97702-0

NO. 79708-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

V.

MICHAEL HAXTON

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Erik D. Price Judge

PETITION FOR REVIEW

MICHAEL P. HAXTON
Pro Se

TABLE OF CONTENTS

Decision

I the appellant, Michael Paul Haxton, petition the Supreme Court of the State of Washington to review the unpublished opinion filed on July 1, 2019 in the First Division of the Court of Appeals which stated "Haxton has not presented anymore evidence than a 'bare allegation' that he was mis-informed, which is not sufficient to carry his burden unden CrR 4.2(f).... Because Haxton was not able to show that a withdrawal of his guilty plea was necesary to correct a manifest injustice, the trial court did not err in denying his motion"

Issues Presented for Review

1 The Court of Appeals contradicted State v. ANJ 168 Wn.2d 91 by failing to a withdrawal of plea when my uncontraverted testimony was that counsel told me that I would face 20-22 years in prison if convicted of all charges 2 RP 27 (whereas the correct range is 10-13½ years) and a competancy assessment filed before entry of the plea states "He [Haxton] believed that should he be found guilty of all charges the possible penalty could be 'around 20 years'" (Competancy assessment filed Feb. 24, 2017, pg 6, ln 13-14)

2 The Court of Appeals contradicted State v. Buckman 190 Wn.2d 51 by failing to find that my plea was involuntary when my uncontraverted testimony was that I was affirmatively misinformed by counsel of a direct consequence of the plea and a competancy assessment filed prior to entry of the plea confirms the resulting misunderstanding.

3 The Supreme Court should review this case as an issue of substancial public interest. RAP 13.4(b)IV

4 The appeals court contradicted State v Barton 93 Wn.2d 301, 305

Statement of the Case

In September 2016 I was charged with 2 counts of attempted rape of a child in the first degree and 1 count of attempted rape of a child in the second degree. The sentancing range if convicted of all three charges with no criminal history is 121.5-162 months to life (Ex2) or approximately 10-13½ years to life.

On February 24th, 2017 a competancy assessment was filed with the court in which the evaluator states "He [Haxton].... believed that should he be found guilty of all charges the possible penalty could be around 20 years" (competancy assessment filed Feb 24, 2017, pg 6, ln 13-14). Despite this large discrepancy, on June 5, 2017 the court accepted a plea of guilty to 1 count of attempted rape of a child in the second degree without any

clarification on the matter CP48-56. The 2 other charges were dismissed.

On July 17, 2017, immediately after receiving correct information about my plea and prior to sentancing, I filed a pro se motion to withdraw my plea.

On October 17, 2017 my new counsel filed a motion to withdraw my guilty plea under CrR4.2(f). His motion claimed it was not knowingly, voluntarily and intelligenly entered and that I received ineffective assistance of counsel CP43-56. This motion cited the court file which contained the competancy assessment.

In a hearing on the motion on December 18, 2017, I testified that my first attorney Mr Quillian did no meaningful investigation 2RP8-25. I testified, "the timeframe he [Mr. Quillian] told me was 20-22 years" if convicted of all charges 2RP27, that he told me my offender score would be a "9" instead of a "6" 2RP26-28, and he never told me attempt crimes were 75% of the standard range 2RP28. I affirmed that I thought I was facing more than 20 years in prison and stated "that was a big factor in my decision [to plead guilty]" 2RP30. I testified that I did not learn the correct sentancing information until after

I entered my plea 2 RP 29 and that I did not see the plea agreement prior to the hearing on December 18, 2017. No testimony or evidence was introduced to show Mr. Quillian did not say those things. Mr. Quillian himself does not deny it. No testimony or evidense was introduced to show that I was informed of the correct sentancing range for all charges prior to the entry of the plea. It was not in the plea statement or the plea colloquy. There is not evidence I understood the correct range.

The Superior Court entered findings of fact and conclusions of law including the following: "The defendent alleged that Mr. Quillian may have provided him with an incorrect possible sentancing range CP 100 (conclusions of law 16) and gave the following ruling "even without making a finding as to whether Mr. Quillian did or did not make that representation, the court concludes that there has been an insufficient showing that Mr. Haxton would not have plead guilty if he had been to told 13 instead of 20" 2 RP 77-78

In my brief of appellant my counsel argued "Did the trial court err in finding appellants motion to withdraw his guilty plea was based only on a claim of ineffective assistance of counsel, when appellant also sought to

withdraw his plea because it was not a knowing, voluntary and intelligently entered plea as a result of misinformation about potential sentancing consequences of a trial?.... where appellants uncontraverted testimony was that appellant was affirmatively misinformed by counsel that he faced 20+ years to life in prison if convicted at trial and never learned of the error before accepting the plea offer?.... Did the trial court err in finding appellant merely "may" have been misinformed by counsel?.... Did the trial court err in concluding a seven year difference in sentancing consequences is not a significant enough to impact a defendents decision whether to accept a plea offer to one charge or take all charges to trial?" (Brief of appellant, April 19, 2018, pg 2). It also argued that the trial court erred in denying my motion to withdraw my guilty plea.

The Appeals Court filed an unpublished opinion stating "Haxton has not presented any more evidence than a 'bare allegation' that he was misinformed, which is not sufficient to carry his burden under CrR 4.2(f)." Despite the fact that I argued in my motion for reconsideration that my testimony is supported by the competancy assessment and that the bare allegation standard set forth in State v.

Osborne 102 Wn.2d 87,97 684 P2d 683 (1984) applies only to claims of involuntariness, not ineffective assistance of counsel. The Appeals Court denied my 2nd Motion for Reconsideration on August 22, 2019. The Supreme Court extended the deadline for a Petition for Review to October 25, 2019. I timely filed (see enclosed declaration).

Argument

I agree with the case law given on page 7 and lines 1-4 of page 8 of the unpublished opinion filed on July 1 , 2019. I argue that the court's later findings contradicted State v. A.N.J 168 Wn.2d 91-120 and State v Buckman 190 Wn.2d 59 and State v Barton 93 Wn.2d 301,305. Misapplication of State v. Osborne 102 Wn.2d 87,97 may have, in part, led to these contradictions. I also argue the Supreme Court should accept review of this case as an issue of substancial public interest RAP 13.4(6)IV.

Osborne

Osborne seeks to withdraw her plea based on an allegation established solely by her own affidavit. In response the court ruled something more than a "bare allegation" is required to overcome the highly

persuasive evidence of voluntariness. Ballentine's Law Dictionary defines bare as mere, unaccompanied, nothing more. In my case I testified "the timeframe he [Mr Quillian] told me was 20-22 years" if convicted on all charges. 2RP27 This is supported by the competancy assessment which states "He [Haxton].... believed that should he be found guilty of all charges the possible penalty could be 'around 20 years.'" while the competancy assessment does not prove Mr. Quillian misinformed me, it does establish an erroneous belief that fits with my testimony. This provides context that substancially increases the credibility of my testimony. Therefore my allegation that I was misinformed is not bare or unaccompanied. I also alledge I did not understand the possible sentancing consequences. When asked "the fact that you thought you were facing more than 20 years in prison, did that affect your decision to enter your plea....?" I responded "yes, that was a big factor in my decision." 2RP30 By affirming that the fact affected my decision, I also affirmed that the fact was true. The competancy assessment helps prove this directly. Therefore the allegation that I did not understand the possible sentancing consequences is even more accompanied and less bare. Furthermore the

requirement in Osborne is specifically to overcome evidence of voluntariness. It cannot be applied to a claim of ineffective assistance of counsel. Therefore the court cannot apply Osborne here to justify a finding of insufficient evidence, especially not for "all claims under CrR 4.2(f)

