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NO. 92502-0

(Court of Appeal No. 32390-1-III)

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

Discretionary Review of

Lyzette Vargas

Petitioner

PETITION FOR DISCRETIONARY REVIEW

Lyzette Vargas
Pro Se - Petitioner
9601 Bujacich Road NW
Gig Harbor, WA 98332

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re: Personal Restraint Petition of:) NO:
)
Lyzette Vargas) MOTION FOR
Petitioner.) DISCRETIONARY
) REVIEW
)
_____)

A. Identity of Movant.

Lyzette Vargas, movant herein, seeks discretionary review of the Court of Appeal's Decision described in Section B.

B. Court of Appeals Decision.

The Court of Appeals Division III, Analysis CrR 4.2(f) allows a defendant to withdrawal her plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice. "This is demanding standard. State v. Zhae, 157 Wn 2d 188,197 , 137 P.3d 835 (2006). Manifest injustice includes instances when the plea was not voluntary. Id. (quoting State v Marshall,144 Wn 2d 266, 281, 27 P.3d 192 (2001). Moreover States, Ms. Vargas contends her plea was involuntary because it lacked a factual basis. The court does not need to be convince the defendant is guilty beyond a reasonable doubt. State v. Arnold, 81 Wn. App. 379, 382, 914 P.2d 762 (1996). "Instead, a factual basis exists if the evidence is

sufficient for a jury to conclude that the defendant is guilty.” A person commits theft of a motor vehicle if she wrongfully obtain or exerts unauthorized control over another’s vehicle with intent to deprive him of the vehicle RCW 9A.56.065; RCW 9A.56.020(1)(a). Thus two elements exist for theft of a motor vehicle: wrongfully obtains and intent. Regarding the intent element, Ms. Vargas points to her use of the word “borrowed” to argue there is insufficient evidence to support she had any intent to deprive the owner of the vehicle. “The specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” We overturn a trial court’s denial of motion to withdraw a plea solely for abuse of discretion.”

While Ms. Vargas does not argue she did not wrongfully obtain the vehicle, her statement certainly provides a factual basis for this element. A person who was granted authority to use a vehicle but then exceeds that authority wrongfully obtains that vehicle. See *State v. Clark*, 96 Wn.2d 686, 638 P.2d 572 (1982) (where a person has a license to use another’s vehicle and exceeds the scope of that license, the correct charge is theft of a motor vehicle). Ms. Vargas’ statement demonstrated while she

initially had permission to use the vehicle, she exceeded the
scoped of that permission when she refused to return the car when
asked. This is sufficient to show she wrongfully obtained the
vehicle. “ Affirmed judgment of the trial court denying defendant
motion to withdraw her guilty plea. Filed Oct 13th.2016 Unpublished
Opinion.

C. Issues Presented for Review.

(1.) [2]For the purpose of CrR 4.2(f), which provided that a guilty
plea may be withdrawn to correct a “manifest injustice” an
involuntary plea of guilty to criminal charges constitutes a “manifest
injustice.

(2.) CrR 7.8(C) The court erred in denying Ms. Vargas prejudgment
motion and memorandum to withdraw her guilty plea to be able to
show and present affidavit from alleged victim
Christopher Best recanted affidavit.

(3) Failure to comply with CrR 4.2(d) requires a plea be set aside.
Without prejudice. The court could’ve given modifications that are
made in good faith or in light of circumstances to specific
performance or preexisting duty exception from Ms. Vargas .

(4.) CrR 4.2(f) Provides that a trial court must permit the withdrawal of a guilty plea to correct "manifest injustice." Four nonexclusive criteria exist or determining "manifest injustice". [1] Ineffective counsel. [2] Plea not ratified by defendant or by her authorized to do so. [3 [4] plea agreement was not honored.

(5.) The State did not honor Ms. Vargas indeed being interrogated by State agents . Ms. Vargas believes it should be considered cooperating with State Being question by State Officials. Ms. Vargas ensured her plea of guilty to get a reduces sentence of 30month rather being enforce to 86months.

