

TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
II.	ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF THE CASE.....	1
IV.	ARGUMENT & AUTHORITIES	6
V.	CONCLUSION	9

TABLE OF AUTHORITIES

CASES

<u>State v. Adams</u> , 91 Wn.2d 86, 586 P.2d 1168 (1978)	7
<u>State v. Cameron</u> , 30 Wn. App. 229, 633 P.2d 901 (1981).....	7
<u>State v. Osborne</u> , 102 Wn.2d 87, 684 P.2d 683 (1984).....	7, 8
<u>State v. Taylor</u> , 83 Wn.2d 594, 521 P.2d 699 (1974).....	6

OTHER AUTHORITIES

CrR 4.2(f).....	6
-----------------	---

I. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Jacob Leon Hadley's motion to withdraw his guilty plea.
2. Jacob Leon Hadley received ineffective assistance of counsel during the plea bargaining process.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did Jacob Leon Hadley present facts to establish that a manifest injustice occurred which necessitates the withdrawal of his guilty plea? (Assignments of Error 1 & 2)
2. Did trial counsel's failure to fully share and discuss exculpatory evidence and witness statements with Jacob Leon Hadley before the plea hearing constitute ineffective assistance of counsel during the plea bargaining stage? (Assignments of Error 1 & 2)

III. STATEMENT OF THE CASE

On February 3, 2009, the State charged Jacob Leon Hadley with one count of murder in the first degree (RCW 9A.32.030), or alternatively murder in the second degree (RCW 9A.32.050), based on the shooting death of John Stratton. (CP 1-2) The State also charged Hadley with one count of second degree assault (RCW 9A.36.021), and one count of first degree assault (RCW

9A.36.011), for striking and shooting a second victim, Octavier Bushnell. (CP 2) The State alleged that Hadley was armed with a firearm during the commission of each of the crimes, and also charged Hadley with one count of unlawful possession of a firearm (RCW 9.41.040). (CP 1-3)

The charges arose from an altercation outside Stratton's residence, where Hadley and Bushnell were attending a party. (CP 4-5) When the charges were originally filed, law enforcement believed that Hadley assaulted and shot both Stratton and Bushnell. (CP 4-5; RP 107) Further investigation and forensic test results showed that Stratton and Bushnell were shot with different guns, and several witnesses identified a second shooter, Michael Randon. (RP 107-08)

On March 3, 2010, Hadley entered a guilty plea to an amended information charging second degree murder for the death of Stratton, second degree assault as an accomplice to the striking of Bushnell, and unlawful possession of a firearm. (CP 6-7, 9-18; RP 32) The reason given by the State to support its decision to amend the information was: "[There] are significant evidentiary issues that exist that make conviction at trial unlikely. The amended substantive charges accurately reflect the defendant's

conduct during the incident.” (CP 8)

At the plea hearing, the court engaged in a colloquy with Hadley to determine whether he had thoroughly reviewed his plea statement with his attorney, whether he understood the charges against him and the consequences of pleading guilty, whether he was entering his pleas voluntarily or under pressure, and whether his factual statements relating to the crimes were accurate.¹ (RP 21-32) The court was satisfied by Hadley’s responses, and accepted the pleas. (RP 32)

At the same hearing, Randon also entered guilty pleas to assault for the shooting of Bushnell, and to second degree murder as an accomplice for the shooting of Stratton. (RP 4-5, 18-20) During Randon’s sentencing proceedings, both Stratton’s sister, Rachel Stratton, and Stratton’s mother, told the court that they believe the wrong man was convicted of shooting Stratton. (RP 38-40) They believed that Randon, not Hadley, actually shot Stratton. (RP 38-40)

Hadley subsequently filed a motion to withdraw his guilty plea, alleging that he received ineffective assistance of counsel.

¹ Hadley entered Alford/Newton pleas to the assault against Bushnell, but entered factual pleas to the second degree murder and firearm possession charges, and admitted in the plea to shooting at Stratton. (CP 17; RP 30-31)

(CP 24-29) In a declaration submitted with the motion, Hadley states that: he was not given an opportunity to review the discovery or discuss the discovery with his trial counsel; that trial counsel did not tell him that Rachel identified a different man as Stratton's shooter; that his trial attorney did not inform him about other discrepancies and contradictions in the evidence and witness statements; that he believed his trial attorney had negotiated a deal where he would plead to manslaughter; that the plea deal was presented to him right before the hearing and he did not have enough time to think about it; and that his trial attorney told him he had no choice but to take the deal for second degree murder. (CP 30-33)

Hadley's trial counsel was questioned at a hearing on the motion, and described the witness statements that inculpated Hadley and indentified him as Stratton's shooter. (RP 71, 75, 77-78) Trial counsel also explained that Hadley had made incriminating statements after the shooting, which counsel believed would have been admissible against Hadley at a trial. (RP 71-72) Trial counsel claimed that he had discussed all of the evidence with Hadley several times during the months leading up to the plea, and had informed Hadley that Stratton's sister was claiming that

Randon shot both Stratton and Bushnell. (RP 71, 72, 73, 86, 109-10) However, counsel knew Rachel to be mistaken, because the ballistics tests showed that Stratton and Bushnell were shot with different caliber guns, so they could not have been shot by the same person. (RP 73, 75-76, 79, 86)

Trial counsel explained that plea negotiations occurred over several months, but the finalization of the plea occurred rather quickly. (RP 70, 91) Hadley had expressed to counsel that he hoped to obtain a deal whereby he would plead to manslaughter and serve 10-15 years. (RP 84, 85, 111-12) The deal that counsel negotiated involved a plea to second degree murder and a joint recommendation for 180 months (15 years). (RP 84-85)

Trial counsel stated that he informed Hadley of the potential deal at least a day before the plea hearing, but discussed several major the details of the plea agreement just before going into the courtroom for the hearing. (RP 85, 86, 87) Counsel explained that Hadley had wanted to enter an Alford/Newton plea to all the charges, but just before the hearing counsel explained to Hadley that the State had demanded that he admit to shooting Stratton. (RP 87, 110) Counsel said he did not push Hadley to take the deal, but did inform him that he must either take the deal or go to trial.