Buckman/Barton

Washington has adopted the federal standard for voluntariness. In order for a plea to be knowing and voluntary a defendant must be informed of all direct consequences State v. Barton 93 Wn.2d 301, 305 and must understand the direct consequences. Buckman makes this clear. The unpublished opinion filed August 22, 2019 references Buckman stating "A plea is knowing and voluntary only when the defendent understands the consequences including possible sentancing consequences." (unpublished opinion, August 22, 2019, pg 8, ln 8-10). Therefore if the defendant misunderstands the possible sentancing consequences, the plea is not knowing and voluntary. When the court finds Buckman was misinformed it is as a means of establishing he misunderstood. The appeals court found that I have presented insufficient evidence that I was misinformed. I disagree. The credibility of my testimony is increased by the fact that I moved to withdraw my plea before

sentancing and immediately after learning the correct information. The competancy assessment provides context to my claim that further increases the credibility. When wieghed against the complete lack of evidence I was not misinformed, it is clearly proven that I was. However such a finding is not required for a plea to be involuntary, all that is required is for me to prove I wasn't informed of the correct possible sentancing range or I did not understand it. It is clearly proven that I did not understand the correct possible sentancing range, I affirmed I thought I was facing more than 20 years in prison 2 RP 30 and the competancy assessment said I believed the I could be sentanced to around 20 years. This is not correct. The court routinely uses a competancy assessment along with the defendant's own statements to establish they understand the consequences of the plea. It would be contradictory if the same was insufficient to establish misunderstanding. My testimony and the report of a physchological expert clearly prove I misunderstood the possible sentancing range for trial. Buckman's plea was ruled involuntary because he did not understand the possible sentancing range for trial. My plea plea was not ruled involuntary. Therefore the Appeals Court

contradicted State v Buckman.

A.N.J.

The court found A.N.J.'s plea was not intelligently and voluntarily entered and should not have been accepted "CrR 4.2(d) prohibited the court from accepting a plea without first assuring the defendant understood the 'nature of the charges and the consequences of the plea'" State v. A.N.J. 168 Wn.2d 119-120 Like A.N.J. my plea should not have been accepted. The competancy assessment clearly showed I did not understand the possible sentancing range for trial. The Judge either knew or reasonably could be expected to have known because it was on the court file. Nothing in the plea statement or plea colloquy show I understood the correct range. My plea was not knowing and voluntary and should not have been accepted. A.N.J. was allowed to withdraw his plea for this reason. I was not. This contradicts State v. A.N.J.

My case is similar to A.N.J. in many other ways. Both claim ineffective assistance of counsel. Both claimed counsel failed to investigate. Both claim counsel misinformed them of consequences of their plea. Both misunderstood consequences of their plea. The court finds A.N.J.'s claim more credible because it was made promptly. "a claim by a defendant

that he did not understand the consequences of his plea may simply be more credible if made before sentancing than it would be if the defendant rolls the dice on a favorable sentance and is dissappointed." 168 Wn.2d 108 Like A.N.J. I promptly moved to withdraw my plea before sentancing and immediately after receiving the correct information. My testimony should be considered more credible.

Both my case and A.N.J's claim ineffective assistance of counsel. "Effective assistance of counsel includes assisting the defendent in making an informed decision as to whether to plead guilty or proceed to trial" A.N.J 168 Wn.2d at 111 Affirmative misinformation is not required, failure to inform would suffice. Because of this the court devotes an entire section to A.N.J.'s understanding. "Importantly the record reflects that A.N.J. and his parents simply did not understand the difference between registration as a sex offender and the record of a conviction" 168 Wn.2d at 117 The court also emphasizes Andersons testimony that A.N.J. appeared confused. A.N.J.'s claims are supported by the affadavits of him, his parents, and his attorney. Because I am not a minor, I was alone with Mr Quillian during our meetings. Due to Mr Quillian's behavior,

