

NO. 34756-3

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAMES STOGSDILL, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Lisa Worswick

No. 04-1-03718-4

RESPONDENT'S BRIEF

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly accept defendant's guilty plea for rape of a child in the second degree when defendant entered the plea knowingly, voluntarily, and intelligently?

B. STATEMENT OF THE CASE.

1. Facts

On July 30, 2004, the State charged James Stogsdill, hereinafter "defendant," with two counts of rape of a child in the second degree (Counts I and III), one count of child molestation in the second degree (Count II), one count of child molestation in the third degree (Count IV), and two counts of child molestation in the third degree (Counts V and VI), for incidences involving AT and HW. CP¹ 1-5.

On March 2, 2006, the State filed an amended information, reducing the charges to one count of child rape in the second degree, as part of a plea negotiation which would allow defendant to be eligible for a Special Sex Offender Sentencing Alternative (SSOSA). CP 23, 24; RP

¹ Citations to Clerk's Papers will be to "CP." Citations to the verbatim report of proceedings will be to "RP," followed by the date of the hearing.

(03/02/06) 4. Both AT and HW were referenced in the single count, despite the fact that HW was 14 years old at the time of the acts. See CP 23, 25-36; RP (03/02/06) 13.

Defendant pleaded guilty to one count of rape of a child in the second degree, for engaging in sexual intercourse with AT, who was between 12 and 14, more than 36 months younger than defendant, and not his wife. CP 25-36. The court found defendant's plea to be knowing, voluntary, and intelligent and accepted the plea. RP (03/02/06) 14.

At sentencing, defendant requested a SSOSA. The court determined that defendant's risk of re-offense was too high for a SSOSA, based on his evaluation. RP (03/31/06) 36. The court sentenced defendant to 136 months to life, with 457 days credit for time served. RP (03/31/06) 37.

Defendant filed this timely notice of appeal. CP 69-82.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY ACCEPTED DEFENDANT'S GUILTY PLEA WHEN DEFENDANT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY PLEADED GUILTY TO ONE COUNT OF RAPE OF A CHILD IN THE SECOND DEGREE, IN ORDER TO BECOME ELIGIBLE FOR A SSOSA.

Due process requires that a defendant's guilty plea be made knowingly, voluntarily, and intelligently. In re Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). In addition to these constitutional requirements,

CrR 4.2 precludes a trial court from accepting a guilty plea without first determining that the defendant is entering the plea voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. CrR 4.2(d)²; State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

A plea is involuntary when a defendant did not understand or was misinformed about the direct consequences of pleading guilty, but a lack of information about collateral consequences cannot justify withdrawal of a plea. State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

Knowledge of the direct consequences of a guilty plea may be satisfied from the record of the plea hearing or clear and convincing extrinsic evidence. Ross, 129 Wn.2d at 287.

In the present case, the court engaged defendant in colloquy regarding his guilty plea. See RP (03/02/06) 5-14. The court discussed defendant's constitutional rights in relation to defendant's plea document:

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

² CrR 4.2(d) states, "[t]he court shall 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. 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."

Defendant: No, ma'am, I don't.

Court: Did you go over this document carefully with your attorney before you signed each of them?

Defendant: Yes, ma'am, I did.

Court: Did Mr. Graves go over them with you line by line and explain them to you?

Defendant: Yes ma'am, he did.

Court: Did he answer all your questions?

Defendant: Yes, ma'am.

RP (03/02/06) 7. Section five of defendant's statement on plea of guilty lists the constitutional rights defendant waived. See CP 25-36. While the court did not explain each of those rights, the court did ensure that defendant read his waiver of constitutional rights carefully, that his attorney explained each right to him, and that his attorney answered all defendant's questions. RP (03/02/06) 7. The court also gave defendant the opportunity to ask questions during the hearing. RP (03/02/06) 13-14.

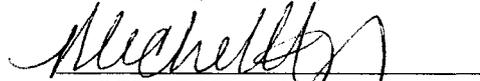
Defendant's acknowledgement of his rights as set forth in his statement of plea of guilty, and his assertion to the court that his attorney carefully explained each right, line by line, is clear and convincing evidence to show that defendant was fully aware of the constitutional rights he was waiving, and that his plea was knowing, voluntary, and intelligent.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests this court to affirm the trial court's decision to accept defendant's guilty plea.

DATED: December 21, 2006.

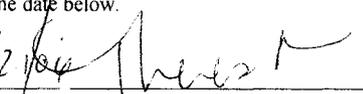
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12/21/06 
Date Signature