(6.) [1] CrR 4.2(d) A defendant's plea of guilty to a criminal charge is not valid if the defendant does not understand the sentencing consequences of the plea. Ms. Vargas was unconscionable in taking these pleas.

(7.) [4] A criminal defendants who, in agreement to plea guilty to a crime, relies on an improper representation made by the trial court is not entitled to specific performance of the representation if the court fails to comply with it. The proper remedy in such a circumstance is to permit the defendant to withdraw her plea.

D. Statement of the Case

State charges Ms. Vargas theft of a motor vehicle (No.32392-7-111). With related case unlawful possession of legend

drug of clonazepam (No.32390-1-111) and possession of methamphetamines with intent to deliver (No. 32391-9-111).

On Oct.9th 2013 she pleaded guilty pursuant to a plea agreement where, if she pleaded to all three charges as a global resolution she would receive the State recommendation reduced sentence of 36months concurrent sentencing and exchange to work with a drug task force entering into a satisfied agreement with Metro or get maximum sentence of 86month.

Prior to sentencing in the three matters listed above, Ms. Vargas therefore moved to withdraw her guilty pleas to all three charges because her guilty pleas were involuntary. The guilty plea to theft of a motor vehicle lacks factual basis.(CP 135). In her statement of defendant on plea of guilty she stated On 8/16/13 I had borrows a 1997 ford explorer + I did not return it when requested.

At the hearing on the motion, the State agreed that if Ms. Vargas were allowed to withdraw her pleas to theft of a motor vehicle, she could withdraw her plea to the other two charges as well since the plea agreement was one global resolved encompassing all three chargers.(3/21/14)RP10-11.

E. Argument.

Per RAP 13.4 (b)(3), Petitioner's case poses a significant question of law under the United States Constitution because her Sixth Amendment right to a fair trial was violated since she did not knowingly, intelligently, and voluntarily engage in a guilty plea.

In issues CrR 7.8(C) The court erred in denying Ms. Vargas prejudgment motion and memorandum to withdraw her guilty plea and to be able to show and present affidavit from alleged victim Christopher Best recanted his allegation of theft of motor vehicle affidavit. Theft of a motor vehicle should have been dismiss the possession with intent to deliver could've have been reduce.

State v. Rolax 84 Wn.2d 836; 529 P.2d 1078;1974 Wash. , whether the jury's would be likely to be influence by recanted allegation. Originally Christopher Best was given a down payment i buy the ford explorer and in collateral Ms. Vargas held title to the vehicle so there wasn't no wrongfully obtain never was there a intent to deprive vehicle especially when Ms. Vargas has part ownership. Would possibly change the result of trial with corroborating evidence. State v D.T.M 78 Wn App.216, 836 P.2d108(1995). The court shall allow a defendant to withdraw her plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. Ms. Vargas has the burden of demonstrating a manifest injustice in light of all the surrounding facts of her case. State v Smith 80 Wn App. 788; P.2d 418; 1995 Wash.

In issues Ms. Vargas argues that a plea was not intelligent and involuntary in that it lacked a factual basis for her pleading guilty to theft of motor vehicle. State v Saas,118 Wn.2d37, 820 P.2d 505(1195). State v Turley, 149 Wn.2d 95,69 .3d 338 (2003) Regarding the intent element, the court states Ms. Vargas points to

her use of the word borrowed" to supposedly argue there in insufficient evidence to support she had any intent to deprive the owner of the vehicle. In plea agreement strangely, defendant does not actually have to be guilty in order for the court to accept her pleas of guilty since it's a global resolution encompassing all three charges. Ms. Vargas argues not guilty of all the charged. Having a fair trial would have been more favorable then getting duress into thus so called plea bargain. State v Barton, 93 Wn.2d 301,609 P.2d 1353(1980)

In the plea not being ratified by defendant. Was not a negotiated deals in best interested Ms. Vargas. The so called plea bargain is so one-sided .State taking advantage in agreement process- ended up getting a lot more than seems justified in the circumstance were recanting is involved. Ms. Vargas duress plea of guilty was made because 30month were held out to Ms. Vargas impose of 86months. When as a matter of fact she wasn't guilty of One out of the three charges . Ms. Vargas was The State did not honor Ms. Vargas indeed being interrogated by State agents . Ms. Vargas believes it should be considered cooperating with State Being question by State Officials. Ms. Vargas ensured her plea of guilty to get a reduces sentence of 30month rather being enforce to 86months.