Some of his actions are likely crimes. Mr. Quillian has 5th ammendment rights and did not testify. It is important to note that he did not deny any of my allegations. However my misunderstanding is established from a different source, the report of the state's psychological expert. The competancy assessment is similar to an attorney's affadavit in many ways. Both come from people who are experts in their field. Both are highly credible and regularly inform the court. The state's expert is less biased because an attorney has an incentive to coverup past misconduct. My credible testimony also establishes my understanding of the events that lead to my plea. The deficient performance of counsel in State v. A.N.J. and in my case are both established by multiple credible sources. If anything cousels assistance was more deficient in my case because affirmative misinformation/failure to inform/misunderstanding involved a direct consequence of the plea not a collateral one, and resulted in the erroneous belief of greater possible prison time. If anything I was more prejudiced than A.N.J. because I misunderstood a direct consequence of my plea instead of a collateral one and because I had greater erroneous belief of possible years in prison. The possibility of serving 7-12 extra years in prison is more prejudicial than the possibility of a charge

remaining on your record because whether the charge is there or not you spend those 7-12 years free in the real world. The court found deficient performance and prejudice in state v. A.N.J. The court did not find them in my case. This contradicts A.N.J.

Issue of substancial Public Interest

Mr. Quillian really did tell me the range if convicted of all charges was 20-22 years, nearly twice the actual range. I do not believe this was an accident. He deliberately deprived me of due process. As a result I may be held involuntarily in prison for the rest of my life. What happened to me could happen to anyone. Whoever people like Mr. Quillian choose to target. It probably won't happen to you or your husbands, wives, and children. But it will happen to somebodies' wives and children. In my case I clearly misunderstood the direct consequences. The competancy assessment was on file, so the Judge knew. He abused his discretion to accept the plea anyway. He swore to uphold the constitution. As long as Judges continue to forsake their oaths nobody is safe. You may think that the occasional ethical lapse is necesary to keep dangerous people like me locked up, but I'm not even accused of hurting anybody. ever. If you could choose one case

to do the right thing please let it be this one. You could look back and say, "I protected the constitution, even when it was not convenient." while your at it maybe you could help stop this from happening. I know Its probably not fun to read about instances like this. Its probably not fun for the people covering it up either. Wouldn't it be nice if this kind of thing happened less often? Please protect defendants by making sure they understand the consequences of their plea. This is an important protection to make sure they weren't lied to. Please don't let the government hold people without due process for life.

Conclusion

For the foregoing reasons the court should accept review of this case and find

- my plea was not knowingly, voluntarily, and intelligently entered
- It should not have been accepted
- I was affirmatively misinformed of possible sentancing consequences
- I was not informed of possible sentancing consequences
- I misunderstood the possible sentancing consequences
- my plea was involuntary
- Counsels performance was deficient and I was

prejudiced by it.
• a withdrawal of my plea is necesary to correct a manifest injustice.

The Supreme Court should reverse the decision and remand it to the superior court with the direction that I be allowed to withdraw my plea.

Respectfully submitted this 23rd of October, 2019

Michael P. Haxton

Declaration

I, michael Paul Haxton, declare that on October 23, 2019 I deposited the foregoing Petition for Review

or a copy thereof, in the internal mail system of Coyote Ridge Corrections Center and made arrangements for postage addressed to:

To the Clerk of the Court
Court of Appeals Division I
One Union Square
600 University St.
Seattle, WA 98101

Jon Tunheim
2000 Lakeridge Dr SW
Building 2
Olympia, WA 98502

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

Dated at Connell, WA on October 23rd, 2019

Michael P. Haxton

FILED
8/22/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. MICHAEL PAUL HAXTON, Appellant.	)	No. 79708-5-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Michael P. Haxton, filed a motion for reconsideration on July 25, 2019 of the opinion filed on July 1, 2019. A majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. MICHAEL PAUL HAXTON, Appellant.	No. 79708-5-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION, WITHDRAWING OPINION, AND SUBSTITUTING OPINION

The appellant Michael P. Haxton, filed a motion for reconsideration of the opinion filed on April 15, 2019. The respondent, the State of Washington, has filed a response. The court has determined that said motion should be denied and that the opinion filed on April 15, 2019 shall be withdrawn and a substitute unpublished opinion be filed. Now therefore, it is hereby

ORDERED that the motion for reconsideration is denied; it is further

ORDERED that the opinion filed on April 15, 2019 is withdrawn and a substitute unpublished opinion shall be filed.

