No. 81236-5

J.M. JOHNSON, J. (concurring)—Twelve-year-old A.N.J. was charged by information on June 30, 2004, with first degree child molestation for having sexual contact with a six-year-old neighbor. Clerk's Papers (CP) at 1. Douglas Anderson was appointed by Grant County to represent A.N.J. in juvenile court in connection with the charge.[1] CP at 2. Anderson met with A.N.J. on at least three and as many as five occasions prior to A.N.J.'s entry of a plea of guilty on September 21, 2004. CP at 163, 176-77, 200. A.N.J.'s parents were both present during these meetings to participate in the discussion and to help their son understand the proceedings. Anderson separately discussed the case with A.N.J.'s father over the phone several times prior to entry of the guilty plea. CP at 163, 176.

Over the course of these meetings and phone calls, Anderson for the most part provided effective assistance to A.N.J. He advised A.N.J. and his parents of

[1] In evaluating an appeal from juvenile court proceedings, we must keep in mind the fact that, although juvenile offenders enjoy many of the same constitutional protections as adult offenders, juvenile rights do differ in a number of noteworthy respects from those of accused adults. *See State v. Kuhlman*, 135 Wn. App. 527, 533, 144 P.3d 1214 (2006). For example, juveniles do not have the right to a jury trial. *See State v. Schaaf*, 109 Wn.2d 1, 16-17, 743 P.2d 240 (1987).

the basic nature of the crime and its elements, the sentence that A.N.J. faced, and the possibility of having that sentence suspended and the charge reduced to second degree child molestation if A.N.J. successfully completed a treatment program. CP at 76, 85, 174, 178, 193. Anderson also discussed with A.N.J. the merits of the offer made by the prosecution. CP at 162. Only after A.N.J. began admitting the alleged misconduct did Anderson counsel him to accept the State's offer, a recommendation that Anderson made after weighing the consequences of the guilty plea against the possibility of keeping A.N.J. out of custody, reducing the charge, and avoiding a second charge for similar conduct involving the victim's younger sister. CP at 184.

In making this recommendation, Anderson explained the basic components of the plea agreement in language comprehensible to a 12-year-old child, including the requirement that A.N.J. register as a sex offender, the limits that would be imposed on A.N.J.'s contact with younger children, the victim, and the victim's siblings, and the firearm restrictions associated with the commission of a felony. CP at 76, 167, 176-79, 196-97, 199. Anderson also described what would happen in the courtroom if A.N.J. pleaded guilty and were advised to respond "yes" when the judge asked him whether he had read the statement on the guilty plea or whether the statement

had been read to him. CP at 167-68. Anderson explicitly ensured that his client was making the plea freely and voluntarily. CP at 179. At this point, Anderson believed that he had adequately advised A.N.J. regarding potential outcomes and that A.N.J. had been adequately informed of the nature of the charge. CP at 181.

Anderson learned otherwise a few weeks later when A.N.J. notified him of his desire to withdraw the plea. Pursuant to standard practice, Anderson promptly contacted Brian Barlow, another public defender, to handle the case so as to avoid a conflict of interest. CP at 12, 169, 171.

In other circumstances, these efforts may be found to constitute effective assistance. Here, however, I agree with the majority in its finding that Anderson's performance was deficient in two crucial respects, those being (i) that he misinformed A.N.J. of several consequences of his plea and (ii) that he failed to sufficiently inform A.N.J. of the precise nature of the crime to which he pleaded guilty. Majority at 31-32. These technical mistakes support the court's finding that A.N.J.'s plea was not knowingly made and therefore was invalid.

Although I concur with the majority in this respect, I write separately to stress the limited nature of the present holding. This case is a rare exception to the strong presumption that plea agreements are valid and enforceable by the courts. *See, e.g.*,

State v. Neff, 163 Wn.2d 453, 468, 181 P.3d 819 (2008) ("Washington State has a strong public policy in favor of accepting and enforcing the terms of voluntary plea agreements where they have been entered into knowingly, voluntarily, and intelligently."). It should not be taken to suggest that a juvenile plea agreement can be invalidated whenever a juvenile offender cannot recite the exact meaning of the legal jargon in his plea agreement or claims to have been confused about an aspect of his sentence after verifying his understanding during colloquy with a judge. This case is the exception, not the rule, and its holding should be limited to its particular facts.

Accordingly, I emphasize again that Anderson's representation of A.N.J. was objectively deficient *only* with respect to the two issues mentioned above that rendered A.N.J.'s plea not knowingly made. For that reason, and that reason alone, A.N.J.'s guilty plea in this case is unenforceable.[2] These two deficiencies are unique to the facts of this case and do not merit the majority's discussion of the ways in which modern public defender contracts have left the guaranty of effective

[2] Although the majority seems to suggest otherwise in its unsympathetic account of Anderson's work on the case, I cannot conclude that Anderson's representation of A.N.J. was ineffective because of the way he chose to manage the case or because he did not spend a particular number of hours investigating the facts. Majority at 7-10. Decisions regarding the proper amount of time to spend investigating and developing cases and the manner in which to manage them are best left to public defenders and those more familiar with the circumstances of each case than to appellate judges such as ourselves working with a cold record.

counsel unfulfilled for some criminal defendants. Majority at 2-5. The majority goes too far beyond the bounds of the present case with this discussion and threatens to erode public confidence in our defender system and cast doubt on valid, enforceable juvenile plea agreements.

I concur in a limited holding on this record that A.N.J. did not receive effective assistance of counsel prior to his decision to plead guilty to the charge of first degree child molestation. Because of my reservations about the majority's critique of the State's generally laudable public defense system, as well as concerns about the ramifications on other juvenile plea bargains from an overbroad reading of today's decision, I limit the scope of my agreement to a simple "I concur."

AUTHOR:

Justice James M. Johnson

WE CONCUR: