

NO. 49113-3-II

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

STATE OF WASHINGTON, RESPONDENT

v.

JAYLIN J. IRISH, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kathryn J. Nelson

No. 12-1-02894-1

BRIEF OF RESPONDENT

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

1. Should defendant's challenge to the validity of his knowing, intelligent and voluntary guilty plea be rejected when his self-serving allegation of involuntariness is refuted by the available record?

B. STATEMENT OF THE CASE.

1. Relevant Facts and Procedure

On August 1, 2012, the Pierce County Prosecutor's Office charged JAYLIN J. IRISH, hereinafter "defendant," with three counts of assault in the first degree with deadly weapon enhancements and one count of drive-by shooting. CP 1-3.

On September 9, 2013, the case was called for trial before the Honorable Kathryn Nelson. RP 1, 3. On September 10, 2013, the State filed a second amended information charging defendant with one count of assault in the first degree and one count of rendering criminal assistance in the first degree. CP 4-5. Defendant pled guilty to the second amended information that same day. CP 6-15; RP 69-75. In support of his guilty plea, defendant admitted the following conduct:

On March 24, 2012, in the City of Tacoma, I drove my car, a white Honda Accord with license plate 368XKL to the area of South 45th Street bordered by South Lawrence Street and South Alder Street. I went there because I heard there was going to be a fight in that location. When I arrived I saw several people fighting. I then saw one

person pull out a gun and fire one shot towards some of the people he had been fighting with. The shooter got into my car and I drove him north on South Alder Street to get him away from the scene so he could avoid apprehension by law enforcement. As we reached the intersection of South Alder Street and South 43rd Street, the shooter told me to stop and let him out of the car so that he could fire another round at the people he had previously shot at. I agreed and let him out. When I drove off I heard a gunshot.

CP 14.

The Statement of Defendant on Plea of Guilty also included the following language:

8. I make this plea freely and voluntarily.
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

CP 13-14. Defendant signed the Statement of Defendant on Plea of Guilty. CP 14.

During the plea hearing, defendant's attorney, Zenon Olbertz, in defendant's presence, represented to the court that he discussed the guilty plea with defendant "for quite a period of time" that morning. RP 69, 71.

Mr. Olbertz also stated,

He's read it and read it and read it, and he indicates to me that he understands the document, the rights he's giving up, the consequences of entering into a plea agreement, the fact that he will be found guilty if the Court accepts the plea of the charges identified in the Second Amended

Information... I'm confident that he's entering this plea knowingly and voluntarily.

RP 71.

The court asked defendant if he reviewed the guilty plea statement with his attorney, and defendant answered, "Yes." RP 72. Defendant also indicated his attorney answered all of his questions regarding the statement on plea of guilty. RP 72. The court asked whether anyone had pressured defendant to plead guilty in the following colloquy:

The Court: Did anyone threaten you to get you to plead guilty today?

[Defendant]: No

The Court: Other than discussing with you the plea agreement and the sentencing recommendation, did anyone make promises to you in order to get you to plead guilty today?

[Defendant]: No.

...

The Court: How do you plead today: Guilty or not guilty?

[Defendant]: Guilty.

The Court: I'm going to accept Mr. Irish's plea of guilty. I'm finding it to be knowingly, intelligently, and voluntarily made. I'm finding that Mr. Irish understands the charges and the consequences of the plea, there's a factual basis for the plea, and that Mr. Irish is guilty.

RP 73-75. *See also*, CP 15.

On October 18, 2013, during the scheduled sentencing hearing, Mr. Olbertz asked to be allowed to withdraw as defendant's attorney, because defendant had expressed a desire to withdraw his guilty plea. RP 84-85. Mr. Olbertz represented to the court that he felt there was a conflict of interest as he was a potential witness if such a motion were to be filed. RP 84-86. The court denied defense counsel's motion and sentenced defendant to a total of 120 months confinement. CP 22; RP 85-86, 92-93.