FILED
7/1/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,	)	No. 79708-5-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
MICHAEL PAUL HAXTON,	)	
	)	
Appellant.	)	
	)	FILED: July 1, 2019

HAZELRIGG-HERNANDEZ, J. — Michael P. Haxton pled guilty to one count of attempted rape of a child in the second degree. He seeks reversal, arguing that he should have been allowed to withdraw his guilty plea under CrR 4.2(f) because he was affirmatively misinformed of the maximum sentence that he faced at trial by his assigned counsel. In a statement of additional grounds for review, he argues that counsel was ineffective at the hearing on the motion to withdraw because he failed to introduce certain evidence. Because Haxton has not carried his burden to show manifest injustice resulted from the plea and cannot show prejudice from counsel's performance, we affirm.

FACTS

On September 7, 2016, Michael P. Haxton began communicating with a woman who he believed was the mother of three young children ages 6, 11, and 12. He indicated that he was interested in participating in sexual acts with the

children and described specific acts that he planned to carry out. He said that he wanted to meet the children and that he would bring gifts including candy, nail polish, a stuffed animal, and a ball. Haxton came to the address that the woman had told him was her residence and was placed under arrest. He had candy, nail polish, a stuffed animal, and a ball in his car. Haxton was charged with two counts of attempted rape of a child in the first degree and one count of attempted rape of a child in the second degree.

At the change of plea hearing on June 5, 2017, the court asked Haxton if he had gone over the statement of defendant on plea of guilty, prosecutor's statement of criminal history, and offender score sheet with his attorney, Robert Quillian. Haxton responded that he had. The court informed Haxton that the standard sentencing range would be 58.5 months to 76.5 months to life imprisonment and he indicated he understood. He also indicated the he understood that the other two charges would be dismissed if the plea was accepted. The court clarified that the State was recommending a sentence of 60 months to life imprisonment on the remaining count and Haxton indicated that he understood.

Haxton then entered an Alford[1] plea of guilty to count 3, attempted rape of a child in the second degree. The court asked if he was making the plea freely and voluntarily and Haxton responded that he was. The court noted that he had the assistance of counsel and had made a free and voluntary plea of guilty to count 3, then found Haxton guilty as charged. The State then moved to dismiss the other

[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

two counts and the court granted the motion. The statement of defendant on plea of guilty to sex offense, which included the standard sentence range of 58.5 to 76.5 months to life for count three and the prosecutor's sentence recommendation of 60 months to life, was signed by Haxton and filed the same day. The prosecutor's statement of criminal history and attached offender score sheet, also signed by Haxton and filed the same day, showed an offender score of 0 and circled the corresponding handwritten sentence range of "58.5–76.5."

On July 17, 2017, Haxton filed a pro se motion to withdraw his plea with no attached briefing. Quillian withdrew as Haxton's counsel on July 31, 2017. His second attorney, A. Christian Cabrera, filed a motion to withdraw the guilty plea and supporting memorandum on October 17, 2017. This motion argued that Haxton should be allowed to withdraw his plea of guilty because it was necessary to correct a manifest injustice. Specifically, Haxton claimed that he had been denied effective assistance of counsel because his first attorney, Quillian, failed to give him adequate legal advice, failed to inform him of the sentence he faced at trial, failed to properly investigate his case, and coerced him into pleading guilty. Therefore, Haxton argued that he did not enter the guilty plea knowingly, voluntarily, and intelligently and he should be permitted to withdraw the plea.

Haxton filed another pro se motion to withdraw the plea on October 25, 2017, on the grounds that he had received ineffective assistance of counsel and the plea was not voluntary because Quillian had subjected him to extreme levels of duress. In an attached handwritten affidavit, Haxton stated that Quillian had miscalculated his offender score and told him that he would be sentenced to 20 to

22 years in prison if he was convicted on all counts. Haxton also alleged that Quillian refused to investigate the "mechanism that was created within the Net Nanny operation that allows officers to systematically frame certain individuals." Haxton alleged that Quillian failed to investigate his reports of "tampering with multiple pieces of evidence in an obvious manner, obvious instances of perjury, and the introduction of fraudulent document [sic] in court." Haxton claimed that Quillian "constantly laughed at [him] for [his] fantasies in practically every meeting [they] ever had," subjected him to a competency evaluation "to intimidate [him] and to damage [his] credibility," and lied to him repeatedly. In a subsequent letter to the court, Haxton alleged that the motion filed by Cabrera was insufficient and did not accurately reflect his arguments as to why the court should permit the plea to be withdrawn. Cabrera was permitted to withdraw as Haxton's counsel after advising the court of a breakdown in communication.

On December 18, 2017, the court held a hearing on the motion at which Haxton was represented by his third attorney, Kevin Griffin. Griffin asked the court to find that a manifest injustice occurred or resulted when Haxton entered a plea of guilty because he had not received effective assistance of counsel and the plea was not made voluntarily. Haxton testified that the prospect of facing over 20 years in prison if he was convicted of all three counts at trial was "a big factor" in his decision to plead guilty. He testified that he would have felt differently about the plea offer if he had known he was actually facing 10 to 13.5 years if convicted of all three counts at trial "because of the fact that it's an indeterminate sentence and that if [he] did not pass the indeterminate sentencing review once with the State's

deal, it would be ten years, which is . . . in the range of the sentence if [he] had gone to trial." He also testified that he did not feel that his plea was voluntary because he felt that he had no other option but to plead guilty. Haxton testified that he had never seen the written plea offer before but he "knew what the plea deal was."

Haxton said that he asked Quillian to hire an investigator to examine a discrepancy between the advertisement in the discovery packet and the one to which he had responded. He felt that this was crucial to his defense strategy. However, Haxton said that Quillian refused to hire an investigator, claiming that there was not time to conduct the investigation before the deadline to accept the plea offer. He testified that Quillian told him that the State could withdraw the plea offer if Haxton asked for substitute counsel.

The trial court denied Haxton's motion to withdraw his guilty plea. The court noted that "[i]t would have been nice to have Mr. Quillian's testimony here today, but the Court was left with only Mr. Haxton." In its verbal ruling, the court noted:

> The Court is skeptical that Mr. Quillian would have missed the range having been provided with the plea offer by the State. I am not prepared to make a finding that he did not. I am not prepared to make a finding whether he did or he didn't make that representation. I think there are reasons to question both the recollection and the motivations of Mr. Haxton in his testimony today but not sufficient to disregard everything Mr. Haxton said. Mr. Haxton has testified about other aspects in a way that does not indicate this is a fabrication, but even without making a finding as to whether Mr. Quillian did or didn't make that representation, the Court concludes that there has been an insufficient showing that Mr. Haxton would not have pled guilty if he had been told 13 years instead of 20. Again, that is based both on the Court's evaluation of Exhibit 2, the testimony from Mr. Haxton, as well as the delta between 13 years and 60 months, all in the context of course of whether or not the bar of manifest injustice has been reached.

