

66679-7

66979-7

NO. 66679-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW CASTRO,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 OCT 12 PM 1:13

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

BRIAN J. WYNNE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

ORIGINAL

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS.....	1
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u>	7
1. CASTRO'S CHANGE OF PLEA TO GUILTY WAS KNOWING, VOLUNTARY, AND INTELLIGENT BECAUSE HE WAS PROPERLY ADVISED OF THE CONSEQUENCES OF THE PLEA.....	7
a. Under The Totality Of The Circumstances, Castro's Plea Was Voluntarily Entered Because He Was Advised Of The Consequences Of His Plea.....	9
b. Due Process Does Not Require A Court To Orally Question A Defendant To Confirm That He Understands The Consequences Of The Plea.....	11
D. <u>CONCLUSION</u>	13

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Boykin v. Alabama, 395 U.S. 238,
89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)..... 8

Washington State:

In re Personal Restraint of Keene, 95 Wn.2d 203,
622 P.2d 360 (1980)..... 12

In re Personal Restraint of Montoya, 109 Wn.2d 270,
744 P.2d 340 (1987)..... 8

In re Personal Restraint of Stoudmire, 145 Wn.2d 258,
36 P.3d 1005 (2001)..... 12

State v. Branch, 129 Wn.2d 635,
919 P.2d 1228 (1996)..... 8, 9

State v. Saas, 118 Wn.2d 37,
820 P.2d 505 (1991)..... 9

State v. Smith, 134 Wn.2d 849,
953 P.2d 810 (1998)..... 9

State v. Taylor, 83 Wn.2d 594,
521 P.2d 699 (1974)..... 9

Constitutional Provisions

Federal:

U.S. Const. amend. V 8

U.S. Const. amend. XIV 8

Washington State:

Const. art. I, § 3..... 8

Rules and Regulations

Washington State:

CrR 4.2..... 8, 9, 12

A. ISSUE PRESENTED

Due process requires a defendant's plea of guilty to be knowing, intelligent, and voluntary. To be knowing, intelligent, and voluntary, a defendant must be informed of and understand the consequence of the plea. Matthew Castro was informed, in writing, of the consequences of his plea of guilty by way of a document entitled Statement of Defendant on Plea of Guilty, which he acknowledged he read and understood. Was the defendant properly informed of the consequences of his plea of guilty?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State initially charged Matthew Castro with one count of Rape of a Child in the First Degree. CP 1. After plea negotiations, the State amended the Information to charge Castro with one count of Child Molestation in the First Degree. CP 7. Castro entered a plea of guilty to one count of Child Molestation in the First Degree on October 1, 2010. CP 31. After pleading guilty to Child Molestation in the First Degree, Castro moved for substitution of

counsel, a motion that was granted. 2 RP 2.¹ After receiving new counsel, Castro moved to withdraw his plea of guilty. 3 RP 2, 3. The court denied Castro's motion to withdraw his plea of guilty. 3 RP 5. At the sentencing hearing, the court imposed a minimum sentence of 89 months and a maximum sentence of life on the Child Molestation in the First Degree cause. 4 RP 13; CP 41.

2. SUBSTANTIVE FACTS

The State initially charged Matthew Castro with one count of Rape of a Child in the First Degree. CP 1. At a plea hearing before the Honorable Michael Heavey on October 1, 2010, the State amended the Information to charge Castro with one count of Child Molestation in the First Degree. 1 RP 1; CP 7. At the hearing, Castro was represented by counsel of record, Carlos Gonzales. 1 RP 2.

At the commencement of the plea colloquy, the prosecutor asked Castro if he recognized the document entitled Statement of

¹ Reports of Verbatim Report of Proceedings consist of four volumes from four separate dates. The volumes are not consecutively paginated. In this brief, the 10/1/10 report of proceeding is cited as 1 RP; the 12/3/10 report of proceeding is cited as 2 RP; the 12/20/10 report of proceeding is cited as 3 RP; and the 1/12/11 report of proceeding is cited as 4 RP.