Defendant filed a timely notice of appeal. CP 32-48. In *State v. Irish*, No. 45509-9-II, this Court held that the trial court violated defendant's right to counsel by denying Mr. Olbertz's motion to withdraw. CP 56-64.¹ The Court vacated defendant's sentence, remanded to allow defendant to move to withdraw his guilty plea, and ordered the trial court to appoint new counsel. *Id.*

On remand, the superior court appointed new counsel to represent defendant. CP 54-55, 65-66, 116. Attorney Robert Quillian subsequently filed a notice of appearance on behalf of defendant. CP 117. Defendant filed a motion to withdraw his guilty plea under CrR 4.2(f), claiming ineffective assistance of counsel and an involuntary plea. CP 77-78. The motion hearing was held on April 28, 2016 and May 26, 2016 before the Honorable Kathryn Nelson. RP 94-96, 162-164.

¹ See *State v. Irish*, No. 45509-9-II, 2015 WL 1472196 (Wash. Ct. App. March 31, 2015) (unpublished).

Defendant testified during the motion hearing. RP 129. Defendant stated that he wanted to take his case to trial but pled guilty out of “pressure,” because he did not feel that his attorney was prepared for trial. RP 140-145. Defendant also testified that he was scared about the amount of prison time he was facing. RP 140. The following exchange occurred between defense counsel (Mr. Quillian) and defendant during the motion hearing:

[Defendant:] Basically, [Mr. Olbertz] was telling me, here’s a guilty plea. I think you should sign it. Basically, you’re looking at a bunch of time, and if you really don’t sign the guilty plea, I don’t believe we can beat this in trial, really. That’s what he said.

[Defense Counsel:] Okay. Did he talk about how much time you would be looking at in prison if you went to trial and lost?

[Defendant:] Yes... Like forty, fifty years.

[Defense Counsel:] Did he threaten you in any way?

[Defendant:] No.

[Defense Counsel:] So did you sign the plea documents?

[Defendant:] I did.

[Defense Counsel:] Why?

[Defendant:] Because I felt like I didn’t have no alternative. Basically, I felt that that was the only alternative I could do. Like, basically, I felt scared and pressured. Like, I felt like that was the only way out is just sign the deal because I was scared of the time.

[Defense Counsel:] Did you feel Mr. Olbertz was prepared to try your case effectively?

[Defendant:] I don't feel like he was prepared.

[Defense Counsel:] Why do you say that?

[Defendant:] Because he really didn't tell me nothing about trial stuff. He never once told me about nothing about trial. Just guilty plea... I was, like, I feel like I should go to trial. I feel like I'm innocent, and he really wasn't really saying anything. He was really saying, like, you're going to lose.

RP 139-141.

Defendant admitted during cross-examination that when he made the decision to plead guilty, it seemed like the right decision at the time.

RP 148. Defendant admitted that Mr. Olbertz never threatened him, but rather gave his legal opinion and assessment of the case. RP 150-151.

[State:] And he says, in his legal opinion, that if you go to trial, you're probably going to lose, right?

[Defendant:] Yes.

...

[State:] So this is kind of his assessment of the case, right?

[Defendant:] Yes.

[State:] And of course, he's been doing this a lot longer than you, right?

[Defendant:] Yes.

[State:] So you hear all of this and you're saying, don't want to go to trial. Don't want to risk it. Do I want to do 40 or 50 years if I lose? You're thinking about these things, right?

[Defendant:] Yes.

...

[State:] And then you decide that 10 years is a lot better than 40 or 50 years, right?

[Defendant:] Yes.

[State:] And then you make the decision to plead guilty?

[Defendant:] Yes.

RP 150-151.

Defendant's mother, Rebecca Green, testified that the morning of September 10th, defendant indicated that he wanted to go to trial. RP 104-105. Ms. Green had no contact with defendant or his attorney over the lunch break. RP 106, 127. After the lunch break, Ms. Green learned that defendant was going to plead guilty. RP 106. Ms. Green was present in court when her son pled guilty. RP 107. When asked if defendant ever indicated that his attorney threatened him to plead guilty, Ms. Green stated, "I don't believe he's ever said he is threatened." RP 123. Ms. Green acknowledged that she felt defendant's attorney "did some things correctly." RP 125.

Defendant's former attorney, Mr. Olbertz, also testified at the motion hearing. RP 164. Mr. Olbertz stated that the decision to plead guilty was defendant's to make, and he believed defendant decided to plead guilty of his own free will. RP 173-174.

[State:] With setting that aside, the idea that he's concerned about the exposure he faces, did you get any sense that there was anything else in the background coercive, anyone twisting his arm, forcing him to plead guilty?

