

69697-1

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NO. 69697-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

VINCENT PETTIE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HAYDEN

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

LINDSEY M. GRIEVE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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A. ISSUE PRESENTED

1. When a defendant completes a written statement on plea of guilty, the statement provides prima facie verification of the plea's voluntariness. After Pettie's co-defendant pleaded guilty and the trial court was informed that Pettie was considering a plea of guilty, the trial court told Pettie he had a serious decision to make because he was facing his "third strike," advised Pettie to discuss the evidence and the options with his attorney, and recessed the proceedings to allow Pettie more time. Pettie then pleaded guilty and affirmed in open court and in a written statement that he was pleading voluntarily. Where Pettie avoided his "third strike" by pleading guilty, never claimed that the trial court impacted his decision to plead guilty, and claimed that his decision to plead guilty was precipitated by his co-defendant's guilty plea, has Pettie failed to show that his guilty plea was coerced by the trial court's statements?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Vincent Pettie was charged by Information along with his co-defendant John Jackson, Jr. with one count of assault in

the first degree.¹ CP 1-3. Due to Pettie's criminal history, a conviction for this offense would qualify as his "third strike" under the Persistent Offender Act and he would face a mandatory life sentence without the possibility of parole. 1RP² 149-50; RCW 9.94A.570.

In a trial that was expected to last two weeks, Jackson pleaded guilty on the morning after the first day of trial testimony to attempted assault in the first degree and felony harassment. 1RP 76, 131. That afternoon, Pettie pleaded guilty to burglary in the second degree and assault in the third degree. 1RP 153, 159. After pleading guilty, both defendants brought motions to withdraw their pleas. 2RP 3. As a basis to withdraw his plea, Jackson claimed that he had received ineffective assistance of counsel. 2RP 5-6. Pettie told the court that he pleaded guilty after Jackson did so because Pettie believed that Jackson would make a statement to exonerate him at trial. 2RP 13-16. Jackson denied this claim. 2RP 16. After multiple hearings, the court denied both defendants' motions. 2RP 3; 3RP 4; 4RP 4.

¹ Jackson has also appealed; his Brief of Appellant was filed on September 27, 2013. This Court may want to link the co-defendants for consideration.

² There are 4 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Sept. 10, 11, and 12, 2012); 2RP (Oct. 5, 2012); 3RP (Nov. 1, 2012); and 4RP (Dec. 12, 2012).

At sentencing, the court imposed an agreed-upon exceptional sentence of 150 months of incarceration. CP 32; 4RP 5.

2. SUBSTANTIVE FACTS.

The Certification for Determination of Probable Cause and Prosecutor's Case Summary described the underlying facts of the charges.³ CP 2-5. In August of 2011, Jackson rented two rooms in a boarding house managed by Anthony Narancic. CP 4. Jackson was subsequently evicted, and Narancic retained Jackson's \$800 deposit due to extensive damage caused to the rooms. CP 4. Jackson made several threatening phone calls to Narancic demanding his deposit "or I'm going to get you." CP 4.

On October 4, 2011, Pettie and Jackson went together to Narancic's office. CP 2. Using a metal club covered in a sock, Jackson repeatedly struck Narancic on the head and shoulders. CP 4. When Narancic attempted to move, Pettie held him down while Jackson continued to hit Narancic with the metal club. CP 4.

³ Pettie stipulated that the court could consider the facts set forth in the certification for determination of probable cause and prosecutor's summary for purposes of the sentencing hearing. CP 25.

Pettie and Jackson ran out of the office together, and Pettie drove Jackson away from the area. CP 4.

As a result of the assault, Narancic sustained a fractured skull and lacerations to his head and left ear. CP 5. He required 13 staples for the cuts to his head and additional stitches to reattach his ear. CP 5.

C. ARGUMENT

1. PETTIE'S PLEA WAS VOLUNTARY.

For the first time on appeal, Pettie claims that the trial court exerted undue pressure on him to plead guilty, thus rendering his plea involuntary. This argument should be rejected. The trial court did not pressure Pettie into pleading guilty, but rather informed him of the consequences of being convicted of a "third strike" offense. Moreover, Pettie repeatedly stated that his decision to plead guilty was precipitated by his co-defendant's guilty plea. Pettie never claimed that the trial court pressured him into pleading guilty against his will.

a. Relevant Facts.

Pettie and his co-defendant, Jackson, were both charged with assault in the first degree when their trial began. CP 1; 1RP 3. During pretrial hearings each defendant confirmed his intended defense; Jackson planned to raise self-defense, and Pettie planned to raise defense of others. 1RP 42, 43. Pettie's trial counsel explained that Pettie would claim that he came to the aid of the victim, Narancic, during the assault and attempted to separate Jackson from Narancic while Jackson assaulted him. 1RP 43.