The court entered written findings of fact and conclusions of law, including the following:

> 16. The defendant has alleged that Mr. Quillian may have provided him with an incorrect possible sentence range if convicted as originally charged. The court makes no finding that Mr. Quillian did, or did not, provide incorrect information. The court is skeptical that Mr. Quillian would have misrepresented the range given the plea offer documentation he possessed at the time.
> 17. Based on the court's observations of the content and demeanor of the defendant while testifying, there are reasons to question his recollection and motivations.
> . . .
> 19. The gap between the sentence range that the defendant stated Mr. Quillian provided him and the actual sentence range is not large enough to demonstrate that the defendant would not have entered the guilty plea.
> 20. There has been an insufficient showing that the defendant would not have entered the guilty plea with the accurate information, assuming, without deciding, that the information was incorrect.

Haxton was sentenced to an indeterminate sentence of 60 months to life imprisonment. He timely appealed.

DISCUSSION

Haxton contends that the court erred in denying his motion to withdraw his guilty plea because he received ineffective assistance of counsel from Quillian and his plea was not voluntary. In a statement of additional grounds for review, he also contends that he was denied effective assistance of counsel when Griffin failed to introduce certain evidence at the hearing on the motion. Because he cannot show a manifest injustice resulted from his plea of guilty or prejudice from Griffin's performance, we affirm.

I. Motion to Withdraw Plea of Guilty

"Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent." State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A defendant who enters a guilty plea waives a number of important constitutional rights in doing so, such as the right to a jury trial, the right to confront accusers, and the privilege against self-incrimination. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996) (citing Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)). A trial court shall not accept a plea of guilty that is not made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. CrR 4.2(d).

Motions to withdraw a guilty plea are usually reviewed for abuse of discretion. State v. A.N.J., 168 Wn.2d 91, 106, 225 P.3d 956 (2010). However, when the motion is based on ineffective assistance of counsel stemming from claimed constitutional error, we review the denial de novo. Id. at 109; State v. Buckman, 190 Wn.2d 51, 57, 409 P.3d 193 (2018).

Trial courts must allow a defendant to withdraw a guilty plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 4.2(f). "A 'manifest injustice' is 'an injustice that is obvious, directly observable, overt, and not obscure.'" State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991) (quoting State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974)). The Washington Supreme Court has found that a manifest injustice results where a defendant was denied effective counsel, the plea was not ratified by the defendant, the plea was involuntary, or the plea agreement was not kept by the prosecution.

State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996) (citing Saas, 118 Wn.2d at 42). A defendant who seeks to withdraw a plea of guilty plea bears the burden to meet the "demanding standard" imposed by CrR 4.2(f). Saas, 118 Wn.2d at 42 (citing Taylor, 83 Wn.2d at 596).

A. Voluntariness

Haxton contends that his plea of guilty was invalid because it was based on affirmative misinformation that he received from Quillian about the consequences he faced at trial. A plea is knowing and voluntary only when the defendant understands the consequences of pleading guilty, including possible sentencing consequences. Buckman, 190 Wn.2d at 59. A defendant's signature on a plea statement is strong prima facie evidence of a plea's voluntariness. Branch, 129 Wn.2d at 642, 642 n.2. "When [a] judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable." Id. at 642 n.2 (quoting State v. Perez, 33 Wn. App. 258, 262, 654 P.2d 708 (1982)). Something more than a defendant's "bare allegation" is required to overcome this highly persuasive evidence of voluntariness. State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984).

A plea of guilty is involuntary when the defendant has received affirmative misinformation about the sentencing consequences of the plea. See Buckman, 190 Wn.2d at 59. In State v. Buckman, the Supreme Court concluded that the defendant's guilty plea was involuntary because he was misinformed by defense counsel, the prosecutor, and the judge that he was facing life imprisonment if he

lost at trial when the actual maximum sentence he faced was 114 months imprisonment. Id. at 58. The State listed the erroneous maximum sentence on the plea statement and the court informed the defendant of the incorrect maximum during the plea colloquy. Id. at 57. The Supreme Court found that Buckman was "plainly misinformed" about the maximum sentence he faced at trial. Id. at 59.