[Mr. Olbertz:] No.

[State:] Did you in any way coerce him or force him to plead guilty?

[Mr. Olbertz:] No. I mean, I was ready to go to trial.

...

[State:] And ultimately, in your assessment, the decision to plead guilty was whose?

[Mr. Olbertz:] Well, ultimately, it was his.

[State:] And did you make that clear to him?

[Mr. Olbertz:] I suppose so. I mean... I don't force people to enter pleas. That's... not appropriate. At this time, also, it's not worth it.

RP 173-175. Mr. Olbertz also testified that based on his work in preparation for trial, he was concerned that "on paper, [defendant] was facing some serious problems at trial." RP 182. Mr. Olbertz stated that he

expressed his opinion to defendant as to the likelihood of him being convicted as an accomplice. RP 182.

After hearing testimony, the court denied defendant's motion to withdraw his guilty plea and entered written Findings of Fact and Conclusions of Law. CP 103-105, 106-107; RP 194-195. The court again sentenced defendant to 120 months total confinement. CP 92; RP 198. Defendant filed a timely notice of appeal. CP 108-109.

C. ARGUMENT.

1. DEFENDANT'S CHALLENGE TO THE VALIDITY OF HIS KNOWING, INTELLIGENT, AND VOLUNTARY GUILTY PLEA SHOULD BE REJECTED, BECAUSE DEFENDANT'S SELF-SERVING ALLEGATION OF INVOLUNTARINESS IS REFUTED BY THE RECORD.

The enforcement of valid plea agreements is of profound public importance. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). A guilty plea is valid when the totality of the circumstances show it was knowing, intelligent and voluntary. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996); *Wood v. Morris*, 87 Wn.2d 501, 503, 505-06, 554 P.2d 1032 (1976). Courts will only permit a plea to be withdrawn to correct manifest injustice. *Codiga*, 162 Wn.2d at 922-23 (citing CrR 4.2(f)²). A manifest injustice occurs when: (1) the plea was not ratified

² CrR 4.2(f) provides, "The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice."

by the defendant; (2) the plea was not voluntary; (3) counsel was ineffective; or (4) the plea agreement was not kept. *State v. DeClue*, 157 Wn. App. 787, 792, 239 P.3d 377 (2010). Defendant bears the burden of proving manifest injustice, which is injustice that is obvious, directly observable, overt, and not obscure. *State v. Ross*, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996); *State v. Pugh*, 153 Wn. App. 569, 577, 222 P.3d 821 (2009) (citing *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974)).

“Because of the many safeguards that precede a guilty plea, the manifest injustice standard for a plea withdrawal is demanding.” *Pugh*, 153 Wn. App. at 577. A trial court’s denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. *State v. A.N.J.*, 168 Wn.2d 91, 106, 225 P.3d 956 (2010). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *Pugh*, 153 Wn. App. at 576.

In this case, defendant claims the trial court abused its discretion in denying his motion to withdraw his guilty plea, because defendant “was pressured into pleading guilty by his fear that his attorney was unprepared for trial and that he predicted that Mr. Irish would be convicted if he went to trial.” Brief of Appellant at 12, 16. Defendant thus argues that his plea was involuntary.³ Brief of Appellant at 12-13. Defendant’s claim fails,

³ Defendant does not raise an ineffective assistance of counsel claim. Therefore, the State will not address any such claim.

because the record clearly shows defendant voluntarily pled guilty. The trial court properly denied defendant's motion to withdraw his guilty plea.

- a. The merits of assignments of error 2, 3, and 4 should be summarily rejected due to defendant's failure to support them with any meaningful analysis.

Defendant assigns error to the trial court's Findings of Fact Nos. 5 and 6 and Conclusion of Law No. 1. *See* Brief of Appellant at 1-2 (Assignments of Error 2, 3, 4). However, defendant fails to argue or discuss these assignments of error in his brief. *See* RAP 10.3(a)(6) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record).

Arguments unsupported by applicable authority and meaningful analysis should not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); *In re Disciplinary Proceeding against Whitney*, 155 Wn.2d 451, 467, 120 P.3d 550 (2005) (citing *Matter of Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (declining to scour the record to construct arguments for a litigant)); RAP 10.3(a). *See also, State v. Stubbs*, 144 Wn. App. 644, 652, 184 P.3d 660 (2008), *reversed by* 170 Wn.2d 117 (2010) (“[p]assing treatment of an issue or

lack of reasoned argument is insufficient to allow for our meaningful review”).

