

No. 64815-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SYLVESTER LEE NEAL, Jr.,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by accepting Sylvester Neal Jr.'s guilty plea to the crime of bail jumping.

2. Mr. Neal's guilty plea to bail jumping was not knowing, intelligent and voluntary and was thus entered in violation of his constitutional right to due process.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

In order to comply with due process, a defendant's guilty plea must be knowing, intelligent and voluntary. U.S. Const. amends. V, XIV; Const. art. I, §§ 3, 22. A plea is not constitutional if the defendant does not understand the elements of the crime to which he is pleading guilty and the relationship between the elements and the facts of his case. Where Mr. Neal pled guilty to the crime of bail jumping but did not admit an essential element of the crime, was his guilty plea knowing, intelligent and voluntary?

C. STATEMENT OF THE CASE

Sylvester Lee Neal, Jr. entered a plea agreement with the State and pled guilty to one count of bail jumping and one count of unlawful possession of payment instruments. CP 10-28.

Concerning bail jumping, Mr. Neal admitted that on August 1, 2008, "I had been released by order of the court after having been

charged with a class C felony and I did fail to appear.” CP 19. For the unlawful possession of payment instruments count, Mr. Neal entered an Alford plea and the court reviewed a certification for probable cause prior to accepting his guilty plea.¹ CP 19, 21-22; 12/15/09RP 8-9, 12.

Mr. Neal received a standard range sentence of eight months incarceration. CP 31-36. This appeal follows. CP 37.

D. ARGUMENT

MR. NEAL’S GUILTY PLEA TO BAIL JUMPING WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW

Due process requires that a defendant’s entry of a guilty plea be knowing, intelligent and voluntary, and the defendant understand the elements of the crime and the relationship between those elements and the facts of his case. Sylvester Neal Jr. pled guilty to bail jumping but did not admit that he knew he was required to appear in court. Because this is an essential element of the crime, there was no factual basis for Mr. Neal’s plea and this Court cannot be assured the plea was knowing and voluntary. Mr. Neal’s guilty plea to bail jumping must therefore be vacated.

¹ Alford v. North Carolina, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

1. Due process requires a guilty plea be knowingly and voluntarily entered. A criminal defendant waives important constitutional rights when he enters a plea of guilty, and due process requires the plea be knowingly, intelligently and voluntarily entered. U.S. Const. amends. V, XIV; Const. art. 1 §§ 3, 22; Boykin v. Alabama, 395 U.S. 238, 243, 89 S.Ct. 1079, 23 L.Ed.2d 274 (1969); In re Personal Restraint of Isadore, 151 Wn.2d 294, 297-98, 88 P.3d 390 (2004); State v. Taft, 49 Wn.2d 98, 99, 297 P.2d 1116 (1956). The State bears the burden of demonstrating a guilty plea is knowing, intelligent and voluntary. State v. Ross, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). Unless the defendant is aware of the rights being waived, the essential elements of the offense, and the direct consequences of pleading guilty, the plea is not constitutionally valid. State v. Holsworth, 93 Wn.2d 148, 153-57, 607 P.2d 845 (1980).

CrR 4.2 also governs guilty pleas, and sets forth procedural safeguards designed to insure that a defendant's constitutional rights are protected. State v. Taylor, 83 Wn.2d 594, 596-97, 521 P.2d 699 (1974). The rule forbids the trial court from accepting a guilty plea without first determining if it is voluntary, competent, and made with an understanding of both the charges and the

consequences of the plea. CrR 4.2(d). “The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.” Id.

2. To satisfy due process, the defendant must understand the elements of the crime and their relationship to the facts of his case. A guilty plea is tantamount to a conviction; once it is entered, “nothing remains but to give judgment.” Boykin, 395 U.S. at 242; Woods v. Rhay, 68 Wn.2d 601, 605, 414 P.2d 601, cert. denied, 385 U.S. 905 (1966). Thus, “[c]entral to the plea and the foundation for entering judgment against the defendant is the defendant’s admission in open court that he committed the acts charged in the indictment.” Henderson v. Morgan, 426 U.S. 637, 648, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976) (White, J., concurring) (quoting Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)).

