on that rendition. It appears that his plea is knowing, intelligent and voluntary with a factual basis.

Report of Proceedings (Jan. 14, 2010) at 12-14, 17.

The most notable omission from this plea colloquy is that the trial court never asked Webb to enter his plea. Other than in his written plea statement, Webb never entered a plea of guilty. When a defendant submits a written plea statement and acknowledges that he has read and understands that statement, the voluntariness of his plea is presumed. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). But the trial court can only rely on a written plea statement if the defendant tells the court that he had read the statement and that the contents of the statement were true. *State v. Codiga*, 162 Wn.2d 912, 923, 175 P.3d 1082 (2008) (citing *In re Pers. Restraint of Keene*, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980)). The court did not inquire of Webb whether he had read the statement or whether he confirmed that its contents were true. Thus, the trial court could not rely on Webb's written plea agreement to establish that his plea was knowing, intelligent, and voluntarily.

The record is insufficient to support the trial court's finding that Webb's plea of guilty was knowing, intelligent, and voluntary. We remand to the trial court to allow Webb to

withdraw his plea under CrR 4.2(f).[3]

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

Van Deren, J.

We concur:

Penoyar, C.J.

Johanson, J.

[3] In his Statement of Additional Grounds for Review filed under RAP 10.10, Webb argues that his trial counsel was ineffective because she did not adequately investigate his case or take adequate efforts to interview witnesses. But his argument relies on evidence outside the record on appeal and so cannot be considered as part of his direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).