F. Conclusion.

Based on the foregoing facts , Ms. Vargas respectfully urges this court to reverse her conviction and remand for withdraw of her guilty pleas or given the original plea deal of 30 months to be ran concurrent.

Dated this 12 day of January 2015.

By: 
Lyzette Vargas Pro-Se Petitioner

FILED
OCT 13, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32390-1-III
)	(Consolidated with
v.)	No. 32391-9-III; No. 32392-7-III)
)	
LYZETTE VARGAS,)	
)	
Appellant.)	UNPUBLISHED OPINION

BROWN, A.C.J. — Lyzette Vargas appeals her convictions for unlawful possession of a controlled substance, possession with intent to manufacture or deliver a controlled substance, and theft of a motor vehicle. She contends the trial court erred in denying her prejudgment motion to withdraw her guilty plea. She argues insufficient facts support the theft of a motor vehicle charge. In her statement of additional grounds for review (SAG), Ms. Vargas expresses concerns about the circumstances surrounding her plea, her cooperation with the terms of the plea agreement, and the bar complaints she made regarding her counsel’s performance. We affirm.

FACTS

The State charged Ms. Vargas with unlawful possession of clonazepam (No. 32390-1-III), possession of methamphetamine with intent to manufacture or deliver (No. 32391-9-III), and theft of a motor vehicle (No. 32392-7-III). As part of a global plea

agreement encompassing all three charges, the State agreed to recommend a reduced and concurrent sentence in exchange for Ms. Vargas' agreement she would work with a drug task force as a confidential informant. In accepting her guilty plea to theft of a motor vehicle, the trial court incorporated the affidavit of probable cause with the following statement made by Ms. Vargas in her statement on plea of guilty: "On 8/16/13 I had borrowed a 1997 Ford Explorer + I did not return it when requested." Clerk's Papers (CP) at 215.

Ms. Vargas did not attempt to work with the task force. She later moved to withdraw her guilty pleas to all three charges, arguing her guilty plea to theft of a motor vehicle lacked a factual basis.¹ The court denied the motion, concluding "the statement of what [Ms. Vargas] believes makes her guilty in her Statement on Plea of guilty satisfied all the required elements of the charge of Theft of a Motor Vehicle." CP at 250. Ms. Vargas appealed.

ANALYSIS

The issue is whether the trial court erred by not allowing Ms. Vargas to withdraw her guilty pleas. Ms. Vargas contends her guilty plea to theft of a motor vehicle lacked a factual basis because the record is insufficient to show she had any intent to deprive the owner of the vehicle.

¹ At the hearing on the motion, the State agreed if Ms. Vargas was allowed to withdraw her plea to theft of a motor vehicle, she could withdraw her pleas to the other two charges as the plea agreement resolved all three cases.

CrR 4.2(f) allows a defendant to withdraw her plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” This is a demanding standard. *State v. Zhao*, 157 Wn.2d 188, 197, 137 P.3d 835 (2006). Manifest injustice includes instances when the plea was not voluntary. *Id.* (quoting *State v. Marshall*, 144 Wn.2d 266, 281, 27 P.3d 192 (2001)). Ms. Vargas contends her plea was involuntary because it lacked a factual basis. We overturn a trial court’s denial of motion to withdraw a plea solely for abuse of discretion. *Id.*