Defendant on Plea of Guilty, to which Castro responded, "Yeah."
1 RP 3. The prosecutor then asked if he read through the
Statement of Defendant on Plea of Guilty with his attorney. 1 RP 3.
Castro said, "Yes, sir." 1 RP 3. The prosecutor then asked if
Mr. Gonzales answered any questions that he, Castro, may have
had. 1 RP 3. Castro answered in the affirmative, saying, "Yes, sir."
1 RP 3. The prosecutor asked, "Did you feel you understood the
contents of this document after reading through it?" 1 RP 3. Again,
Castro said, "Yes." 1 RP 3.

Paragraph 6(d) of the Statement of Defendant on Plea of
Guilty reads, "If I am convicted of any new crimes before
sentencing, or if any additional criminal history is discovered, both
the standard sentencing range and the prosecuting attorney's
recommendations may increase or a mandatory sentence of life
imprisonment without possibility of parole may be required by law.
Even so, I cannot change my mind and my plea of guilty to this
charge is binding on me." CP 10.

The prosecutor, during the course of the plea colloquy,
informed Castro that his standard sentencing range at that time
was 67 to 89 months. 1 RP 4. Additionally, the prosecutor
informed Castro that the State's sentencing recommendation would

likely change if additional criminal history were to be discovered before sentencing. 1 RP 5. The prosecutor did not orally state that Castro's standard sentencing range would increase if additional criminal history were discovered or if he pled guilty to another felony. 1 RP 1-11.

Prior to accepting Castro's change in plea, the Honorable Michael Heavey asked Mr. Gonzales if he had anything to add to the plea colloquy. 1 RP 9. Castro's attorney, Mr. Gonzales, said, "Yes, Your Honor, I have had an opportunity to go over the case entirely with Mr. Castro. And I did go over with him what the trial would look like, and his various options in terms of plea options. And I have had an opportunity to go over the Statement of Defendant on Plea of Guilty and answer his questions. I do believe in answering his questions and the statement today, he is changing his plea knowingly, intelligently, and voluntarily." 1 RP 9.

Judge Heavey informed Castro about the significance of signing the Statement of Defendant on Plea of Guilty by saying, "Mr. Castro, your signature attests that you adopt and have been informed of everything that's in that document." 1 RP 10. Judge Heavey then asked Castro if he "had an opportunity to go over this document with your attorney?" 1 RP 10. Castro said, "Yes, sir."

1 RP 10. In response, Judge Heavey asked, "Was he able to answer all your questions?" 1 RP 10. Castro said, "Yeah." Judge Heavey later asked, "Did Mr. Gonzales read this form to you? Yes or no." 1 RP 11. Castro said, "Yes." 1 RP 11. Judge Heavey concluded his inquiry by asking, "Did you read it?" Castro said, "Yes, Your Honor. We read it with each other." 1 RP 11. Judge Heavey found Castro's plea to be knowing, voluntary, and intelligent. 1 RP 10.

During the hearing, Judge Heavey also stated on the record, in reference to the Statement of Defendant on Plea of Guilty, "On this last page I need Mr. Gonzales' and Mr. Castro's signature." 1 RP 10. On the last page of the Statement of Defendant on Plea of Guilty, in paragraph 12, is written, "My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this 'Statement of Defendant on Plea of Guilty.' I have no further questions to ask the judge." CP 20.

Prior to accepting Castro's plea of guilty, Judge Heavey checked boxes (a) and (b) on page 13 of the Statement of Defendant on Plea of Guilty. CP 20. Boxes (a) and (b) on page 13 indicate that the defendant asserted (a) "the defendant had

previously read" and (b) "the defendant's lawyer had previously read to him" the Statement of Defendant on Plea of Guilty and that the defendant understood it in full. CP 20.

Judge Heavey then made a finding that the defendant's plea of guilty was knowingly, intelligently, and voluntarily made, and that the defendant understood the charges and the consequences of the plea. CP 20.

