No. 31311-5-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

THOMAS T. ARANDA,
Defendant/Appellant.

RESPONDENT'S MOTION ON THE MERITS

Douglas J. Shae
Chelan County Prosecuting Attorney

James A. Hershey WSBA #16531
Chief Deputy Prosecuting Attorney

Chelan County Prosecuting Attorney's Office
P.O. Box 2596
Wenatchee, Washington 98807-2596
(509) 667-6204

TABLE OF CONTENTS

TABLE OF AUTHORITIES

1. Identity of Moving Party

State of Washington, by James A. Hershey, Chief Deputy Prosecuting Attorney for the County of Chelan.

2. Statement of Relief Sought

State of Washington, by counsel, makes this motion on the merits to affirm the action taken by the Superior Court for Chelan County as indicated herein.

3. Facts Relevant to Motion

On April 25, 2008, Thomas Aranda and four other individuals participated in a home invasion robbery armed with firearms. (CP 89-90). At the time, the home was occupied by several of the residents. During the commission of the home invasion robbery, Mr. Aranda took Lindsey Owyen, one of the residents, into a bedroom and raped her vaginally, orally, and anally, while holding a gun to her head. (CP 89-90).

On November 17, 2009, Mr. Aranda pleaded guilty pursuant to a plea agreement to a Second Amended Information charging rape in the first degree, robbery in the first degree, burglary in the first degree, unlawful possession of a firearm in the second degree, and unlawful possession of a controlled substance, psilocybin. (CP 9-12; 13-28).

On January 14, 2010, the Judgment and Sentence was entered. (CP 29-44). On March 3, 2010, an Agreed Order Clarifying and Amending the Judgment and Sentence was entered. (CP 48-49). On December 7, 2012, Mr. Aranda filed his "Notice of Appeal." (CP 80).

4. Grounds for Relief and Argument

a. Mr. Aranda's Claim That His Plea Was Not Knowing, Voluntary, and Intelligent is Clearly Without Merit.

Mr. Aranda claims that his plea was not knowing, voluntary, and intelligent because he was not informed until after sentencing that his offense of rape in the first degree required an indeterminate sentencing consisting of a maximum term of life and

a minimum term of confinement. However, the record on appeal as to the defendant's plea of guilty demonstrates otherwise.

A defendant's plea of guilty must be knowingly, intelligent, and voluntary. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). Defendants must be informed of all direct consequences of a plea. In Re Personal Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). "Knowledge of the direct consequences of a plea can be satisfied by the plea documents." State v. Codiga, 162 Wn.2d 912, 923, 175 P.3d 1082 (2008) (citing In Re Personal Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001)).

Due process does not require that the court "orally question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense." Codiga, 162 Wn.2d at 923 (citing In Re Personal Restraint of Keene, 95 Wn.2d 203, 207, 622 P.2d 360 (1980)). A trial court is not required to orally confirm a defendant's understanding of the various elements of the plea if the court relies on the defendant's plea form, its attached documents, and the defendant's assurances that he reviewed the form with his attorney and understood it. Codiga, 162 Wn.2d at 924. A plea is strongly presumed to have been

properly entered where the defendant admits to reading, understanding, and signing a proper plea statement. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). "We have expressed a strong preference for the enforcement of plea agreements, and the burden of showing manifest injustice sufficient to warrant withdrawal of a plea agreement rests with the defendant." Codiga, 162 Wn.2d at 929. The defendant has failed to meet his burden.

Mr. Aranda signed and submitted a statement of defendant on guilty plea prepared by his attorney. (CP 13-28). This form stated that the standard range for the charge of rape in the first degree was 222 to 276 months, and that the maximum term was life. (CP 14). The plea form also stated that, "The judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate." (CP 15). Continuing on, the plea form also stated that, "The minimum term of confinement that is imposed may be increased by the indeterminate sentence review board if the board determines by a preponderance of the evidence that is more likely

than not that I will commit sex offenses if released from custody." (CP 15).

Importantly, the defendant stated in his plea form that:

> My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "offender registration" attachment. 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.

