No. 31401-4-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JUAN A. MENDOZA,

Defendant/Appellant.

Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred in not allowing Mendoza to withdraw his guilty plea.

B. ISSUE PETAINING TO ASSIGNMENT OF ERROR

Was Mendoza entitled to withdraw his guilty plea where the plea was not voluntary because he was misinformed that the statutory maximum for the charged crimes was 20 years, rather than 10 years?

C. STATEMENT OF THE CASE

In 2010, Juan Mendoza pled guilty to three counts of delivery of a controlled substance—cocaine, and one count of possession of a controlled substance with intent to deliver—cocaine. CP 12-19. He received a sentence of 108 months including a 24-month enhancement. CP 23. The second amended information, the guilty plea statement, and the judgment and sentence all mistakenly stated the statutory maximum on three of the counts (counts 2-4) was 20 years. CP 9-11, 13, 22.

On December 17, 2012, Mendoza moved to withdraw his guilty plea based on the misinformation on the statutory maximum for the three counts. 12/17/12 RP 64. Mendoza stated he was induced to plead guilty because he thought he was potentially facing 20 years in prison. He would never have accepted the plea bargain had he been correctly informed of the

correct statutory maximum of 10 years, since 108 months is only 12 months shy of the statutory maximum. 12/17/12 RP 64-65.

The Court forwarded the matter to the Court of Appeals as a personal restraint petition, finding the matter was not properly before the court. 12/17/12 RP 71. The Court also stated to Mendoza, "And if you think I'm wrong in that regard, then you can take that up with the Court of Appeals." RP 72. The personal restraint petition was ultimately dismissed at Mendoza's request. See ACORDS Case Events No. 31345-0-III.

This appeal followed. CP 178-79.

D. ARGUMENT

Mendoza was entitled to withdraw his guilty plea where the plea was not voluntary because he was misinformed that the statutory maximum for the charged crimes was 20 years, rather than 10 years.

As a preliminary matter, the fact that the trial court deferred ruling on this issue and forwarded the matter to the Court of Appeals as a personal restraint petition that was later dismissed is inconsequential, since this issue may be raised for the first time on appeal.

RAP 2.5(a)(3) provides that "manifest error affecting a constitutional right" may be raised for the first time on appeal. A defendant gives up constitutional rights by agreeing to a plea agreement,

and, because fundamental rights of the accused are at issue, due process considerations come into play. *State v. Van Buren,* 101 Wn. App. 206, 211, 2 P.3d 991 (2000); see *State v. Tourtellotte,* 88 Wn.2d 579, 583, 564 P.2d 799 (1977). A claim of error based upon a breach of a plea agreement involves an issue of constitutional magnitude that may be raised for the first time on appeal under RAP 2.5(a)(3). *State v. Walsh*, 143 Wash. 2d 1, 8, 17 P.3d 591 (2001). Similarly, misinformation about the statutory maximum sentence for the charged crime concerns a direct consequence of a guilty plea and is manifest constitutional error. *In re Stockwell*, 161 Wash. App. 329, 335, 254 P.3d 899 (2011) (citing *State v. Weyrich,* 163 Wn.2d 554, 557, 182 P.3d 965 (2008)). Therefore, Mendoza may raise the issue of the involuntariness of his plea for the first time on appeal.

CrR 4.2(f) allows a defendant to withdraw his guilty plea whenever it appears that the withdrawal is necessary to correct a manifest injustice. Manifest injustice occurs when a defendant receives misinformation about direct consequences of his or her sentence, resulting in an involuntary plea—even when the corrected judgment and sentence results in a lower sentencing range. See *Walsh,* 143 Wn.2d at 8–9, 17 P.3d 591 (citing *State*

v. Miller, 110 Wn.2d 528, 756 P.2d 122 (1988)); *State v. Mendoza,* 157 Wn.2d 582, 587, 141 P.3d 49 (2006).

A defendant must be informed of the statutory maximum sentence for a charged crime because it is a direct consequence of his guilty plea. *Weyrich,* 163 Wn.2d at 557, 182 P.3d 965. In *Weyrich,* the defendant was misinformed that the statutory maximum for the charged crimes was 5 years, rather than 10 years. *Weyrich,* 163 Wn.2d at 556, 182 P.3d 965. Because the misinformation concerned a direct consequence of his guilty plea, the plea was not voluntary and the defendant was entitled to withdraw it. *Weyrich,* 163 Wn.2d at 557, 182 P.3d 965.

Here, Juan Mendoza was misinformed that the statutory maximum sentence for the charged crime was 20 years, rather than 10 years. Counts 2, 3, and 4 are class B felonies with a 10-year maximum. RCW 69.50.401(1), (2)(a). The second amended information, the guilty plea statement, and the judgment and sentence all mistakenly stated the statutory maximum on the three delivery counts was 20 years. CP 9-11, 13, 22. This misinformation concerned a direct consequence of Mendoza's guilty plea. See *Weyrich,* 163 Wn.2d at 557, 182 P.3d 965.

A defendant seeking to withdraw a guilty plea need not establish a causal link between the misinformation and his decision to plead guilty;

nor does he need to show actual prejudice. *Id. Mendoza,* 157 Wn.2d at 590–91, 141 P.3d 49. Nevertheless, a causal link is definitely established in this case. Juan Mendoza stated he was induced to plead guilty because he thought he was potentially facing 20 years in prison. He would never have accepted the plea bargain had he been correctly informed of the correct statutory maximum of 10 years, since the 108 months he received as a sentence is only 12 months shy of the statutory maximum. 12/17/12 RP 64-65. Therefore, he should be allowed to withdraw his guilty plea because the plea was involuntary.

E. CONCLUSION

For the reasons stated, the plea should be set aside, and the case remanded for further proceedings.

Respectfully submitted July 22, 2013,

s/David N. Gasch, WSBA #18270
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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on July 22, 2013, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the brief of appellant:

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