CrR 4.2(d) requires the trial court to find a factual basis supporting the plea. In determining whether a factual basis exists for the plea, the court does not need to be convinced the defendant is guilty beyond a reasonable doubt. *State v. Arnold*, 81 Wn. App. 379, 382, 914 P.2d 762 (1996). “Instead, a factual basis exists if the evidence is sufficient for a jury to conclude that the defendant is guilty.” *Id.* Any reliable source of information, provided it is a part of the record at the time of the plea, may be considered by the court when determining whether sufficient evidence supports the plea. *Id.* at 382-83 (stating the prosecutor’s factual statement contained in the certificate of probable cause can provide the factual basis for a guilty plea if it was before the court and made a part of the record at the time of the plea).

A person commits theft of a motor vehicle if she wrongfully obtains or exerts unauthorized control over another’s vehicle with intent to deprive him of the vehicle.

RCW 9A.56.065; RCW 9A.56.020(1)(a). Thus two elements exist for theft of a motor vehicle: wrongfully obtains² and intent.

Regarding the intent element, Ms. Vargas points to her use of the word "borrowed" to argue there is insufficient evidence to support she had any intent to deprive the owner of the vehicle. "The specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Moreover, when analyzing intent in a theft case, intent to permanently deprive is not required. *State v. Crittenden*, 146 Wn. App. 361, 369-70, 189 P.3d 849 (2008). It is logical to infer Ms. Vargas' failure to return the vehicle upon request by the owner shows she intended to deprive the owner of the vehicle. Thus, Ms. Vargas' statement by itself provides a factual basis for her plea. Additionally, the court specifically incorporated the affidavit of probable cause when establishing the factual basis. The affidavit indicates Ms. Vargas agreed to return the vehicle on August 2, 2013; despite the owner's attempt to contact Ms. Vargas, her whereabouts and the location of the vehicle were unknown until August 16, 2013, when the owner reported the vehicle stolen. Ms. Vargas' intent to deprive can be inferred

² While Ms. Vargas does not argue she did not wrongfully obtain the vehicle, her statement certainly provides a factual basis for this element. A person who was granted authority to use a vehicle but then exceeds that authority wrongfully obtains that vehicle. See *State v. Clark*, 96 Wn.2d 686, 638 P.2d 572 (1982) (where a person has a license to use another's vehicle and exceeds the scope of that license, the correct charge is theft of a motor vehicle). Ms. Vargas' statement demonstrated while she initially had permission to use the vehicle, she exceeded the scope of that permission when she refused to return the car when asked. This is sufficient to show she wrongfully obtained the vehicle.

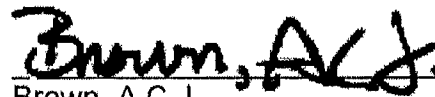
from her failure to (1) return the car for two weeks and (2) respond to the owner's attempts to contact her during that time.

SAG

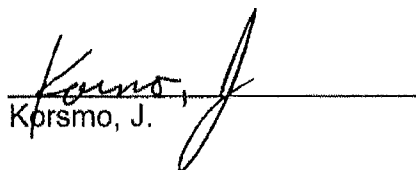
Ms. Vargas expresses three concerns in her SAG: (1) the State pressured her into keeping her plea agreement despite knowing she wished to withdraw her plea, (2) she did cooperate with the drug task force, and (3) she filed two complaints against her counsel for ineffective assistance. The limited evidence showing the State "pressured" Ms. Vargas is the State's opposition to her motion to withdraw her plea. At sentencing, Ms. Vargas stipulated she did not cooperate with the drug task force as required by the plea agreement. Regarding bar complaints, the record is silent. Thus, nothing in the record supports her concerns. The appropriate means of raising matters outside the record is through the filing of a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

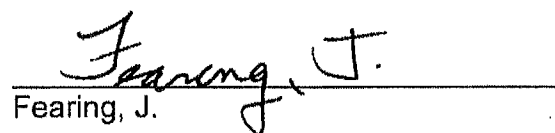
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Brown, A.C.J.

WE CONCUR:


Kirsno, J.


Fearing, J.