(CP 21). Mr. Aranda signed the statement on plea of guilty directly underneath that statement. Furthermore, directly below his signature, defense counsel stated in the plea form that:

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

(CP 21). Defense counsel signed his name immediately below that statement.

Mr. Aranda's understanding of the consequences of his plea is also demonstrated by the report of proceedings of the plea hearing:

> [THE COURT]: Mr. Aranda, I have received a document called statement of defendant on plea of guilty to sex offense. Did you review this?
>
> THE DEFENDANT: Yes.

THE COURT: And did you do that with the help of your attorney?

THE DEFENDANT: Yes

THE COURT: Was Mr. Platts able to explain to you what this means?

THE DEFENDANT: Yes.

THE COURT: Did he answer all of your questions about this document?

THE DEFENDANT: Yes

(RP Plea Hearing 7:2-14).

THE COURT: Have you had a full opportunity to talk with Mr. Platts about your case?

THE DEFENDANT: Yes.

THE COURT: Do you need any additional time to talk with Mr. Platts about the decision that you are making today to plead guilty to these charges?

THE DEFENDANT: No.

(RP Plea Hearing 18:18-24).

THE COURT: Mr. Aranda, when you reviewed this plea form, did you read it or did Mr. Platts read it to you?

THE DEFENDANT: Went over it together.

THE COURT: So did you read it and he read it to you?

THE DEFENDANT: Yes.

THE COURT: And did you understand it?

THE DEFENDANT: Yes.

THE COURT: And did you sign it here?

THE DEFENDANT: Yes.

THE COURT: Do you have any other questions that you need to ask either the Court or Mr. Platts today?

THE DEFENDANT: No.

THE COURT: Sir, with all of those things in mind, do you still wish to plead guilty?

THE DEFENDANT: Yes.

(RP Plea Hearing 19:17-25; 20:1-8).

Based on the information presented at the plea hearing on November 17, 2009, the court made the following finding:

> Mr. Aranda, I will find that first of all that you have knowingly, voluntarily and intelligently chosen to waive your legal rights in this matter, that you have been fully advised of the charges against you and the consequences of those charges ...

(RP Plea Hearing 21:20-24).

In support of his argument, Mr. Aranda relies on State v. Murillo, 134 Wn. App. 521, 142 P.3d 615 (2006). This reliance fails because the record as to Murillo's plea is markedly different than

the one involved herein. Murillo was not advised of the maximum penalty at his plea hearing. Mr. Aranda was. In Murillo, the defendant was not advised at his plea hearing that he would be on community custody for the rest of his life. Mr. Aranda was so advised:

> THE COURT: And the length of the supervision varies according to the particular charge; but again on count one, the rape charge, you will be on supervision for the rest of your life with the Department of Corrections?
>
> THE DEFENDANT: Yes.

(RP Plea Hearing 12:21-25). In addition, Murillo involved a personal restraint petition with extrinsic evidence of defense counsel's testimony at a deposition wherein counsel stated that he would not have talked to Mr. Murillo about the life maximum, because that was not really on anybody's mind. Murillo, 134 Wn. App. at 528. Here, there is no such evidence of deficient performance by defense counsel for Mr. Aranda. This case is not Murillo.

There is nothing in the record of the plea in this matter that indicates that Mr. Aranda did not knowingly, intelligently, and voluntarily plead guilty to his charge of rape in the first degree.

Furthermore, there is nothing in the record that indicates Mr. Aranda was misled or misinformed in any manner about the consequences of his plea. Instead, the record establishes that at the time of his plea he was properly advised of his rights and the consequences of pleading guilty. Thus, there is "an affirmative showing that the plea was made intelligently and voluntarily." State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980) (citing Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S. Ct. 1709 (1969)).

b. Mr. Aranda's Claim That the Court Had No Authority to Enter Its Order Imposing Costs and Fees is Clearly Without Merit.

Mr. Aranda contends that the court did not have authority to enter its order of February 8, 2010, imposing fees and costs as it was done subsequent to the sentencing hearing of January 14, 2010. The court did address those fees and costs at the sentencing hearing. (RP Sentencing 32-33). The court indicted, however, that the parties in the court were not prepared to address those costs and fees at sentencing, and so the court stated there would be a need for a subsequent hearing. (RP Sentencing 33).