After a day of trial testimony, the prosecutor informed the court that Jackson wished to reopen plea negotiations and she requested a recess to negotiate with Jackson. 1RP 131. After the recess, Jackson pleaded guilty to attempted assault in the first degree and felony harassment. 1RP 131. In his statement on plea of guilty, Jackson implicated Pettie in the assault. 1RP 135-36. In relevant part, Jackson admitted that Pettie knew about the assault, that Pettie was with him during the assault, and that Pettie held Narancic in place while Jackson assaulted Narancic. 1RP 135-36.

After the prosecutor notified Pettie that the State would be requesting a jury instruction on the lesser included offense of assault in the second degree, the court asked Pettie if he understood what that meant. 1RP 144. When Pettie responded: “No, sir, I don’t[,]” the court explained the differences between the two offenses. 1RP 144-47. The court then explained that if Pettie was found guilty, either offense would qualify as his “third strike.” 1RP 147-48. The court stressed:

It’s my job to tell you the consequences here. It’s not for me to tell you what to do about it. But, it is my job to make sure you are informed of the potential consequences of deciding to go ahead with the trial. When you said you don’t know about the lesser included, that raises a red flag for me that you need to know about the lesser included.

1RP 148-49. After Pettie confirmed that he understood the consequences, the court stated, “I understand there has been an offer to you of – I don’t know.” 1RP 149. Pettie stated that the offer was “the same as my codefendant.” 1RP 149. Following the prosecutor’s confirmation, the court again reiterated: “All I can say is, sir, I don’t get involved in negotiations.” 1RP 149.

The prosecutor informed the court that Pettie “may be accepting the State’s offer.” 1RP 150. The court again told Pettie “I am not going to tell you what to do.” 1RP 150. The court then told Pettie that previously a defendant who was facing a “third strike” offense proceeded to trial in his courtroom while claiming that he was innocent of the charge. 1RP 151. The court stated that because he was found guilty of his third strike, the court did not have any discretion at sentencing. 1RP 151.

The court informed Pettie that, because he was facing his third strike, he had an important decision to make:

I want to be real clear. This is your life. It is not my job to tell you what to do. I cannot persuade you one way or another what to do. It’s between you and your lawyer. But, it is my job, I think, to let you know... what you are facing.

1RP 151. After the prosecutor stated that Pettie would face 15 years of incarceration under the terms of the plea agreement, the court stated:

Mr. Pettie, obviously this is a very serious decision.

...

You may full well think you did absolutely nothing wrong. It’s up to the jury to decide whether that’s true or not. You and your lawyer have to talk about all of the evidence that will be presented, and your lawyer gives you advice about what he thinks the

likely outcome will be. And based upon his advice as to what the likely outcome would be, given that [sic] he anticipates all the evidence will be, you need to make your decision.

I want you to be clear that coming in on Assault II for you is the same thing as coming in on Assault I for you, given the circumstances. For anyone else, it would be much different because Assault I and Assault II have very, very different standards of ranges [sic]. Counsel, what do you want to do? Are we calling the jury back in? Has he made up his mind? Does he need more time?

1RP 152-53. The court then recessed. 1RP 153. After the recess, Pettie pleaded guilty to burglary in the second degree and assault in the third degree, offenses that allowed Pettie to avoid a "third strike." 1RP 153.

As part of the plea, Pettie completed a statement indicating that he understood the nature of the charges against him and the rights he was giving up by pleading guilty. CP 14-15; 1RP 154-55. In Pettie's signed statement, he declared that he was making the plea "freely and voluntarily" without threat or promise. CP 22. Pettie's trial counsel also signed the statement acknowledging that he had explained and fully discussed the plea with Pettie and that he believed Pettie understood its terms.

During the plea colloquy, Pettie confirmed that he wanted to plead guilty and stated, both to the prosecutor conducting the colloquy and to the court, that he had made that decision voluntarily. 1RP 158-59. The court accepted Pettie's guilty plea as knowing, intelligent, and voluntary. 1RP 159.

Following their guilty pleas, Pettie and Jackson both brought motions to withdraw their pleas. 2RP 5. During the first hearing, Pettie repeatedly stated that he had pleaded guilty because his co-defendant had pleaded guilty, because that "changed [his] perspective of the case." 2RP 4-5. Pettie and his trial counsel explained to the court that Pettie was hoping that Jackson would make a statement exonerating Pettie. 2RP 12-14. Jackson denied this claim by stating, "That is not true." 2RP 16. At the second hearing, Jackson claimed that he had been provided ineffective assistance of counsel, but Pettie maintained that he had received effective assistance from his counsel. 3RP 16, 19. At the third hearing, the trial court denied Pettie's motion to withdraw and proceeded to his sentencing. 4RP 4. Throughout the plea colloquy and the subsequent hearings, *Pettie never claimed that the trial court had any influence on his decision to plead guilty.*

b. The Trial Court Did Not Exert Undue Influence On Pettie To Plead Guilty.

