

NO. 45044-5-II

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

STATE OF WASHINGTON,

Appellant,

v.

D.J.C.
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Gordon Godfrey, Judge

REPLY BREIF OF CROSS APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant's plea was not knowing, voluntary and intelligent because he was not adequately advised that sex offender registration was a mandatory sentencing requirement and the statement of defendant on plea of guilty did not contain the sex offender registration requirements.

Issues Presented on Appeal

1. Was Appellant's plea knowing, voluntary and intelligent where he was not advised of the specific sex offender registration sentencing requirements?

B. RESPONSE STATEMENT OF THE CASE

D.J.C. incorporates by reference all of his prior briefs.

The state did not include an offender registration requirement attachment to the statement of defendant on plea of guilty.

1. D.J.C.'S PLEA WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT BECAUSE THE TRIAL COURT DID NOT ADEQUATLEY APPRISE D.J.C. OF SPECIFIC REQUIREMETNS OF SEX OFFENDER REGISTRATION.

Contrary to the state's assertion in its brief, D.J.C. was not adequately advised that sex offender registration was a direct consequence of pleading guilty to communication with a minor for immoral purposes. CP 13-18. The Statement of Defendant on Plea of Guilty section "12 C" appears partially crossed out and it references a document that was not attached to the plea agreement: "The specific requirements are set forth in the 'Offender Registration Attachment'". Id. This attachment was not provided to D.J.C, was never filed and is not a part of the trial court record. Id.

In the sentencing recommendation section, the plea form simply stated, "local sanctions". Local sanctions are community based consequences, under which the juvenile remains in the community or is released after a short stay in the local juvenile detention facility. WASH. STATE CASELOAD FORECAST COUNCIL, 2012 WASHINGTON STATE JUVENILE DISPOSITION GUIDELINES MANUAL § 1, at 7–8 (Rev.20130625).

a. Direct Consequence of Plea: Sex Offender Registration

A guilty plea is involuntary when a defendant is not informed of all direct consequences of pleading guilty. *In re Pers. Restraint of*

Isadore, 151 Wn.2d 294, 300, 88 P.3d 390 (2004). A direct consequence is one having a definite, immediate, and largely automatic effect on the range of punishment. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A defendant need not be informed of all possible collateral consequences of his plea. *In re Isadore*, 151 Wn.2d at 298.

A defendant cannot make a knowing, voluntary and intelligent decision to plead guilty when he decides to plead guilty on misinformation regarding sentencing consequences. *Robinson*, 172 Wn.2d at 790 (citing, *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988) *overruled on other grounds by State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011)).

In *A.N.J.* the Supreme Court held that sex offender registration was a direct consequence of pleading guilty to a sex offense. *A.N.J.*, 168 Wn.2d at 115. *A.N.J.* argued that he was misled about sex offender registration and the ability to petition for removal of this offense from his record. Sex offender registration is a direct consequence of pleading guilty to a sex offense but the ability to remove the sex offense from the juvenile record is not. *A.N.J.*, 168 Wn.2d at 115.

D.J.C.'s plea was not knowing, voluntary and intelligent because the state failed to provide him with the specific requirements of sex offender registration, a direct consequence of pleading guilty. Here, at best, the plea form was ambiguous. First, the last sentence of section "C" appears crossed out, and second, section "C" references the specific sex offender registration requirements, but that document was not attached or ever filed. The failure to provide this information to D.J.C. prior to pleading guilty renders the plea invalid because D.J.C. could not make a knowing, voluntary and intelligent plea to a direct consequence when he was not informed of the specific requirements for sex offender registration.

b. Remedy

For many years, the Supreme Court has held that "[t]he defendant is entitled to the benefit of his original bargain." *Isadore*, 151 Wn.2d at 303 (quoting, *State v. Tourtellotte*, 88 Wn.2d 579, 585, 564 P.2d 799 (1977)). However in *Barber*, the Supreme Court held that the defendant is not entitled to rely on a sentencing recommendation in a plea that is based on mutual mistake when it is contrary to law. *Barber*, 170 Wn.2d at 873. D.J.C. may therefore choose to withdraw his plea.

D. CONCLUSION

D.J.C. respectfully requests this court remand for withdrawal of the plea because trial court failed to ensure that D.J.C. made a knowing voluntary and intelligent decision to plead guilty with an understanding the direct consequence of sex offender registration.

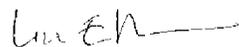
DATED this 17th day of June 2014.

Respectfully submitted,



LISE ELLNER
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I, Lise Ellner, a person over the age of 18 years of age, served the Grays Harbor County prosecutor's office Greg Fuller Gfuller@co.grays-harbor.wa.us and D.J.C. 1101 Woodlawn Ave. #15 Centralia, WA 98531 a true copy of the document to which this certificate is affixed, on June 17, 2014. Service was made to D.J.C. by depositing in the mails of the United States of America, properly stamped and addressed and electronically to the prosecutor.



Signature

ELLNER LAW OFFICE

June 17, 2014 - 3:55 PM

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