RCW 9.94A.760(1) provides in part:

> Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must, on either the judgment and sentence *or on a subsequent order to pay*, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.

(Emphasis added). Hence, the court had authority to enter its order on costs and fees.

Moreover, when the court stated at the sentencing hearing that the expert costs and fees would be addressed at a subsequent hearing, Mr. Aranda voiced no objection to that procedure. Thus, any error in that regard was invited and the issue is clearly without merit on appeal. In Re Personal Restraint of Tortorelli, 149 Wn.2d 82, 94, 66 P.3d 606 (2003).

c. Mr. Aranda's Additional Grounds Are Clearly Without Merit.

The State submits that Mr. Aranda's claim that his plea was not knowingly, intelligent, and voluntarily is clearly without merit for the reasons addressed above. Further, Mr. Aranda's statement of

additional grounds contains factual allegations concerning an attempted suicide and competency issues that are outside the record on appeal and should not be considered in this matter.

Mr. Aranda also claims that he received the ineffective assistance of counsel. To establish deficient performance, the defendant must show that his counsel's performance fell "below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Courts presume an attorney's representation was effective. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). In the instant case, Mr. Aranda has failed to demonstrate any deficient performance in his statement of additional grounds.

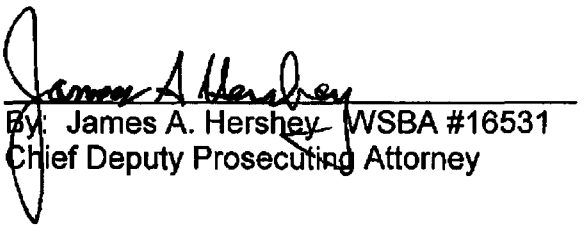
5. Conclusion

For the reasons set forth above, the assignments of error are clearly without merit.

DATED this 15th day of August, 2014.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney



By: James A. Hershey WSBA #16531
Chief Deputy Prosecuting Attorney

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

STATE OF WASHINGTON, Plaintiff/Respondent, vs. THOMAS T. ARANDA, Defendant/Appellant.	No. 31311-5-III Superior Court No. 08-1-00234-0 DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 15th day of August, 2014, I electronically transmitted to:

Renee S. Townsley
Clerk/Administrator
Court of Appeals, Div. III
500 N. Cedar Street
Spokane, WA 99201

AND deposited in the United States Mail properly stamped and addressed envelopes directed to:

Susan Gasch
Gasch Law Office
P.O. Box 30339
Spokane, WA 99223-3005

Thomas T. Aranda
#336060
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

DOUGLAS J. SHAE
CHELAN COUNTY
PROSECUTING ATTORNEY
P.O. Box 2596
Wenatchee, WA 98807
(509) 667-6202

said electronic transmission and envelopes containing true and correct copies of Respondent's Motion on the Merits.

Signed at Wenatchee, Washington, this 15th day of August, 2014.

Cindy Dietz
Legal Administrative Supervisor
Chelan County Prosecuting Attorney's Office

DOUGLAS J. SHAE
CHELAN COUNTY
PROSECUTING ATTORNEY
P.O. Box 2596
Wenatchee, WA 98807
(509) 667-6202

CHELAN COUNTY PROSECUTOR

August 15, 2014 - 2:11 PM

Transmittal Letter

Document Uploaded:	313115-Aranda 31311-5 Motion on the Merits.pdf
Case Name:	Thomas T. Aranda
Court of Appeals Case Number:	31311-5
Party Respresented:	Respondent
Is This a Personal Restraint Petition?	☐ Yes ☑ No
	Trial Court County: Chelan - Superior Court # 08-1-00234-0

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☑ Motion: Motion on the Merits
- ☐ Response/Reply to Motion: ____
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____ Hearing Date(s): _____
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☐ Other: _____

Comments:

No Comments were entered.

Sender Name: Cindy Dietz - Email: cindy.dietz@co.chelan.wa.us