On December 12, 2010, prior to sentencing, Castro moved to withdraw his guilty plea. 3 RP 3. Castro's motion to withdraw his guilty plea was denied. 3 RP 5. His sentencing hearing was then continued on the defendant's motion. 3 RP 7.

On January 12, 2011, Castro was sentenced for one count of Child Molestation in the First Degree and one count felony Violation of a No Contact Order under King County cause numbers 10-1-02513-4 SEA and 10-1-08968-0 SEA, respectively. 4 RP 2; CP 37-48. Due to Castro's plea of guilty to felony Violation of a No Contact Order, Castro's standard sentencing range increased to 72 to 96 months. CP 38. The Honorable Beth Andrus imposed a minimum sentence of 89 months and a maximum sentence of life on the Child Molestation in the First Degree cause. 4 RP 13; CP 41.

C. ARGUMENT

1. CASTRO'S CHANGE OF PLEA TO GUILTY WAS KNOWING, VOLUNTARY, AND INTELLIGENT BECAUSE HE WAS PROPERLY ADVISED OF THE CONSEQUENCES OF THE PLEA.

During the plea hearing, Castro repeatedly affirmed to the prosecutor and the court that he had read the contents of the Statement of Defendant on Plea of Guilty and that he understood the Statement of Defendant on Plea of Guilty. Additionally, Castro's attorney asserted that he read over the Statement of Defendant on Plea of Guilty with Castro and answered his questions about the contents of the Statement of Defendant on Plea of Guilty. Contained within paragraph 6(d) of the Statement of Defendant on Plea of Guilty is the explicit advisement of "If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentencing range and the prosecuting attorney's recommendations may increase or a mandatory sentence of life imprisonment without possibility of parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this charge is binding on me." Although the defendant was not orally advised by the prosecutor or the court that his standard sentencing range would increase if he entered a plea

of guilty to a new felony, he was advised of this consequence in the Statement of Defendant on Plea of Guilty, and Castro affirmed that he had been so advised. Thus Castro's change of plea to guilty was knowing, intelligent, and voluntary.

In order to satisfy the due process requirements of the federal and state constitutions, a guilty plea must be knowing, intelligent, and voluntary. Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Personal Restraint of Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987); U.S. Const. amends. V, XIV; Wash. Const. art. I, sec. 3. The criminal rules reflect this principle by dictating that a court must not accept a plea of guilty without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. CrR 4.2(d). The defendant must enter the plea competently and with an understanding of the nature of the charge and the consequences of the plea, including the understanding that he or she necessarily waives important constitutional rights. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996).

A court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary

to correct a manifest injustice. CrR 4.2(f). The defendant bears the burden of proving manifest injustice, defined as “obvious, directly observable, overt, 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)).

- a. Under The Totality Of The Circumstances, Castro's Plea Was Voluntarily Entered Because He Was Advised Of The Consequences Of His Plea.

A court determines voluntariness on the basis of the totality of the circumstances. Branch, 129 Wn.2d at 642. A plea is presumed to have been properly entered where the defendant admits to reading, understanding, and signing a proper plea statement. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998).

Here, the Statement of Defendant on Plea of Guilty includes a clause in paragraph 6(d) that states, "If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentencing range and the prosecuting attorney's recommendations may increase or a mandatory sentence of life imprisonment without possibility of

parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this charge is binding on me." CP 10. At the time of Castro's plea, Castro affirmatively stated to the prosecutor that he had read through the Statement of Defendant on Plea of Guilty with his attorney and that his attorney answered his questions. Castro also told the prosecutor that he understood the contents of the Statement of Defendant on Plea of Guilty. At no time did he express reservations about understanding the contents of the Statement of Defendant on Plea of Guilty.

Castro also told Judge Heavey that he had an opportunity to go over the Statement of Defendant on Plea of Guilty with his attorney and that his attorney was able to answer his questions. 1 RP 10-11. Furthermore, Castro confirmed for the court that his attorney read the Statement of Defendant on Plea of Guilty to him. 1 RP 11.