A court must allow a guilty plea to be withdrawn if withdrawal is necessary to correct a manifest injustice. CrR 4.2(f). A manifest injustice may arise where a defendant's plea was involuntary. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). Whether a plea is voluntary depends on all of the relevant circumstances surrounding it. Brady v. United States, 397 U.S. 742, 749, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). A guilty plea is involuntary if the record shows that it was obtained by mental coercion overbearing the defendant's will. Id. at 750.

A defendant's signature on a plea statement is strong evidence of a plea's voluntariness. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Moreover, when a defendant completes a written statement on plea of guilty in compliance with CrR 4.2 and acknowledges that he has read it and understands it and that its contents are true, the statement provides prima facie verification of the plea's voluntariness. State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982).

A defendant's denial of improper influence in open court does not preclude him from later claiming coercion; however, it is "highly persuasive evidence" that a plea is voluntary. State v. Frederick, 100 Wn.2d 550, 557, 674 P.2d 136 (1983). The Washington Supreme Court emphasized that a defendant who later seeks to retract his admission of voluntariness will bear a heavy burden in trying to convince a court that his admission in open court was coerced. Id. at 558. "The task will be especially difficult where there are other apparent reasons for pleading guilty, such as a generous plea bargain or virtually incontestable evidence of guilt." Id. A guilty plea is valid even though the defendant proclaimed his innocence but pleaded guilty to avoid a potentially harsher punishment. State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981).

There is nothing in the record to indicate that Pettie's plea was coerced. Before his plea, Pettie acknowledged that the decision to plead guilty or proceed to trial was very serious where he was facing a "third strike." 1RP 152. Although Pettie recognized that the decision was difficult, he specifically stated, several times during the plea proceedings, that his decision to plead guilty was made voluntarily and free of coercion. CP 22;

1RP 158-59. Indeed after the plea, Pettie repeatedly indicated that his co-defendant's decision to plead guilty "changed [his] perspective of the case" and influenced his decision to plead guilty.

Pettie cites to State v. Watson to emphasize that trial courts are not to offer advice to defendants about pleading guilty. 159 Wn.2d 162, 149 P.3d 360 (2006). However, the facts in Watson are easily distinguished from the present facts. In Watson, the presiding judge directly advised the defendant that he should take the State's plea offer.⁴ 159 Wn.2d at 165. Here, the court did not advise Pettie to plead guilty. Rather, the court ensured that Pettie understood the consequences of his decision, stressed that he had an important choice to make because he was facing his "third strike," and recessed the trial proceedings to allow him additional time to consider his options. 1RP 148-49, 151-53, 154.

Pettie analogizes this case to the facts in Wakefield, supra. This comparison is misguided. In Wakefield, the trial court expressed concern that the defendant was not receptive to the plea offer, urged her to take her attorney's advice to plead guilty, and

⁴ Although the Washington Supreme Court found the presiding judge's statements improper, Watson's guilty plea was voluntary where the judge's remarks were sufficiently removed from the plea, which took place months later. 159 Wn.2d at 165.

promised that the court would impose a standard range sentence. 130 Wn.2d at 474. Shortly after the judge's promise, the defendant pleaded guilty.⁵ Id. In finding that the court's involvement in the plea negotiations "casts significant doubt on the voluntariness of Wakefield's plea[.]" the court noted that a "judge's promise of a standard range sentence could easily sway a defendant to plead guilty." Id.

Here, the trial court did not involve itself in the plea negotiations in any of the ways that the trial court did in Wakefield. Once the court was advised that Pettie was considering pleading guilty, the court told Pettie to discuss the evidence against him, and the plea offer, with his attorney. 1RP 150, 151, 152-53. The court never advised Pettie to plead guilty nor did the court promise a particular sentence if Pettie pleaded guilty.

Pettie has not overcome the "highly persuasive evidence" of voluntariness demonstrated from his written and verbal plea statements. Nor has Pettie shown any evidence that the trial court exerted undue influence on him in a manner that caused his plea to be involuntary. This Court should reject Pettie's claim and affirm his convictions.

⁵ At sentencing, the court "renege[d]" on its promise to the defendant and sentenced her to an exceptional sentence. Id. at 475.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Pettie's convictions.

DATED this 3 day of October, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

LINDSEY M. GRIEVE, WSBA #42951
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Nancy P. Collins, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. VINCENT PETTIE, Cause No. 69697-1 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 3 day of October, 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name
Done in Seattle, Washington