

FILED
COURT OF APPEALS
DIVISION II

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NO. 43462-8-II

STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Respondent,

v.

DARRYL AUSTIN SATCHER,

Appellant.

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

The Honorable Bryan E. Chushcoff

BRIEF OF APPELLANT

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P. M. 11-26-2012

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A. ASSIGNMENT OF ERROR

Appellant's guilty plea is constitutionally invalid because it was not knowing, voluntary, and intelligent.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Is appellant entitled to withdraw his guilty plea where his plea is constitutionally invalid because it was not knowing, voluntary, and intelligent as due process requires?

C. STATEMENT OF THE CASE¹

On February 28, 2011, the State charged appellant, Darryl Austin Satcher, with one count of murder in the first degree with a firearm enhancement; one count of robbery in the first degree; two counts of assault in the second degree; and one count of unlawful possession of a firearm in the second degree. CP 1-3. The State amended the information on March 5, 2012, charging Satcher with one count of murder in the second degree with a firearm enhancement and two counts of robbery in the first degree. CP 4-5. On the same day, Satcher pleaded guilty to the three charges. CP 6-14; 1RP 5 -16.

On April 20, 2012, the trial court sentenced Satcher to 240 months for murder in the second degree and 60 months for the firearm

¹ There are two volumes of verbatim report of proceedings: 1RP - 03/05/12; 2RP - 04/20/12.

enhancement for a total of 300 months in confinement. The court also imposed a 68 month sentence for each of the robbery in the first degree convictions to be served concurrently with the sentence for murder in the second degree. The court additionally imposed 36 months of community custody for the murder conviction and 18 months of community custody for each of the robbery convictions. CP 63-74; 2RP 32-37.

Satcher filed a timely notice of appeal on May 21, 2012. CP 75.

D. ARGUMENT

SATCHER'S GUILTY PLEA IS CONSTITUTIONALLY INVALID WHERE IT WAS NOT KNOWING, VOLUNTARY, AND INTELLIGENT.

Satcher is entitled to withdraw his guilty plea because his plea was not knowing, voluntary, and intelligent as due process requires.

Due process requires that a guilty plea be voluntary, knowing, and intelligent. U.S. Const. amend. 14; Wash. Const. art. I, section 3; Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Personal Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d (2004). The State bears the burden of proving the validity of a guilty plea, including the defendant's knowledge of the direct consequences of the plea. State v. Knotek, 136 Wn. App. 412, 423, 149 P.3d 676 (2006). If based on misinformation about sentencing consequences, a guilty plea is not entered knowingly. State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122

(1988). A plea is involuntary if the plea is entered without knowledge of the direct sentencing consequences. In re Isadore, 151 Wn.2d at 298.

Under CrR 4.2(d), a trial 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.” One purpose of this rule is to fulfill the constitutional requirement that a guilty plea be made voluntarily. In re Personal Restraint of Keene, 95 Wn.2d 203, 206, 622 P.2d 360 (1980)(citing McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)); Wood v. Morris, 87 Wn.2d 501, 554 P.2d 1032 (1976). Failure to comply fully with CrR 4.2 requires that the defendant’s guilty plea be set aside and his case remanded so that he may plead anew. Wood, 87 Wn.2d at 511.

An involuntary plea is a manifest injustice and withdrawal of the plea is permitted to correct such an injustice. State v. Ross, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996). A defendant who makes an involuntary plea need not make a special showing of materiality to be afforded a remedy. In re Isadore, 151 Wn. 2d at 296.

The record here substantiates that Satcher’s plea was not knowing, voluntary, and intelligent. At the plea hearing, defense counsel stated that the court “should have before it the Statement of Defendant on Plea of Guilty” and that he “went through all of the numbered paragraphs with Mr.

Satcher and had him initial those paragraphs that did not apply to him.” 1RP 5. The court noted, “It looks like you have struck off the language about the firearm enhancement, but it’s my understanding that there is a firearm enhancement.” 1RP 6. Defense counsel recognized that he mistakenly struck the provision but told the court, “It’s not a surprise. [Satcher] knows that there was a firearm enhancement in Count I.” The court replied, “Right.” 1RP 7. Defense counsel had Satcher initial the change. 1RP 8; CP 12-13. The court did not ask Satcher if he fully understood the provision in the Statement of Defendant on Plea of Guilty, which states that “firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence.” CP 13. Defense counsel assured the court that he “read” the plea agreement to Satcher and “reviewed all the paragraphs with him, despite admitting that he mistakenly crossed out the firearm enhancement provision. 1RP 8.

Thereafter, the court discovered another error regarding the length of community custody for murder in the second degree:

THE COURT: [I]s it a community custody range anymore or is it just 48 months?

PROSECUTOR: I believe it’s 36.

DEFENSE COUNSEL: 36 to 48, I believe. Your Honor.

THE COURT: It says 24 to 48, and I was wondering -- I thought they got rid of the ranges. I think that --

PROSECUTOR: They did. It should be 36 months, Your Honor.

.....

THE COURT: So, it's actually just 36. On Count II and III, is that also 36 months?

PROSECUTOR: I think it's 18 on Counts II and --

DEFENSE COUNSEL: 18 on Count II and III, your Honor.

THE COURT: Okay, I will change this.

1RP 9-10.

The record reflects that the court corrected the community custody time on the plea agreement but Satcher did not initial the change, and the chart with the incorrect community custody ranges was not stricken. CP 7, 9. (Paragraph 6 (a) and (f) of Statement of Defendant on Plea of Guilty). Then the court asked Satcher if he understood the standard ranges and the length of community custody for the crimes. Satcher replied that he believed the standard range for robbery in the first degree was 41 to 54 months. The court noted that the standard range had been changed on the plea agreement. Defense counsel explained that he initially miscalculated the standard range, "I realized my error, indicated that to Mr. Satcher. And when we reviewed the Statement of Defendant on Plea of Guilty, I

put the proper range in there.” 1RP 11. The court clarified that the standard range was 51 to 68 months and Satcher said that he understood. 1RP 10-12.

Thereafter, the court asked Satcher if he understood that it did not have to follow the sentencing recommendations of the State or the defense and Satcher replied, “No.” The court responded, “You don’t understand that?” Satcher asked the court to “[s]ay that one more time,” and when the court repeated itself, Satcher said he understood. 1RP 12-13. The court did not review or state on the record what the prosecutor or defense would recommend. Paragraph 6 (g) of the Statement of Defendant on Plea of Guilty contains the prosecutor’s recommendation but erroneously omits the 18 months of community custody for each of the robbery in the first degree convictions. CP 9.

In State v. Branch, 129 Wn.2d 635, 919 P.2d 1228 (1996), the Washington Supreme Court observed that:

When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea’s voluntariness. When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.

129 Wn.2d at 642 n. 2 (quoting State v. Perez, 33 Wn.App. 258, 261-62, 654 P.2d 708 (1982)).

Here, although Satcher said that he read and understood the Statement of Defendant on Plea of Guilty, he expressed confusion about the standard range and what sentence the court could impose, which are consequences of the plea. Importantly, the court never asked Satcher if he knew what the prosecutor and defense counsel would recommend for sentencing. Furthermore, the Statement of Defendant on Plea of Guilty contained material errors involving a mandatory firearm enhancement and length of community custody. Additionally, the Statement of Defendant on Plea of Guilty contains other errors which were overlooked. The erroneous community custody chart was not stricken and the error in the prosecutor's recommendation was not corrected. CP 9. Consequently, the presumption of voluntariness is refuted by the record.

Satcher's apparent confusion, miscommunication between him and defense counsel, and numerous errors made by defense counsel in preparing the Statement of Defendant on Plea of Guilty clearly compromised the voluntariness of the plea. Nonetheless, the trial court proceeded to accept his guilty plea. Due process requires that a guilty plea may be accepted only upon a showing that the accused entered the plea intelligently and voluntarily. State v. A.N.J., 168 Wn.2d 91, 120, 225 P.3d

956 (2010). CrR 4.2(d) prohibits the trial court from accepting a guilty plea without first assuring that the accused understood the consequences of the plea. Id.

Satcher's guilty plea must be vacated because the trial court erred in accepting his plea without first assuring that Satcher absolutely understood the consequences of the plea, especially in light of the fact that he was facing a potential sentence of 325 months in confinement. A guilty plea entered and accepted during a hearing fraught with errors and distractions cannot be deemed constitutional.

E. CONCLUSION

For the reasons stated, this Court should vacate Satcher's constitutionally invalid plea and remand to the trial court for a hearing before a different judge.

DATED this 26th day of November, 2012.

Respectfully submitted,



VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, Darryl Austin Satcher

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue, Tacoma, Washington 98402 and Darryl Austin Satcher, DOC # 357512, Washington State Penitentiary, 1313 N 13th Avenue, Walla Walla, Washington 99362.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of November, 2012 in Kent, Washington.



VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

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