Here, Haxton has not proven that he was affirmatively misinformed about the consequences of his guilty plea. He testified at the hearing on the motion that Quillian told him he faced a maximum sentence of over 20 years if he went to trial on all three counts. The record contained evidence that he had repeated this erroneous maximum range to a competency evaluator four months prior to the entry of the guilty plea. However, unlike Buckman, Haxton was not "plainly misinformed" of the maximum sentence he faced at trial by the court or the State. The plea statement that he signed did not include the maximum sentence if convicted on all three counts, but listed the correct sentencing range of 58.5 to 76.5 months under the amended information. Haxton specifically indicated to the court during the plea colloquy that he understood the sentencing range to be 58.5 to 76.5 months for the proposed resolution. The trial court was not convinced that Quillian had affirmatively misinformed Haxton of the sentencing consequences and noted that it had reason to question the credibility of Haxton's testimony. Haxton has not presented any more evidence than a "bare allegation" that he was misinformed, which is not sufficient to carry his burden under CrR 4.2(f).

Accordingly, he has not shown deficient performance by Quillian and his claim of ineffective assistance of counsel fails. Because Haxton was not able to show that withdrawal of his guilty plea was necessary to correct a manifest injustice, the trial court did not err in denying his motion.

II. Ineffective Assistance of Griffin

In a statement of additional grounds, Haxton contends that his third defense attorney, Griffin, provided ineffective assistance by failing to introduce certain items at the evidentiary hearing on the motion to withdraw the plea. Specifically, Haxton contends that Griffin should have entered the report of his first competency evaluation and the transcript of a jail call between Haxton and his mother as exhibits in support of his motion.

As noted above, an appellant must show that counsel's performance was deficient and that he was prejudiced by this deficient performance. Strickland, 466 U.S. at 687. Again, there is a strong presumption that counsel's performance was not deficient. McFarland, 127 Wn.2d at 336. An appellant can rebut this presumption if there was no conceivable trial tactic explaining counsel's performance. State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

A. Competency Evaluation

Haxton first contends that Griffin should have introduced the report of his first competency evaluation to support his motion to withdraw the plea. In this report, the evaluator states that Haxton believed the possible penalty if he was convicted at trial of all three charges could be around 20 years. The report was created and filed with the court on February 15, 2017. Haxton entered the guilty

plea on June 5, 2017. The written motion to withdraw the plea submitted by Cabrera stated the defendant relied on the court file in support of the motion.

Because the report was in the file and the motion stated that it relied on the file for support, the court was free to consider the contents of the competency evaluation. Griffin's failure to specifically draw the court's attention to this document does not appear to rise to the level of deficient performance. Furthermore, Haxton cannot show that he was prejudiced by this decision. It seems unlikely that the court would have been swayed by evidence that Haxton had stated the erroneous sentencing range to the evaluator four months before he entered the guilty plea. This evidence does not provide proof that he was affirmatively misinformed of the accurate sentencing range. Therefore, Haxton's claim of ineffective assistance of counsel on this basis fails.

B. Call Transcript

Haxton also contends that Griffin was ineffective in failing to introduce the transcript of a recorded jail call between Haxton and his mother. The transcript of this call is not part of the record on review. Haxton states in his statement of additional grounds for review that he told his mother during this call that if he lost at trial he would be sentenced to 20 to 22 years. He says this call occurred before he entered the plea of guilty but does not give a specific date.

Similarly, Haxton cannot show that he was prejudiced by counsel's failure to offer this evidence as an exhibit in support of the motion to withdraw the plea. This transcript would not have proven that Quillian affirmatively misinformed Haxton of the correct sentencing range. The court would still have been left with

Haxton's bare allegations that he had been misinformed. Accordingly, Haxton's second ineffective assistance claim also fails.

We affirm.

WE CONCUR: