



IV. FACTS RELATED TO ISSUES

Mr. Leach incorporates the facts in his opening brief and refers to the record for additional facts necessary for a full review of his claims.

NOVEMBER 9, 2010 PLEA COLLOQUY

At Mr. Leach plea hearing the court asked if Mr. Leach understood he is pleading guilty to Assault in the first degree with a firearm enhancement. A total of 222 to 276 months including the enhancement. The court did not explain to Mr. Leach that the 60 month enhancement would be served consecutively. (RP 6-7). Later the court explained "This is a most serious offense and a strike offense and that if he gets 3 strikes he would be subject to life in prison." (RP 9). Mr. Leach replied that he did understand the 3 strikes law. The court then stated "I don't know if you have a prior strike." Counsel for Mr. Leach informed the court "He does not your honor. His prior strike was as a juvenile, so he is at this point with one strike. (RP 9-10) "So this would be your first strike." Yes your honor." THE COURT: "It does mean two more strikes and you go to prison for life without parole, okay." "Yes your honor." (RP 10). The court accepted his guilty plea as knowingly and intelligently and voluntarily given. (RP 12).

FEBRUARY 11, 2011 PLEA WITHDRAW HEARING

The court would not reappoint counsel to allow further briefing on the issues Mr. Leach had regarding a motion to withdraw. Counsel for Mr. Leach stated to the court, "As I understand it, he said he did not understand that the enhancement on the firearm was flat time and consecutive".... "The other thing he said to me that we did not correctly calculate his offender score." (RP 6). The court requested to hear from Mr. Leach who stated in part: "I believe I have ineffective assistance of counsel. I also believe my attorney committed fraud inducement." "He misled me in taking the plea bargain by saying I would get less time." (RP 9). The court denied the motion to dismiss counsel and to withdraw plea finding no ineffective assistance of counsel in the case. (RP 11).

FEBRUARY 25, 2011 SENTENCING HEARING

Mr. Leach, through counsel renewed his motion to withdraw his plea and for new counsel. The court denied the motion (RP 14). Mr. Leach would not stipulate to the state's version of his offender score. (RP 15). The State then informed the court that "This is his second strike. It would have been his third, if his 2006 Robbery 2nd degree wouldn't have been a juvenile case." (RP 20). The court sentenced Mr. Leach to 260 months under a 6 point offender score. (RP 28). This Appeal follows:

IV. ARGUMENT

Mr. Leach's Guilty Plea Represents A Manifest Injustice  
Warranting Withdraw

The Washington Court Criminal Rules allow for a defendant to withdraw a guilty plea whenever it appears that the withdrawal is necessary to correct a manifest injustice. CrR 4.2(f). A defendant bears the burden of proving a manifest injustice. (STATE v. ROSS, 129 Wn. 2d 279, 283-84, 916 P.2d 405 (1996)). A non exclusive list of indicia of manifest injustice is 1). DENIAL OF OF EFFECTIVE ASSISTANCE OF COUNSEL 2). THE PLEA IS NOT RATIFIED BY THE DEFENDANT; 3). THE PLEA IS INVOLUNTARY; AND 4). THE PLEA AGREEMENT WAS NOT KEPT BY THE PROSECUTOR. (STATE v. TAYLOR, 83, Wn 2d. 699, (1974): Two of the indicia listed above are present here. The first being: Mr. Leach did not make a knowing and intelligent plea because he did not understand the consequences of the plea. First, Mr. Leach understood the standard the standard range but he did not understand the consecutive gun enhancement and the court did not explain that it will be ran consecutive. (RP 6-7, PLEA COLLOQUY). Second, Mr. Leach understood he is pleading guilty to only one strike and "this will be his first strike". (RP 10) (PLEA COLLOQUY). A defendant must be advised of all direct consequences of a guilty plea. (STATE v. ROSS, 129 Wn 2d 279, 284, 916 P.2d 405 (1996)). Direct consequences are those that have a definite, im-