Defendant assigned error to particular findings of fact and the conclusion of law made by the trial court, then apparently abandoned the claims by failing to address them in the body of the opening brief. This Court should decline to review these assignments of error.

- b. Substantial evidence supports the trial court’s findings of fact, and the findings support the court’s conclusion of law.

The court reviews challenged findings of fact and conclusions of law to determine whether substantial evidence supports the challenged findings and whether the findings support the conclusions. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006); *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the findings’ truth. *Levy*, 156 Wn.2d at 733. The appellate court defers to the fact finder regarding credibility of witnesses and the weight to be given to reasonable but competing inferences. *State ex. Rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992).

Unchallenged findings are verities on appeal. *State v. O’Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Challenges to a trial court’s conclusions of law are reviewed de novo. *State v. Gatewood*, 163 Wn.2d

534, 539, 182 P.3d 426 (2008). Unchallenged conclusions of law become the law of the case. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014). The party challenging the findings bears the burden to show that substantial evidence does not support the superior court's findings. *A.N.J.*, 168 Wn.2d at 107.

Defendant has not met his burden to show that substantial evidence does not support the superior court's findings, because he fails to even address the challenged findings in the body of the opening brief. However, should this Court address the merits of defendant's assignments of error, substantial evidence supports the challenged findings of fact, and the findings support the challenged conclusion of law.

In Finding of Fact No. 5, the court found:

The defendant ultimately decided of his own accord to accept the State's plea offer. Mr. Olbertz met his obligation to actually and substantially assist the defendant in deciding whether to plead guilty. Mr. Olbertz thoroughly and sufficiently reviewed with the defendant the statement of defendant on plea of guilty that was later accepted that day by the court.

CP 104. This finding is supported by substantial evidence.

Defendant testified that he understood that it was his decision to plead guilty, and he chose to plead guilty. RP 151, 155. Defendant agreed that no one threatened him in order to get him to plead guilty. RP 140,

150, 155. Mr. Olbertz discussed the plea offer with defendant and gave his legal opinion and assessment of the case. RP 134-135, 150-151.

Mr. Olbertz testified that he discussed defendant's potential sentence if defendant were convicted as charged at trial, and defendant "did not want to go to jail for that kind of time." RP 168. Mr. Olbertz also discussed with defendant the concept of accomplice liability as it related to the evidence in defendant's case. RP 168-169. Mr. Olbertz went over the guilty plea with defendant in detail, per his practice. RP 171. Mr. Olbertz would not have moved forward or allowed his client to plead guilty until he was satisfied that defendant knew what he was doing. RP 172. Mr. Olbertz believed that defendant was pleading guilty of his own free will, and the decision to plead guilty was ultimately defendant's to make. RP 173-174.

Additionally, unchallenged Finding of Fact No. 2 found that "Mr. Olbertz is a highly experience[d] and respected criminal defense attorney who was extremely qualified to provide the defendant with effective representation in this matter." Unchallenged Finding of Fact No. 4 found that defendant and Mr. Olbertz "met for several hours that morning to discuss... (a) the State's offer, (b) the consequences of pleading guilty, (c) the evidence in the case, (d) related legal concepts... including accomplice liability, and (e) the defendant's potential exposure if he proceeded to trial

and was convicted of the charged offenses.” Unchallenged findings are verities on appeal. *State v. O’Neill*, 148 Wn.2d at 571. Substantial evidence supports Finding of Fact No. 5.

In Finding of Fact No. 6, the court found:

On the afternoon of September 10, 2013, the court engaged the defendant in a change of plea hearing. The court was satisfied that the defendant was making a knowing, voluntary, and intelligent decision to plead guilty to assault in the first degree and rendering criminal assistance in the first degree. Accordingly, the court accepted the defendant’s guilty plea.

CP 104-105. This finding is supported by substantial evidence.

Defendant’s Statement on Plea of Guilty and the transcript from the change of plea hearing were both admitted into evidence at the motion hearing. Exhibit 2, Exhibit 3; RP 175. The plea hearing commenced the afternoon of September 10, 2013. Exhibit 3; RP 69. After engaging defendant in a colloquy, the court found defendant’s plea to be knowing, intelligent, and voluntary and accepted his plea of guilty to assault in the first degree and rendering criminal assistance in the first degree. Exhibit 2, Exhibit 3; RP 71-75; CP 6-15. Substantial evidence supports Finding of Fact No. 6.

The trial court made the following Conclusion of Law:

The defendant has not carried his burden to establish a manifest injustice that would warrant the withdrawal of his guilty plea. That defendant entered that plea knowingly,

voluntarily, and intelligently. He made the decision to plead guilty and forgo his trial after full consultation with his attorney. That attorney more than adequately assisted the defendant in the decision of whether to plead guilty.

CP 105. The court's findings support this conclusion of law.

Defendant decided of his own accord to accept the State's offer and plead guilty (Finding of Fact No. 5). The court engaged defendant in a change of plea hearing and was satisfied that defendant knowingly, intelligently, and voluntarily pled guilty to the charges (Finding of Fact No. 6). Defendant met with his attorney, a highly experienced and qualified criminal defense attorney, for several hours to discuss the evidence and legal concepts in the case as well as the consequences of pleading guilty to the State's offer (Finding of Fact Nos. 2, 4). Defendant's attorney actually and substantially assisted defendant in deciding whether to plead guilty and thoroughly reviewed with defendant his statement on plea of guilty (Finding of Fact No. 5).

Substantial evidence supports the challenged findings of fact and they, in turn, support the trial court's conclusion that defendant knowingly, intelligently, and voluntarily pled guilty. Defendant's argument fails.

c. The plea was voluntarily made.

Due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *State v. Robinson*, 172 Wn.2d 783, 794, 263 P.3d 1233 (2011); *Codiga*, 162 Wn.2d at 922. The criminal rules reflect this principle by requiring that the trial court not accept a guilty plea without first determining that the plea was made “voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d). This rule provides further safeguards to protect a defendant against an involuntary plea. *Robinson*, 172 Wn.2d at 792; *State v. Knotek*, 136 Wn. App. 412, 424, 149 P.3d 676 (2006).

Guilty pleas are voluntary when entered by uncoerced defendants that understand the constitutional protections waived, the charged offense’s elements (and how their conduct satisfied those elements), and the direct consequences of pleading guilty. *State v. Holsworth*, 93 Wn.2d 148, 153-57, 607 P.2d 845 (1980); *Hews v. Evans*, 99 Wn.2d 80, 87, 660 P.2d 263 (1983); *State v. Williams*, 117 Wn. App. 390, 398, 71 P.3d 686 (2003).

When a defendant completes a written plea statement and admits to reading, understanding, and signing the statement, a strong presumption

arises that the plea was voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998); *see also Branch*, 129 Wn.2d at 642 (“a defendant’s signature on a plea statement is strong evidence of a plea’s voluntariness”). An information that notifies the defendant of the nature of the crimes to which he is pleading creates a presumption that the plea was knowing, intelligent and voluntary. *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993). Additionally, when a judge orally inquires of the defendant and becomes satisfied of voluntariness on the record, the presumption of voluntariness is “well nigh irrefutable.” *State v. Perez*, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982).

Again, defendant claims his plea was involuntary, because he feared that his attorney was not prepared for trial and he faced a lengthy prison sentence if convicted. Brief of Appellant at 2, 12. Defendant’s claim of “coercion” fails, because his mere allegation of involuntariness is rebutted by the record which shows defendant voluntarily pled guilty.

Once a plea is entered, the defendant bears the burden to show an involuntary plea. *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). The defendant must present some evidence of involuntariness beyond his self-serving allegations. *Id.* at 97. In *Osborne*, one of the defendants moved to withdraw his guilty plea, alleging his plea was involuntary because his wife threatened to commit suicide if he went to

trial. *Osborne*, 102 Wn.2d at 96-97. The Supreme Court determined that because defendant had “specifically stated, several times during the plea proceedings, that his guilty plea was voluntary and free of coercion,” these statements on the record constituted “‘highly persuasive’ evidence of voluntariness” that required more than a “mere allegation by the defendant” to be overcome. *Id.* at 97. In this case, nothing other than defendant’s allegation indicates the plea was coerced.

Defendant submitted a written plea statement, which he acknowledged in open court to have reviewed and understood in full. CP 6-15; RP 71-75. The written plea statement provided that defendant was freely and voluntarily pleading guilty to the charges without any threats of harm or any promises apart from those set forth in the statement. CP 13-14. Defendant signed the plea statement. CP 14. This is prima facie evidence that defendant’s guilty plea was voluntary. *Perez*, 33 Wn. App. at 261.

Additionally, the trial court entered into a colloquy with defendant to determine whether his plea was voluntary. RP 71-75. During the colloquy, defendant informed the trial court that: (1) he went over the statement on plea of guilty with his attorney; (2) his attorney answered all of his questions; (3) he understood the elements of the charges; (4) he understood the important rights he was giving up by pleading guilty, including the right to trial by jury; (5) he understood the sentencing

consequences of his plea; and (6) no one threatened him or made any promises in order to get him to plead guilty.⁴ In light of this colloquy, the presumption that defendant's plea was voluntary is nearly "irrefutable." *Perez*, 33 Wn. App. at 262.

Defendant's asserted fear of the amount of prison time he faced if convicted at trial does not change this result. See Brief of Appellant at 15. "Subjective fear is not coercion externally applied, and does not render a defendant's plea involuntary. If fear of a trial and the resulting stress were sufficient mental coercion to constitute grounds to avoid trial or withdraw a plea, no doubt many defendants could claim their pleas were coerced." *State v. Osborne*, 35 Wn. App. 751, 754-55, 669 P.2d 905 (1983) (citing *North Carolina v. Alford*, 400 U.S. 25, 30-31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)). See also, *State v. Music*, 40 Wn. App. 423, 429-30, 698 P.2d 1087 (1985) (a guilty plea induced by the risk of more severe punishment does not necessarily invalidate an otherwise voluntary plea).

Defendant's claim of coercion contradicts his express assurances to the trial court that he was making the decision to plead guilty without undue force or persuasion. After denying improper influence in open court, a defendant who later tries to retract his admission of voluntariness

⁴ During the evidentiary hearing regarding defendant's motion to withdraw his guilty plea, defendant again confirmed that neither his attorney nor anyone else threatened him to secure his guilty plea. RP 140, 150, 156.

will bear a heavy burden to convince a court that his admission was coerced. *State v. Frederick*, 100 Wn.2d 550, 557-58, 674 P.2d 136 (1983), *overruled on other grounds by Thompson v. State Dep't of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999). Again, a mere allegation by the defendant of coercion will not overcome his “highly persuasive” assertions at the guilty plea hearing of voluntariness. *Osborne*, 102 Wn.2d at 97 (quoting *Frederick*, 100 Wn.2d at 557).

As argued by the State in its briefing below, “defendant’s motion to withdraw his plea is nothing more than a classic case of buyer’s remorse... He was set to begin a trial with a real potential of a *de facto* life sentence. It is no wonder that he, after consultation with his experienced attorney, chose to accept a plea offer with a serious reduction in charges with a sentence as low as ten years.” CP 80. After receiving an honest assessment and legal opinion from his attorney, defendant was faced with a choice between (1) asserting his trial rights and risking a lengthy prison sentence, and (2) pleading guilty to reduced charges with lesser sentencing consequences. “[T]he imposition of these difficult choices [is] an inevitable – and permissible – attribute of any legitimate system which tolerates and encourages the negotiation of pleas.” *Music*, 40 Wn. App. at 429 (internal citations and quotation marks omitted).

The totality of the circumstances demonstrate that defendant's plea was voluntary. Defendant failed to prove manifest injustice, and the trial court properly denied defendant's motion to withdraw his guilty plea. Defendant's claim of an involuntary plea fails.

D. CONCLUSION.

For the foregoing reasons, the State respectfully requests this Court affirm the trial court's denial of defendant's motion to withdraw his voluntary guilty plea and affirm defendant's conviction and sentence.

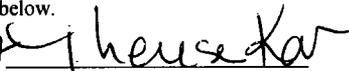
DATED: March 31, 2017.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


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Deputy Prosecuting Attorney
WSB # 44108

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~US~~ 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.

3/31/17 
Date Signature

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