(RP 89) Counsel testified that he believed he communicated all of the important information to Hadley. (RP 97)

The trial court denied Hadley's motion to withdraw the guilty plea. (RP 118) The court did not believe that Hadley had shown that his plea was entered into involuntarily or without an understanding of the plea and its consequences. (RP 118) The trial court then sentenced Hadley to a term of confinement totaling 178 months. (RP 124-25; CP 94) This appeal timely follows. (CP 102)

IV. ARGUMENT & AUTHORITIES

"The trial court shall allow a defendant to withdraw his plea of guilty whenever it appears that withdrawal is (1) necessary to correct a (2) manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure[.]" State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974) (emphasis omitted); CrR 4.2(f). The burden is on the defendant to show that withdrawal of the plea is necessary. Taylor, 83 Wn.2d at 596.

Ineffective assistance of counsel at the plea bargaining stage can be grounds for withdrawal of a guilty plea. The test used to determine whether a criminal defendant was denied effective assistance of counsel is whether, after considering the entire

record, it can be said that the accused was afforded an effective representation. State v. Adams, 91 Wn.2d 86, 89, 586 P.2d 1168 (1978). In a plea bargaining context, “effective assistance of counsel” requires that counsel “actually and substantially [assist] his client in deciding whether to plead guilty.” State v. Cameron, 30 Wn. App. 229, 232, 633 P.2d 901 (1981).

In State v. Osborne, Everett and Mary Osborne challenged their pleas of guilty to second degree felony murder alleging, among other things, that they did not receive effective assistance of counsel. 102 Wn.2d 87, 89, 684 P.2d 683 (1984). They claimed they received ineffective assistance of counsel because counsel failed to come up with a viable defense or to conduct adequate pretrial investigation. 102 Wn.2d at 99. On appeal, the Court affirmed their pleas, noting: “[t]he record indicates, however, that counsel interviewed State witnesses, obtained independent evaluations of the autopsy report, and thoroughly reviewed the evidence with petitioners.” 102 Wn.2d at 99.

This case differs from Osborne, however. Hadley does not claim that his counsel failed to adequately review the record, interview witnesses, or conduct independent investigation. Rather, he claimed that counsel failed to fully disclose the results of his

research and investigation before urging Hadley to plead guilty to second degree murder. (RP 113-15; CP 30-33)

The Osborne court affirmed the guilty pleas in part because it found that counsel “thoroughly reviewed the evidence with petitioners.” 102 Wn.2d at 99. That did not happen here. Trial counsel testified that he believed he communicated all relevant information to Hadley. (RP 97) But Hadley states that most of the exculpatory evidence was not disclosed to him before he entered his plea and, had he known these facts, he would have chosen to exercise his constitutional right to a trial. (CP 30-33)

Moreover, the trial court did not deny Hadley’s motion because the court believed counsel and not Hadley. (RP 122-23) Rather, the court denied the motion because, after reviewing the transcript from the plea hearing, the judge believed that Hadley understood the plea and the consequences, and voluntarily entered the plea. (RP 122-23) But that does not address Hadley’s claim that, if he had a full knowledge and understanding of the State’s evidence, he would not have entered the plea. The court did not address the claim that trial counsel failed to fully inform Hadley of all the evidence pointing to his innocence, and that counsel thereby failed to “actually and substantially” assist Hadley in deciding

whether to plead guilty or proceed to trial.

A thorough discussion of the evidence, both inculpatory and exculpatory, is critical to a defendant's decision of whether to go to trial or plead guilty. A defendant with an incomplete understanding of the evidence and law may appear to understand the choice he made. But because that understanding is based on incorrect or incomplete information, it cannot therefore be truly knowing and voluntary. Trial counsel has a duty to ensure that a defendant has all of the relevant information and evidence before entering a plea.

Hadley asserted in his sworn declaration that counsel failed to inform him of crucial information before the plea hearing. (CP 30-33) Hadley's declaration presents facts sufficient to establish that this information was not adequately discussed with him by his trial counsel, and that this lack of knowledge caused him to enter into a plea agreement that he otherwise would not have taken. Hadley therefore received ineffective assistance during the plea bargaining process, which is a manifest injustice necessitating the withdrawal of his guilty plea.

V. CONCLUSION

Hadley claimed that trial counsel did not inform him of the exculpatory witness statements before he entered a guilty plea, and

that trial counsel did not give him sufficient time to process and consider whether to accept the State's plea offer. His decision to enter into a plea agreement was therefore not made with the necessary knowledge and understanding of the consequences of pleading guilty versus proceeding to trial. This lack of knowledge was a direct result of trial counsel's inattentiveness, and he therefore received ineffective assistance of counsel at the critical plea bargaining stage. Hadley's convictions should be reversed and he should be allowed to withdraw his guilty plea.

DATED: July 15, 2011

Stephanie Cunningham

STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Jacob Leon Hadley

CERTIFICATE OF MAILING

I certify that on 07/15/2011, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) Jacob L. Hadley, DOC#342529, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326.

Stephanie Cunningham

STEPHANIE C. CUNNINGHAM, WSBA #26436

FILED
COURT OF APPEALS
DIVISION II
11 JUL 18 AM 10:13
STATE OF WASHINGTON
BY
DEPUTY