

FILED
COURT OF APPEALS

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NO. 34756-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

ROBERT STOGSDILL,

Appellant.

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

The Honorable Lisa Worswick, Judge

BRIEF OF APPELLANT

LISE ELLNER
Attorney for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090
WSB #20955

PM 10/27/06

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A. ASSIGNMENT OF ERROR

The trial court failed to inquire as to whether the defendant understood all of the constitutional rights waived by pleading guilty thus making it impossible to determine that his plea was knowing, voluntary and intelligent.

Issue Presented on Appeal

Did the trial court's failure to inquire as to whether the defendant understood all of the constitutional rights he waived render his plea unconstitutional?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

James Stogsdill was charged by amended information with rape of a child in the second degree in violation of RCW 9A.44.076. CP 23. He pleaded guilty as charged in the amended information. CP 25-36. Mr. Stogsdill acknowledged that there was only a factual basis for the rape charge against one of the victims but nonetheless admitted to raping a second child who was between the age of 14-16. CP 31. Mr. Stogsdill stipulated to his offender score. CP 37-39. He received a standard range sentence. CP 55-67. Mr. Stogsdill fired his attorney and moved the court for reconsideration of his sentence. 2RP 3-4. The Court declined to hear the motion because Mr.

Stogsdill fired his attorney. Id. This timely appeal follows. CP 69-82.

2. SUBSTANTIVE FACTS

Counsel for Mr. Stogsdill indicated that he went over the plea form with Mr. Stogsdill three weeks prior to the plea hearing. RP 5. The trial judge engaged Mr. Stogsdill in the following colloquy regarding his constitutional rights:

There are a number of constitutional rights that you are giving up by pleading guilty. They're listed in section five of each of these documents. That list explains your rights to trial, the rights you would have at trial and certain appeal rights. So you have any questions about those rights?

No, ma'am, I don't.

RP 7. Mr. Stogsdill acknowledged that was neither threatened nor made any promises to induce him to plead guilty. RP 12. The Judge determined that the plea was voluntary even though she did not explain the nature of the constitutional rights Mr. Stogsdill waived by pleading guilty. RP 14. . The trial court did not ask Mr. Stogsdill any questions regarding his constitutional rights. Rather she affirmed that he had a GED, read the statements on plea of guilty and understood them before signing. RP 6. Counsel for Mr. Stogsdill informed the court that he did review the

statements of defendant on plea of guilty with Mr. Stogsdill and that he believed that his client understood the documents. RP 5.

C. ARGUMENT

1. APPELLANT'S PLEA WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT WHERE THE TRIAL COURT FAILED TO EXPLAIN THE NATURE OF EACH CONSTITUTIONAL RIGHT BEING WAIVED.

Due process under the state and federal constitutions requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily.. Boykin v. Alabama, 395 U.S. 238, 243, n.5, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). In the instant case, the defendant's plea was not knowing, voluntary and intelligent because the trial judge did not determine if Mr. Stogsdill understood the nature of the constitutional rights he was waiving. The trial judge simply stated:

There are a number of constitutional rights that you are giving up by pleading guilty. They're listed in section five of each of these documents. That list explains your rights to trial, the rights you would have at trial and certain appeal rights. So you have any questions about those rights?

No, ma'am, I don't.

RP 7. This “colloquy failed to name the constitutional rights or explain any of them in any sort of detail.

“In entering a plea of guilty, a defendant necessarily waives important constitutional rights, including the right to a jury trial, to confront one’s accusers and the privilege against self-incrimination.” State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). The prosecution bears the burden of proving the validity of a guilty plea. Ross, 129 Wn.2d at 287. A reviewing court must indulge every reasonable presumption against waivers of fundamental rights. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L. Ed. 1461, 1466 (1938).

In the instant case, the trial court failed to inquire or explain the nature of Mr. Stogsdill’s constitutional rights. At best the court presumed that he understood the rights and at worst simply did not think it necessary to make a finding that Mr. Stogsdill actually understood the rights he was waiving. Mr. Stogsdill answered “no” when asked if he had any questions regarding his rights. RP 7. This does not satisfy the court’s responsibility to engage the defendant in a colloquy to determine that he pleaded guilty with full knowledge of his legal and constitutional rights.

