

NO. 49493-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

PHILIP WARD,

Appellant.

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

The Honorable Carol A. Murphy, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court failed to conduct sufficient inquiry into the voluntariness of appellant's plea.

2. Appellant's guilty plea was involuntary because it was coerced, and the trial court erred in denying his motion to withdraw the plea.

Issues pertaining to assignments of error

Due process requires the trial court to determine whether a plea is voluntary before accepting it. The trial court was aware that appellant and his wife were offered a package plea deal, requiring both to plead guilty for either to take advantage of the offer, yet it failed to inquire as to the specific risks posed by such a deal when determining whether appellant's plea was voluntary. Where appellant has established he was coerced into entering a guilty plea, did the trial court err in denying his motion to withdraw the plea?

B. STATEMENT OF THE CASE

In April 2011, Appellant Philip Ward was charged in Thurston County Superior Court with one count of leading organized crime and 54 counts of first degree theft. His wife, Kitzia Huerta-Ward, was named as a co-defendant. CP 9-49. In October 2013, an amended information was

filed charging three counts of first degree theft. CP 115-18. Both Ward and his wife entered guilty pleas as part of a package plea deal from the State. CP 119-30; 1RP<sup>1</sup> 13. At the plea hearing on October 23, 2013, the State informed the court that it had made a joint offer of settlement, contingent on both Ward and his wife entering guilty pleas. 1RP 12-13. Heurta-Ward entered her guilty plea at that hearing, but Ward's plea hearing was set over for a month while the parties resolved a dispute as to his offender score. 1RP 11-12; 2RP 3-4.

At Ward's guilty plea hearing on November 18, 2013, the court went over the terms of the plea agreement with Ward, and he indicated he understood the rights he was giving up, the potential sentence he faced, the sentence recommendation the State would make, and the other consequences to pleading guilty. 2RP 5-12. Ward entered *Alford* pleas to the three counts. 2RP 13. As to the voluntariness of these pleas, the following colloquy occurred:

The Court: Has anyone made any threats against you to have you plead guilty today?

Ward: No, Your Honor.

The Court: And do you make the decision to plead guilty voluntarily?

Ward: Yes, Your Honor.

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<sup>1</sup> The Verbatim Report of Proceedings is contained in five volumes, designated as follows: 1RP--10-23-13; 2RP—11/18/13; 3RP—3/3/16; 4RP—7/1/16; 5RP—9/21/16.

2RP 14. The court found a factual basis for each plea and found that the pleas were knowing and voluntary. 2RP 15.

Prior to sentencing Ward moved to withdraw his guilty plea, arguing that there was no factual basis for two of the counts<sup>2</sup> and that the plea was involuntary because it was coerced. CP 245-50. Ward stated in a declaration that he was innocent of all charges. He pled guilty because his wife faced more serious consequences if she exercised her right to trial, and the State offered only a joint plea agreement. CP 243. He argued that his plea was involuntary and constituted a manifest injustice, because inappropriate coercion pitted him against his wife. Although he was innocent of all charges, he was coerced to enter a plea in order to protect his wife from greater exposure. CP 248-49. Ward explained that his statement at the plea hearing that no threats had caused him to enter the plea was not true. If he had told the court that he was actually innocent but was being coerced to accept the joint plea deal, the court would not have accepted his plea. The inappropriate coercion he faced rendered his plea involuntary. CP 266-67.

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<sup>2</sup> Under the terms of the plea agreement, a restitution hearing was held prior to sentencing, so that if Ward paid at least 50% of the restitution ordered, he would be permitted to withdraw his guilty pleas as to counts II and III. CP 128-30. Following the restitution hearing the court determined that the State had not proven easily ascertainable damages as to counts II and III. CP 270-75. Ward argued that because the court did not find the necessary facts to support a restitution order on counts II and III, there was no factual basis for those counts. CP 248. Ward was permitted to withdraw his pleas as to counts II and III at the sentencing hearing. 5RP 58-59.

At the hearing on Ward's motion, defense counsel argued that Ward was coerced to enter a joint plea agreement by the threat that his wife would face more serious charges if he asserted his innocence and went to trial. 4RP 10-13. Counsel argued that the situation was coercive because of the marital relationship, and allowing the plea to stand impacts the integrity of the judicial process. 4RP 15-18.

The court denied Ward's motion to withdraw his plea. CP 269. It noted that the State has the power to determine what charges to file and what plea offers to make, and it found no error with the offer made in this case or with the court's acceptance of the plea. 4RP 62-63.

Ward also filed a motion to compel discovery germane to mitigation at sentencing and a motion to assign the case to Judge Dixon, who had presided over the restitution hearing. CP 162-300, 219-21. Both motions were denied. 3RP 22. Following a sentencing hearing the court imposed a standard range sentence of 90 days. 5RP 103. Ward filed this appeal. CP 782-853.