mediate, and largely automatic effect on the range of defendants punishment. (ROSS, 129 Wn 2d. at 284). 60 months to be served consecutive to a 200 month sentence has a largely automatic effect on the range of Mr. Leach's punishment. Coupled with this large effect on his punishment, Mr. Leach' plead guilty understanding he will only have one strike. (RP 10 (PLEA COLLOQUY)). At sentencing the Court and State found Mr. Leach had a prior strike, (NOT EXPLAINED OR REPRESENTED AT THE PLEA COLLOQUY). and sentenced him with a total of 2 strikes. (2-25-11 RP 20). Additionally at sentencing, Mr. Leach would not stipulate to the State's representation of his prior convictions. (2-25-11 RP 15). In STATE v. BISSON, 156 Wn. 2d 507, 130 P3d 820 (2006). the Supreme Court remanded for withdraw of a guilty plea because he had not been clearly informed that the 5 deadly weapon enhancements applicable to the first degree Robbery counts had to be served consecutively to one another. Here Mr. Leach was also misinformed that his 5 year gun enhancement would run concurrent and the record clearly shows he was not informed at his plea colloquy that the 5 year enhancement would run consecutive.

Its clear Mr. Leach did not understand the consequences of his guilty plea and has shown this court that his guilty plea was involuntarily creating a manifest injustice. SEE ALSO (STATE v. MOORE, 75 Wn APP. 166, 876 P2d. 959 (1994). DEFENDANT ENTITLED TO WITHDRAW GUILTY PLEA DUE TO MISUNDERSTANDING CONSEQUENCES OF PLEA.

The second manifest injustice here is ineffective assistance of counsel. Ineffective assistance of counsel constitutes a manifest injustice. (STATE v. MARSHALL, 144 Wn. 2d. 266, 281, 27 P3d 192 (2001).

In (STATE v. A.N.J. , 168 Wn. 2d 91, 116, 225 P.3d 956 (2010).

The Supreme Court stated that when there are additional consequences of an unquestionable serious nature it may be manifestly unjust to hold the defendant to his earlier bargain. (ANJ 168 Wn. 2d at 116). The court concluded that because ANJ was misinformed as to the consequences of his plea, he was entitled to withdraw it. (ANJ Wn 2d at 117). Here it's also clear Mr. Leach was misinformed about his prior strike and pleading guilty to only one strike.

The court: "So this would be your first strike". "Yes, your honor." (RP 10) PLEA COLLOQUY. The strickland test applies to in cases where a criminal defendant enters a plea of guilty. (HILL v. Lockhart, 474 U.S. 52, 59, 88 L Ed. 2d 203, 106 S. Ct. 366 (1985). In Strickland v. Washington, 466 U.S. 668 (1984). the Supreme Court established a 2 prong test for determining whether assistance of counsel is ineffective. Both prongs must be proved by a defendant in order to prevail. (STRICKLAND, 466 U.S. at 687). Under one prong--- the performance prong-- the defendant must show that counsel's performance was deficient. Under the other prong-- the prejudice prong-- the defendant must show the deficient performance prejudiced the defense. (STRICKLAND, 466 U.S. at 687).

Here Mr. Leach's attorney mistakenly informed him that he will be pleading guilty to his first strike. It was only after being assured that he has only "A first strike" that he agreed to plead guilty. The attorney's misstatement that "it was his first strike", fell below an objective standard of reasonableness and he relied on his attorney's advice to his serious detriment in entering his guilty plea.

This satisfies both prongs of the STRICKLAND test and indicates another Manifest Injustice.

V. CONCLUSION

Mr. Leach has shown two manifest injustices warranting withdraw of his guilty plea. Please remand for withdrawal of his guilty plea.

DATED: \_\_\_\_\_

RESPECTFULLY SUBMITTED,

\_\_\_\_\_

PRESENTED BY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Davante Leach D.O.# 347464 C-UNIT HS  
Callam Bay Corrections Center  
1830 Eagle Crest Way  
Callam Bay, WA 98326-9724

FIRST  
CLASS

Clerk D  
count of  
950  
Taco

Legal Mail