The sole purpose of a judge questioning a defendant at the time of the plea is to establish that the waiver of rights is constitutionally sufficient. Because the judge failed to do this in the instant case, the plea was not valid. The Court in In re Woods v. Rhay, explained that

[t]o be voluntary, a plea of guilty must be freely, unequivocally, intelligently and understandingly made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act.

In re Woods v. Rhay, 68 Wn.2d 601, 605, 414 P.2d 601 (1966). Mr. Stogsdill pleaded guilty without ever being informed of the nature of his constitutional rights. The trial court's limited colloquy was insufficient to determine that Mr. Stogsdill had "full knowledge of his . . . constitutional rights". *Id.* Such a waiver does not meet the standard of knowing, voluntary and intelligent. *Id.*

Analogous to the instant case is the standard for determining the voluntariness of a plea in the context of a motion to withdraw a guilty plea. The standard requires the trial court to ascertain the subjective understanding of the defendant regarding the rights he waives by pleading guilty. His attorney's representation that he informed his client of his rights is irrelevant as it does not address the defendant's subjective understanding of those

rights. Lutton v. Smith, 8 Wn. App. 822, 824, 509 P.2d 58 (1973), citing, Boykin v. Alabama, supra. In the instant case there was no colloquy to determine Mr. Stogsdill's subjective understanding of his rights.

In a case where the defendant pleads guilty and later returns claiming that he misunderstood the law, a trial court can reasonably rely on the fact that counsel appropriately advised the defendant of his rights but that is not evidence of the defendant's subjective understanding of his rights. In the instant case, the trial court did not ask Mr. Stogsdill any questions regarding his constitutional rights. Rather she affirmed that he had a GED, read the statements on plea of guilty and generally understood them before signing.
RP 6.

Counsel for Mr. Stogsdill informed the court that he did review the statements of defendant on plea of guilty with Mr. Stogsdill three weeks prior to the plea hearing and that he believed that his client understood the documents. RP 5. This dialogue leaves the question unanswered as to whether Mr. Stogsdill rather than his attorney understood the constitutional rights he was waiving and their significance. From the record, it is impossible to ascertain if Mr. Stogsdill was actually made aware of his constitutional rights with sufficient specificity to permit a knowing, voluntary and

intelligent waiver. As stated supra the record must affirmatively indicate the voluntarienss of the plea. Woods v. Rhay, supra, Lutton v. Smith, supra, Boykin v. Alabama, supra.

It is important to note that if signing a plea agreement was conclusive evidence that a plea was voluntary, then a defendant would never be entitled to withdraw his plea. Fortunately that is not the law. Rather, the courts have recognized that although a defendant may indicate in his plea statement that the plea is being made “freely and voluntarily”, that statement is not conclusive evidence that the plea was in fact voluntary and it does not preclude a later claim of involuntariness. State v. Frederick, 100 Wn.2d 550, 557, 674 P.2d 136 (1983); Barnes v. State, 523 A.2d 635, 643, (Md. App. 1987). This Court should remand for withdrawal of the plea.

D. CONCLUSION

Mr. Stogsdill’s plea was unconstitutional because he was not informed of the constitutional rights he waived by pleading guilty. A plea that is not knowing, voluntary and intelligent must be vacated. For these reasons, Mr. Stogsdill respectfully requests this court vacate his plea and remand for new proceedings.

DATED this 27th day of October 2006.

Respectfully submitted,

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STATE OF WASHINGTON

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LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County prosecutor's office 930 Tacoma Ave. S. Rm. 946, Tacoma, WA 98402 and James Stogsdill DOC# 713484 Washington State Penitentiary 1313 13th Avenue Walla, Walla, WA 99362 a true copy of the document to which this certificate is affixed, on October 27, 2006. Service was made by depositing in the mails of the United States of America, properly stamped and addressed.

Signature