Castro's attorney at the plea hearing, Mr. Gonzales, informed the court prior to the court's acceptance of the plea that he "had the opportunity to go over the Statement of Defendant on Plea of Guilty and answer his questions." 1 RP 9. Mr. Gonzales also signed the Statement of Defendant on Plea of Guilty attesting to the same. CP 20.

Finally, Castro signed the Statement of Defendant on Plea of Guilty. CP 20. Above Castro's signature, in paragraph 12 of the Statement of Defendant on Plea of Guilty, is printed, "My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this 'Statement of Defendant on Plea of Guilty.' I have no further questions to ask the judge." CP 20. Therefore, under the totality of the circumstances, Castro's plea of guilty was voluntarily made. Castro was not misinformed about the standard range for sentencing purposes nor was the plea colloquy misleading on this issue. To the contrary, Castro was informed of the consequences of pleading guilty to other crimes prior to sentencing as it pertained to his standard range on this cause by way of the Statement of Defendant on Plea of Guilty, which Castro and his attorney both acknowledged he read and understood.

- b. Due Process Does Not Require A Court To Orally Question A Defendant To Confirm That He Understands The Consequences Of The Plea.

A trial judge may rely on the written plea statement where the defendant told the court he had read the agreement and that

the statements contained therein were truthful. In re Personal Restraint of Keene, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980). In Keene, the court found no due process requirement that the court *orally* question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense. Id. at 207. The Keene court emphasized that neither CrR 4.2 nor prior case law explicitly required oral inquiries. 95 Wn.2d at 206. Knowledge of the direct consequences of the plea can be satisfied by the plea documents. In re Personal Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001).

Although neither the prosecutor nor the court orally advised Castro his standard sentencing range would increase if he pled guilty to a new offense prior to sentencing, Castro was advised of this consequence in the Statement of Defendant on Plea of Guilty. As noted previously, Castro and his attorney both affirmatively informed the court that Castro had read and understood the entire Statement of Defendant on Plea of Guilty. 1 RP 1-11; CP 20. Castro also acknowledged that his attorney answered all of his questions in advance of the hearing. 1 RP 3. The court properly inquired as to whether Castro understood the documentation offered in support of Castro's plea of guilty, and Castro repeatedly

affirmed that he understood the contents of the Statement of Defendant on Plea of Guilty; Castro affirmed his understanding orally to the prosecutor, orally to the Court and in writing by signing the Statement of Defendant on Plea of Guilty underneath paragraph 12, which further articulates an affirmation of understanding of the entirety of the document. CP 20. As such, although Castro was not orally informed of the consequence to his standard sentencing range by pleading guilty to a new crime in advance of sentencing, Castro was properly advised of this consequence in the Statement of Defendant on Plea of Guilty. Therefore, the court properly relied on the written documents in accepting Castro's plea of guilty.

D. CONCLUSION

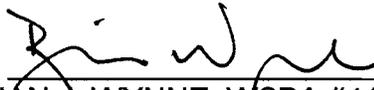
Under the totality of the circumstances, Castro's plea of guilty was knowing, voluntary, and intelligent because he was properly advised of the consequence of the plea in the Statement of Defendant on Plea of Guilty. Additionally, due process does not require the court to orally advise Castro of the consequences of his plea so long as Castro was properly advised in the Statement of

Defendant on Plea of Guilty and he indicated that he understood the consequences of his plea at the time of the hearing.

DATED this 11TH day of October, 2011.

Respectfully submitted,

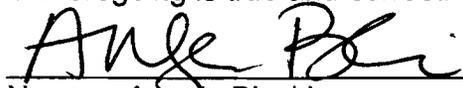
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
BRIAN J. WYNNE, WSBA #41687
Deputy Prosecuting Attorney
Attorneys for Respondent
WSBA Office #91002

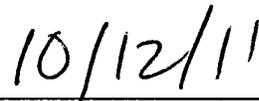
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine Winters, 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. MATTHEW CASTRO, Cause No. 66679-7-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.



Name Angela Blocki
Done in Seattle, Washington


Date 10/12/2011

ORIGINAL