The Henderson Court therefore held the defendant’s guilty plea to second degree murder was not voluntary because he was never informed that the intent to kill was an element of the offense and did not admit such intent in entering his guilty plea. Id. 644-47. “[A]n admission by the respondent that he killed Mrs. Francisco does not necessarily also admit that he was guilty of second-

degree murder.” Id. at 646. A similar conclusion was reached under the state constitution where the Washington Supreme Court vacated a rape conviction based upon an unrepresented defendant’s guilty plea to rape where the defendant did not understand the distinction between rape and the crime of carnal knowledge. Taft, 49 Wn.2d at 100-03.

Similarly in State v. R.L.D., 132 Wn.App. 699, 133 P.3d 505 (2006), this Court found no factual basis for a juvenile’s plea to second degree theft. This Court noted that due process mandates the defendant understand nature of the offense to which he is pleading guilty; this requires not only an understanding of the elements of the crime, but also that his conduct meets those elements. R.L.D., 132 Wn.App. at 705-06. “Without an accurate understanding of the relation of the facts to the law, a defendant is unable to evaluate the strength of the State’s case and thus make a knowing and intelligent guilty plea.” Id.

In his guilty plea statement, R.L.D. stated he and other people “entered into a vehicle valued less than \$1,500 with the intent to take the vehicle and keep it from the owner.” Id. at 704, n.4. Because R.L.D. and his friends did not have keys to the car and were unable to jump start it, the plea and other facts before the

juvenile court did not establish he had the dominion and control necessary for a theft conviction. Id. at 706. Finding the respondent did not understand the relationship between the elements of the crime and the facts of his case, this Court vacated and dismissed his conviction. Id. at 706.

3. Mr. Neal's conviction must be vacated because he did not admit he knowingly failed to appear and thus did not understand an essential element of the crime of bail jumping. Here, Mr. Neal pled guilty to bail jumping. CP 10-20. The bail jumping statute reads, in relevant part:

Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of the state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

RCW 9A.76.170(1) (emphasis added). An essential element of the crime is that the defendant knowingly failed to appear as required.

RCW 9A.76.170(1); State v. Williams, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007); State v. Pope, 100 Wn.App. 624, 627, 999 P.2d 51, rev. denied, 141 Wn.2d 1018 (2000).

In his guilty plea statement, however, Mr. Neal did not state that he knew of the obligation to appear in court on August 1.

Instead, the guilty plea form states simply:

On or about August 1, 2008, in King County Washington I had been released by order of the court after having been charged with a class C felony and I did fail to appear.

CP 19. Mr. Neal thus did not admit he knew of the obligation to appear and knowingly failed to do so. CP 19. Nor did he state so orally. 12/15/09RP 7, 9-11.

Additionally, there was no other evidence before the court to demonstrate Mr. Neal knowingly failed to appear. Mr. Neal entered an Alford plea to a separate count of unlawful possession of payment instruments, and the certification for determination of probable cause is therefore attached to the guilty plea form. CP 21-22. The certification, however, addresses only the possession of payment instrument count and is silent as to bail jumping. CP 21-22.

The facts admitted in Mr. Neal's guilty plea do not provide the necessary factual basis for his guilty plea to the crime of bail jumping, which includes the element that he knowingly failed to appear for court. RCW 9A.76.170(1). Mr. Neal's plea was

therefore not based upon an understanding of the elements of the crime and their relationship to the facts of his case and was entered in violation of due process of law. Henderson, 426 U.S. at 647. Mr. Neal's bail jumping conviction must be vacated and dismissed. R.L.D., 132 Wn.App. at 706-07, 708.

E. CONCLUSION

The lack of a factual basis to support his conviction for bail jumping demonstrates that Sylvester Neal did not understand the elements of the crime and his plea was thus not voluntarily and intelligently made. His conviction for bail jumping must be vacated and dismissed.

DATED this 27th day of September 2010.

Respectfully submitted,



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)	
Respondent,)	
)	NO. 64815-2-I
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)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF SEPTEMBER, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| <input checked="" type="checkbox"/> SYLVESTER NEAL, JR.
(NO VALID ADDRESS)
C/O COUNSEL FOR APPELLANT
WASHINGTON APPELLATE PROJECT | ()
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