No. 45392-4-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAMES JOHN CHAMBERS, JR., Appellant

OPENING BRIEF OF APPELLANT

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I. INTRODUCTION

COMES NOW the Appellant James John Chambers, Jr., by and through his attorney Stephen G. Johnson, to respectfully submit this Opening Brief of Appellant, appealing the trial court's denial of his Motion To Withdraw his plea of guilty in Pierce County Superior Court Cause No. 99-1-00817-2.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering an order on September 27, 2013, denying Appellant's motion to withdraw his pleas of guilty in Pierce County Superior Court cause number 99-1-00817-2, judgment and sentenced entered on March 17, 2000.

Issues Pertaining To Assignments of Error

1. Is actual and substantial prejudice to justify a withdrawal of a guilty plea established when the Appellant was sentenced to a period of incarceration that is almost double to what the maximum sentence would be for the proper charge? (Assignment of Error No. 1)

2. Are pleas of guilty to two counts of First Degree Unlawful Possession of a Firearm involuntary when the Appellant does not have the requisite predicate offense necessary to elevate the offense from a Class C felony to a Class B felony? (Assignment of Error No. 1)

3. Did the Respondent State of Washington and the trial court fail to meet the Respondent's burden to establish prejudice to the Respondent should the trial court grant Appellant's motion to withdraw his guilty plea? (Assignment of Error No. 1)

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III. STATEMENT OF THE CASE

Once again, Appellant James John Chambers, Jr., (henceforth Appellant) comes before Division II of the Washington State Court of Appeals seeking relief from the trial court's denial of his motion to withdraw his plea of guilty, originally made and entered on July 7, 1999, and sentenced on March 17, 2000. The Appellant's case, as well as the Appellant himself, has suffered a long and arduous journey seeking to correct a facially invalid guilty plea, as well as a facially invalid judgment and sentence. There is significant case history to review.

A. *In Re James John Chambers*, Court of Appeals, Division II, No. 38074-9-II.

Appellant sought relief via a personal restraint petition from the judgment and sentence entered in Pierce County Superior Court cause number 99-1-00817-2. On January 14, 2009, Division II of the Court of Appeals granted the Appellant's petition in part, allowing him to withdraw his guilty pleas to Counts III and IV of the Information charging him with two (2) counts of First Degree Unlawful Possession of a Firearm. See, Chambers, No. 38074-9-II, page 1, 3-4. Division II stated and found the following:

> [Appellant] contends that he cannot be guilty of first degree possession of a firearm because that crime requires him to have been previously convicted of a "serious offense." RCW 9.41.040(1)(a). He contends that his prior conviction, for unlawful manufacture of marijuana, was a Class C felony, and that under RCW 9.41.010(12)(b), a "serious

> offense" for a drug conviction must be for a Class B felony or higher. Thus, he contends that his prior conviction was not for a "serious offense" and he cannot be guilty of first degree unlawful possession of a firearm.
>
> The State responds that unlawful manufacture of controlled substances is a Class B felony and therefore is a "serious offense" under RCW 9.41.010(12)(b). But not all unlawful manufacturing of controlled substances is a Class B felony. Only unlawful manufacturing of narcotic drugs, amphetamines or methamphetamines is a Class B felony. RCW 69.50.401(2)(a) and (b). Unlawful manufacturing of other Schedule I controlled substances, such as marijuana, is a Class C felony. RCW 69.50.401(2)(c). Thus, [Appellant] Chambers did not have a prior conviction for a Class B felony, and had not been previously convicted of a "serious offense" under RCW 9.41.010(12)(b) and could not be guilty of first degree unlawful possession of a firearm under RCW 9.41.040(1)(a). ***His judgment and sentence*** [under Pierce County Superior Court cause number 99-1-00817-2] ***is invalid on its face as to Counts III and IV. And because it is invalid as to those counts, his petition is not time-barred by RCW 10.73.090(1)***. In Re The Personal Restraint of LaChapelle, 153 Wn.2d 1, 6, 100 P.3d 805 (2004).
>
> ***Because*** [Appellant] ***Chambers' judgment and sentence is invalid on its face as to Counts III and IV, we remand to the trial court for further proceedings consistent with this order***. Accordingly, it is hereby
>
> ORDERED that [Appellant] Chambers' petition is granted as to Counts III and IV. His judgment and sentence is remanded to the trial court to address those counts. In all other respects, [Appellant] Chambers' petition is denied.

See, Chambers, Court of Appeals No. 38074-9-II, page 3-4 (emphasis added). Repeatedly, Division II of the Court of Appeals found the Appellant's judgment and sentence "invalid on its face" as to Counts III and IV under Pierce County Superior Court cause number 99-1-00817-2.

Accepting discretionary review, the Washington State Supreme Court summarily amended Division II's order, remanding Appellant's motion to withdraw his plea of guilty to the trial court with the following

instruction—"The motion to withdraw should be considered by the trial court in relation to counts I and II at the same time as that court considers the Court of Appeals [sic] remand as to counts III and IV." See, In Re The Personal Restraint Petition of James John Chambers, 171 Wn.2d 1035, 217 P.3d 1159 (2009).

B. *State v. Chambers*, 163 Wn.App. 54, 256 P.3d 1283 (Div. II, 2011).

Pursuant to the rulings and remands of both Division II of the Court of Appeals and the Washington State Supreme Court (see, §III.A., supra.), the Appellant sought relief in the trial court, again. Appellant brought his motion to withdraw his guilty plea on Pierce County Superior Court cause number 99-1-00817-2, citing that the judgment and sentence was facially invalid. The State of Washington opposed the motion, arguing *inter alia* that cause number 99-1-00817-2 was part of an indivisible plea agreement with two other cases, or cause numbers[1], and that the Appellant would have to withdraw his pleas of guilty to all the cases, not just 99-1-00817-2. The trial court agreed with the Appellant, stating that cause number 99-1-00817-2 was not part of an indivisible plea agreement with cause numbers 99-1-02235-3 and 99-1-05307-1, and allowed the Appellant to withdraw his guilty plea to cause number 99-1-

[1] Pierce County Superior Court cause numbers 99-1-02235-3 and 99-1-05307-1.

00817-4. See, State v. Chambers, 163 Wn.App. 54, 56-60, 256 P.3d 1283 (Div. II, 2011)[2]. Because all the evidence in cause number 99-1-00817-4 was destroyed by the State, the case was dismissed. The State appealed the trial court's rulings. Id. Division II of the Court of Appeals, having found as a matter of law that the Appellant entered into an indivisible plea deal involving all three (3) cases, reversed the trial court and remanded the matter back to the trial court "in which [Appellant] Chambers may seek to withdraw his indivisible guilty plea on all nine counts under cause numbers 99-1-00817-2 and 99-1-05307-1." Chambers, 163 Wn.App. at 62.

C. *State v. Chambers*, 293 P.3d 1185 (2013).

Appellant sought discretionary review of the decision of Division II of the Court of Appeals, which the Washington State Supreme Court granted. See, State v. Chambers, 173 Wn.2d 1006, 266 P.3d 879 (2012). Appellant sought review of (1) Division II's finding that the Appellant had entered into an agreement that combined Pierce County Superior Court cause numbers 99-1-00817-2, 99-1-02235-3, and 99-1-05307-1 into an

[2] On or about July 2, 2010, Appellant sought to withdraw his guilty plea under Pierce County Superior Court cause number 99-1-05307-1, arguing that the trial court had entered an illegal exceptional sentence. The trial court denied the Appellant's motion, and the Appellant appealed. Division II of the Court of Appeals consolidated the Appellant's appeal from Pierce County Superior Court cause number 99-1-05307-1 with the State's appeal from Pierce County Superior Court cause number 99-1-00817-2. Division II of the Court of Appeals did not reach the merits of Appellant's appeal, declaring the issue moot in light of its ruling that the Appellant had entered into a single, indivisible plea deal. See, Chambers, 163 Wn.App. at 61, footnote 9.

indivisible plea "package"; and (2) the trial court's refusal to grant Appellant relief from an illegally imposed exceptional sentence in cause number 99-1-05307-1. On the issue of whether the Appellant "agreed" to a single, indivisible plea "package," the Supreme Court affirmed the findings and analysis of Division II of the Court of Appeals. On the issue of whether Appellant's sentence in cause number 99-1-05307-1 was illegally imposed, the Supreme Court ruled against the Appellant. See, State v. Chambers, ___ Wn.2d ___, 293 P.3d 1185, 1188 – 1193 (2012). In its conclusion and ruling, the Supreme Court stated:

> We hold that the agreement [Appellant] Chambers entered into was indivisible based on the parties' objective manifestation of intent. Further, we hold that Chambers fails to establish that his sentence for the November crimes [cause number 99-1-05307-1] resulted in a complete miscarriage of justice because he received the exact sentence that he stipulated to and the judge had the legal authority to impose it. Accordingly, ***we [1] affirm the Court of Appeals' holding as to the indivisibility of the plea agreement*** and ***[2] dismiss*** [Appellant] ***Chambers' PRP challenging his sentence for the November crimes*** [cause number 99-1-05307-1].

Chambers, 293 P.3d at 1193 (emphasis added).

D. Appellant's Motion To Withdraw His Plea Of Guilty.

On May 10, 2013, Appellant appeared before the Pierce County Superior Court on his motion to withdraw his guilty plea. CP 35-40. RP 2. The trial court denied the Appellant's motion to withdraw his guilty plea because "I just don't see him as disadvantaged, is the bottom line to me." RP 31, ln. 3-5.

The trial court's idea that the Appellant was not "disadvantaged," or "was not harmed," by his pleas of guilty to Counts III and IV in cause number 99-1-00817-2 seemed to be the focus of whether injustice would result in granting the Appellant's motion:

> THE COURT: Let me put it this way: If he were to have chosen to go back and say, okay, we'll take these two charges in the first degree, we'll amend them to charges in the second degree, and I'll plead to the package with the amended charges, there would have been no additional jeopardy to him. He wouldn't have been paying a bigger price by way of sentence to get his deal.

RP 15, ln. 16-23.

> THE COURT: So he's [the Appellant's] not suffering some injustice as a result of...of this whole arrangement."

RP 16, ln. 1-2 and 4.

> THE COURT: The argument being, if he was willing to plead as he did, he would certainly be willing to plead to something that was less serious than what he ultimately plead to, and so it is totally disingenuous to say he's disadvantaged by the way this has worked out.

RP 16, ln. 22 though RP 17, ln. 2.

> THE COURT: If you look at the bottom line of what both the Court of Appeals and the Supreme Court is trying to accomplish is the idea is that you – if there is a mistake that it made, you rectify the mistake. You ensure that the defendant is no worse off than he would have been had the mistake not happened. You don't give him a gift for a mistake having been made.
>
> The thing you are guarding against is [sic] he is not any worse off. I am having trouble seeing where he is worse off in this regard if the State's analysis is utilized.

RP 25, ln. 4 – 14.

> THE COURT: ....Did [the Appellant] Mr. Chambers get a fair shake in this whole process? If he didn't, how do we go about rectifying it without giving him a gift in the process? I, therefore, see this as two critical issues, one, is this a package deal, even though these pleas took

> place sequentially and not all at one time, and is there a just result in the end. In the end, regardless of whether the State can or can't prove its case on the homicide, if they were to ultimately need to bring it or the evidence has been lost or whatever else, the deal that was contemplated during the course of this case, what has been the incentive for [the Appellant] Mr. Chambers to plead, has remained the same the whole time. To suggest now that he ought to be able to get something better than he bargained for is simply a denial of justice in this circumstance.

RP 30, ln. 3 – 18.

> THE COURT: ....I just don't see him as disadvantaged, is the bottom line to me. I am going to deny the request [of Appellant to withdraw his plea of guilty].

RP 31, ln. 3 – 5. This appeal was timely taken.

IV. ARGUMENT

A. THE COURT MUST REVERSE THE TRIAL COURT, AND ORDER THE TRIAL COURT TO GRANT APPELLANT'S MOTION TO WITHDRAW HIS PLEA OF GUILTY.

The trial court erred in denying the Appellant's motion to withdraw his plea of guilty. Appellant's motion was not time barred, was necessary to correct an actual and substantial prejudice, and causes no injustice to the Respondent State of Washington.

1. Appellant's Motion To Withdraw His Plea Of Guilty Is Not Time Barred.

As has been previously litigated and firmly established as the law of the case, Appellant's motion to withdraw his plea of guilty in the cause number 99-1-00817-2 is not time barred pursuant to RCW 10.73.090(1). The judgment and sentence on cause number 99-1-00817-2 is "invalid on

its face as to Counts III and IV." See, In Re Chambers, No. 38074-9-II, page 3. Appellant's motion was properly before the trial court.

2. Appellant's Motion To Withdraw His Plea Of Guilty Is Necessary To Correct A Facially Invalid Judgment And Sentence, And To Correct The Actual And Substantial Prejudice That Flows Therefrom.

A post conviction motion to withdraw a plea of guilty is governed by CrR 7.8. See also, CrR 4.2(f). CrR 7.8(b)(1), (4) and (5) govern the Appellant's motion to withdraw.

It is firmly established in this case that the Appellant plead guilty to and was sentenced on two (2) charges of First Degree Unlawful Possession of a Firearm. CP 6-30. See also, In Re Chambers, No. 38074-9-II, page 3. As Division II of the Court of Appeals has already found, "[Appellant] did not have a prior conviction for a Class B felony, had not been previously convicted of a 'serious offense' under RCW 9.41.010(12)(b) and could not be guilty of first degree unlawful possession of a firearm under RCW 9.41.040(1)(a)." Id.

Next, the question is what post-conviction, collateral attack standard applied in the Appellant's present circumstances—does the Appellant have to show actual and substantial prejudice, or is prejudice presumed. Regardless of which standard applies, Appellant meets both.

In the case In Re The Personal Restraint Petition of Stockwell, 179 Wn.2d 588, 316 P.3d 1007 (2014), the Washington State Supreme Court ruled that in the circumstance of a collateral attack on a plea where a misstatement of the statutory maximum punishment was relied upon, the petitioner must demonstrate "actual and substantial prejudice resulting from the erroneous misstatement of the statutory maximum...." Stockwell, 179 Wn.2d at 605. It is doubtful whether Appellant's circumstance can be classified as an "erroneous misstatement of the statutory maximum," but Appellant can meet this standard of proof of actual and substantial prejudice to him. According to Appellant's Judgment and Sentence, he was sentenced to 116 months on Counts III and IV, the top end of a standard sentencing range of 87 to 116 months for First Degree Unlawful Possession of a Firearm. CP 22, 26. Appellant's sentencing range on Second Degree Unlawful Possession of a Firearm (with 9+ points) is 51 to 60 months. This means that as a direct consequence of an erroneous plea and conviction, the Appellant served nearly double the amount of time in custody than he would have received had he been properly charged and sentenced. This, alone, is the definition of "actual and substantial prejudice."

However, as noted above, it is doubtful that Appellant's circumstance can be classified as an "erroneous misstatement of the

statutory maximum" since he was sentenced to the upper end of the wrong charge. This means that the more restrictive burden in Stockwell may not necessarily apply to the Appellant, but rather that the other standard of "certain errors on direct appeal are presumed prejudicial in a PRP" applies in Appellant's matter. Stockwell, 179 Wn.2d at 605[3] (Gordon-McCloud, J., concurring).

An involuntary plea is presumptively prejudicial on direct appeal.

Constitutional due process requires that the Defendant's guilty plea be "knowing, voluntary, and intelligent." State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 390 (2006), *citing* In Re Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). See also, CrR 4.2(f). CrR 4.2(f) provides that once a guilty plea is accepted, the court must allow withdrawal of the plea only "to correct a manifest injustice." CrR 4.2(f). See also, Mendoza, 157 Wn.2d at 587. Generally, "manifest injustice" is found where a defendant is denied effective counsel, where a defendant fails to ratify a plea, where a defendant makes an involuntary plea, or where the prosecution breaches the plea agreement. See, Mendoza, 157 Wn.2d at 587, *citing* State v.

[3] "In fact, the rule established in In re Personal Restraint of Richardson, 100 Wash.2d 669, 679, 675 P.2d 209 (1983), overruled on other grounds by State v. Dhaliwal, 150 Wash.2d 559, 568, 79 P.3d 432 (2003), State v. Kitchen, 110 Wash.2d 403, 413, 756 P.2d 105 (1988), and In re Personal Restraint of Gunter, 102 Wash.2d 769, 774, 689 P.2d 1074 (1984), and restated in In re the Personal Restraint of St. Pierre, 118 Wash.2d 321, 328, 823 P.2d 492 (1992)— that errors which are presumptively prejudicial on direct appeal will generally be presumed prejudicial in a PRP— is still good law."

Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). "[A] defendant may also challenge the voluntariness of a plea when the defendant was misinformed about the sentencing consequences resulting in a more onerous sentence than anticipated." Id. Specifically:

> ***a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence of the plea***, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all the direct consequences of his guilty plea, the defendant may move to withdraw the plea.

Mendoza, 157 Wn.2d at 591 (emphasis added). "[A] sentencing consequence is [a direct consequence of a plea] when 'the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Id., at 588. Length of sentence is a direct consequence of pleading guilty. Id., at 590. When determining whether a plea is constitutionally valid or not valid, the Court is not to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Id. at 590-591.

Again, there is nothing in the record to indicate that the Appellant was ever informed that he did not have the predicate offense to support a conviction of First Degree Unlawful Possession of a Firearm. Nor has the Respondent State of Washington ever produced any evidence that the Appellant knew he was pleading to a charge he could not have been

convicted of at trial; viz. no evidence that the Appellant made a valid In Re Barr[4] plea. As such, Appellant's plea was involuntary.

In either analysis, the Appellant's plea of guilty to two (2) counts of First Degree Unlawful Possession of a Firearm was actually and substantially prejudicial and involuntary entitling him to post-conviction relief.

3. The Burden Of Proving That The Respondent State Of Washington Would Be Prejudiced By The Granting Of Appellant's Motion Was Not Met.

Where the defendant's sentence is invalid, it is the defendant's choice of remedy to seek either specific enforcement of the plea agreement or withdrawal of the guilty plea. See, State v. Turley, 149 Wn.2d 395, 399, 69 P.3d 338 (2003), *citing* State v. Miller, 110 Wn.2d 528, 536, 756 P.2d 122 (1988). See also, State v. Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002). The State then bears the burden of showing that the chosen remedy is unjust and that compelling reasons exist to not allow that remedy. Turley, at 401, Miller at 535. The Appellant elects to withdraw his guilty pleas.

The Respondent State of Washington did not present any evidence or argument that the Appellant's chosen remedy was unjust to the

[4] In Re Barr, 102 Wn.2d 265, 684 P.2d 712 (1984).

Respondent, let alone compelling reasons to deny his sought after remedy. On the contrary, the Respondent State of Washington stated:

> MR. SCHACHT: The State certainly would not characterize the equities favoring the defendant [should Appellant's plea be withdrawn]. In fact, exactly the opposite.

RP 15, ln. 9 – 11. In other words, the Respondent State of Washington is not prejudiced by granting Appellant the relief he seeks. Further, the Court itself did not focus on whether the Respondent State of Washington would suffer any prejudice as a result of Appellant's motion to withdraw his plea of guilty. Rather, the Court focused on the Appellant, and whether the Appellant was "disadvantaged." See, §III.D., supra. The Respondent failed to meet its burden, and the Appellant's motion should have been granted.

4. Appellant's Withdrawal Of His Plea Of Guilty On One Case Operates As A Withdrawal Of His Plea Of Guilty To All His Cases.

Appellant's withdrawal of his plea of guilty in Pierce County Superior Court cause number 99-1-00817-2 operates to withdraw his pleas of guilty in cause numbers 99-1-02235-3 and 99-1-05307-1 as well. See, Chambers, 163 Wn.App. at 61-62; Chambers, 293 P.3d at 1193; Turley, 149 Wn.2d at 401.

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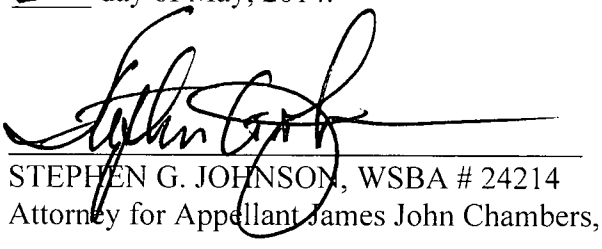
V. CONCLUSION

Based upon the foregoing, the Appellant James John Chambers, Jr., respectfully requests that the Court REVERSE the Trial Court's denial of his Motion to Withdraw his Guilty Plea, and MANDATE that the trial court allow the Appellant to withdraw his pleas of guilty.

DATED THIS 27th day of May, 2014.



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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named person(s) with a true, correct and complete copy of this document:

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