C. ARGUMENT

WARD'S GUILTY PLEA WAS INVOLUNTARY BECAUSE IT WAS COERCED, AND THE TRIAL COURT ERRED IN DENYING HIS MOTION TO WITHDRAW THE PLEA.

A defendant is entitled to withdraw a guilty plea when necessary to correct a manifest injustice. CrR 4.2(f). A manifest injustice may arise

when the defendant's plea was involuntary. *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). This Court reviews denial of a motion to withdraw a guilty plea for abuse of discretion. *State v. Williams*, 117 Wn. App. 390, 398, 71 P.3d 686 (2003), *review denied*, 151 Wn. App. 1011 (2004).

Due process requires an affirmative showing that a guilty plea is voluntary, knowing, and intelligent. U.S. Const. amend. 14; Wash. Const. art. 1, § 3; *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, 790, 263 P.3d 1233 (2011); CrR 4.2(d). The trial court has the duty to determine whether a plea is voluntary before accepting it, and this inquiry into voluntariness is constitutionally mandated. *Boykin*, 395 U.S. at 243; *Williams*, 117 Wn. App. at 398.

“A guilty plea is involuntary and invalid if it is obtained by mental coercion overbearing the will of the defendant.” *Williams*, 117 Wn. App. at 398. When the prosecution offers a package plea deal, making treatment of one co-defendant dependent on the guilty plea of another, it must inform the court of the nature of the deal. *Williams*, 117 Wn. App. at 400. Such deals “pose an additional risk of coercion not present when the defendant is dealing with the government alone.” *United States v. Caro*, 997 F.2d 657, 659 (9th Cir.1993). “Quite possibly, one defendant will be

happier with the package deal than his codefendant(s); looking out for his own best interests, the lucky one may try to force his codefendant(s) into going along with the deal.” *Id.* Thus, “a prosecutor's offer during plea bargaining of adverse or lenient treatment for some person other than the accused ... might pose a greater danger of inducing a false guilty plea by skewing the risks a defendant must consider.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364, n. 8, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978).

Once the court is informed that the plea agreement is a package deal, the court must take “special care” in determining the guilty plea is voluntary. *State v. Cameron*, 30 Wn. App. 229, 231, 633 P.2d 901 (1981).

Taking special care means that when a court is informed that a plea is part of a package deal, the court must specifically inquire about whether the codefendant pressured the defendant to go along with the plea and carefully question the defendant to ensure he is acting of his own free will. The most crucial inquiry is whether the codefendant pressured the defendant into going along with the plea.

*Williams*, 117 Wn. App. at 400 (citing *Caro*, 997 F.2d at 660 (holding voluntariness of defendant's plea called into question where trial court failed to investigate whether codefendants pressured defendant into entering the plea)).

In this case, although the court had been made aware of the joint nature of the plea offer, it took no special care in determining whether Ward's plea was voluntary. It did not inquire whether Ward was

pressured by his wife to go along with the plea, and it did not carefully question Ward to ensure he was acting of his own free will. The court did not address the package nature of the deal in any way. 2RP 5-15. The limited colloquy conducted by the court at the time of Ward's plea was insufficient to establish the voluntariness of the plea. Accepting the plea without a showing of voluntariness under these circumstances violates due process. *See Caro*, 997 F.2d at 660.

The court's insufficient inquiry calls the voluntariness of Ward's plea into question, and his subsequent motion and declaration establish that the plea was a result of coercion. Because the court did not address the risks inherent in a package deal when it asked Ward whether he had been threatened, Ward's responses at the guilty plea hearing do not establish voluntariness. Moreover, Ward described the coercion he experienced in his motion to withdraw his plea and his declaration in support of his motion. He explained that he was pitted against his wife, he felt forced to act in consideration of her welfare rather than his own, and he wanted to assert his innocence but he was coerced into taking the package deal offered by the State. He stated that if not for this coercion he would have exercised his right to go to trial. CP 243, 248-49, 266-67; 4RP 10-13.

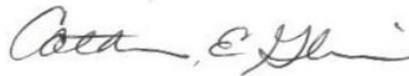
The court's voluntariness inquiry was insufficient to satisfy the demands of due process. Ward's plea was involuntary, and thus a manifest injustice, because it was the product of coercion rather than his free will. The trial court abused its discretion in denying his motion to withdraw his plea.

D. CONCLUSION

Ward's guilty plea was involuntary, and he must be permitted to withdraw it.

DATED August 4, 2017.

Respectfully submitted,



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Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in  
*State v. Philip Ward*, Cause No. 49493-1-II as follows:

Philip Ward  
23903 56<sup>th</sup> Ave. W  
Mountlake Terrace, WA 98043

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



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Catherine E. Glinski  
Done in Manchester, WA  
August 4, 2017

**GLINSKI LAW FIRM PLLC**

**August 04, 2017 - 1:00 PM**

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**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49493-1  
**Appellate Court Case Title:** State of Washington, Respondent v. Philip A. Ward, Appellant  
**Superior Court Case Number:** 11-1-00602-0

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