

NO. 49493-1

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

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STATE OF WASHINGTON,

Respondent,

v.

PHILIP WARD,

Appellant.

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

Philip Ward and Kitzia Huerta Ward, husband and wife, owned and operated Hispanic Voices, a company in Mountlake Terrace, Washington. Hispanic Voices primarily provided interpreting services to Spanish speaking individuals with workers compensation claims. Following a Labor & Industries investigation they were each charged with numerous counts of Theft in the First Degree. Pursuant to a joint plea agreement, Philip Ward pled guilty to three counts and Kitzia Huerta Ward pled guilty to one count of Theft in the First Degree. Philip Ward now appeals, claiming that his guilty plea was not voluntary.

## **II. ISSUE PRESENTED**

Where a defendant pleads guilty and informs the court that no threats or promises were made and that his plea is voluntary, but later claims he felt pressured into pleading guilty to protect his co-defendant wife, does the court commit error in denying defendant's motion to withdraw his guilty plea?

## **III. STATEMENT OF THE CASE**

The State of Washington charged Philip Ward and Kitzia Huerta Ward each with one count of Leading Organized Crime, fifty-four counts of Theft in the First Degree, one count of Kickbacks, Bribes and Rebates and one count of Obtaining a Signature by Deception or Duress. CP 9-29.

On October 23, 2013 the state advised the court that the parties had arrived at a joint or package plea agreement. 1RP 12-13. Pursuant to the plea agreement, the State filed its Second-Amended Information charging Philip Ward with three counts of Theft in the First Degree. CP 115-118. The State also filed a Second Amended Information charging Kitzia Huerta Ward with one count of Theft in the First Degree. The same judge accepted both guilty pleas.

On October 23, 2013 Kitzia Huerta Ward pled guilty to one count of Theft in the First Degree. 1RP 11-12. The plea agreement provided that responsibility for any restitution ordered by the court would be joint and several. The court continued Philip Ward's plea to November 18, 2013 to allow time for the parties to resolve an offender score issue. 1RP 20.

On November 18, 2013, Philip Ward pled guilty to three counts of Theft in the First Degree. The parties agreed that the three counts constituted the same criminal conduct. 2RP 7. The plea agreement provided that Ward would stipulate that there was a factual basis for an upward departure from the standard sentencing range based on multiple incidents per victim. The agreement further provided that Ward would not be sentenced until a contested hearing was held where the court would determine the appropriate amount of restitution. Pursuant to the agreement, Ward would have the opportunity to pay at least one-half of the restitution before sentencing. If

that occurred, the state agreed to reduce its sentencing recommendation by 6 months from 24 months to 18 months. CP 119-130. After a contested restitution hearing spanning five separate days between March 2, 2014 and November 6, 2014, the court ordered restitution in the amount of \$8,165.58. CP 270-275.

On May 3, 2016, Ward filed his motion to withdraw his guilty plea. CP 245-250. Ward claimed that the relatively small amount of restitution ordered established that there was no factual basis for his plea. He also claimed for the first time that his guilty plea was coerced because the plea agreement required that both defendants enter into plea agreements or both go to trial. CP 245-250. The trial court denied his motion to withdraw his plea on both grounds. CP 269. He now appeals.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

The standard of review for a trial court's denial of a defendant's motion to withdraw a guilty plea is abuse of discretion. *State v. Moon*, 108 Wn. App. 59, 62, 29 P.3d 734 (2001). A court abuses its discretion only when its decision is "based on clearly untenable or manifestly unreasonable grounds." *Id* at 398, *State v. Jamison*, 105 Wn. App. 572, 590, 20 P.3d 1010, *rev. denied*, 144 Wn.2d 1018, 32 P.3d 283 (2001).

Withdrawal of a guilty plea is allowed only to correct a manifest injustice, an injustice which is “obvious, directly observable, overt, not obscure.” *State v. Taylor*, 83 Wn.2d 594, 521 P.2d 699 (1974), citing Webster’s Third International Dictionary (1966). Ward has failed to meet this burden.

**B. Ward Voluntarily Pled Guilty**

Ward argues that his plea was not voluntary because the joint plea agreement coerced him into pleading guilty. However, at his plea hearing Ward told the court that no one had made any threats or promises to cause him to enter his plea. 2RP 14. The court very thoroughly went over the guilty plea with him. 2RP 5-15. Ward informed the court that he understood his rights and waived them. 2RP 14. At every stage of the proceedings, Ward was represented by competent, experienced counsel. The court carefully engaged in the required colloquy with Ward and found that his guilty pleas were knowingly, intelligently and voluntarily made. 2RP 15.

Ward argues that the court committed error by not specifically inquiring about whether or not his wife pressured him into pleading guilty. He has never alleged that she did, in fact, pressure him. He merely argues that the court erred by not inquiring about whether or not she pressured him. He cites two Washington cases, *State v. Cameron*, 30 Wn. App. 229, 633

P.2d 901 (1981), and *State v. Williams*, 117 Wn. App. 390, 71 P.3d 686 (2003). Neither case supports Ward's argument.

*State v. Cameron* is strikingly similar to the case at hand. Cameron and his wife were both charged with multiple counts of embezzlement. Cameron pled guilty in return for the prosecutor's agreement to drop charges against Cameron's wife. Cameron argued that his guilty plea was not voluntary because he felt "compelled" to plead guilty or the prosecutor would pursue charges against his wife. *Id* at 231. The trial court did not specifically question Cameron about whether or not his wife pressured him into pleading guilty. Nevertheless, the Court of Appeals found that Cameron's guilty plea was voluntary and affirmed his conviction. *Id* at 234.

Ward incorrectly states at page 6 of his brief: "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." Brief of Appellant, Page 6, (emphasis added). The *Cameron* court actually said: "We recognize that care *should* be taken in reviewing guilty pleas entered in exchange for a prosecutor's promise of lenient treatment to a third party." *Id* at 231. (Emphasis added). *Cameron* does not support Ward's argument. Indeed, care must be taken in every case involving a plea of guilty.

In *Williams*, the state charged Dale Williams and his son, Sean Williams, with assault of a child in the third degree, domestic violence, a

class C felony, for assaulting Sean's son. The plea agreement required that both men plead guilty to the reduced charge of assault in the fourth degree, domestic violence, a gross misdemeanor. The day before sentencing, Dale Williams filed a motion to withdraw his guilty plea, claiming that his plea was not voluntary because he was forced to plead guilty so that his son would get the benefit of the reduced charge. He complained that the state failed to inform the court of the package deal, and that the court did not specifically inquire about whether or not the co-defendant pressured the defendant into pleading guilty. *Id* at 398-399.

The *Williams* case actually supports the state's position in Ward's case. The *Williams* court said: "Although Williams was undoubtedly influenced at least in part by a desire to help his son, the desire to help a loved one and the accompanying emotional and psychological pressure do not, standing alone, render a guilty plea involuntary." *Id.* at 401-402.

The *Williams* court also recognized that the state has an obligation to inform the court that the codefendant's plea is part of a package deal, and observed that the state had failed to do so. *Id* at 400. However, the court concluded that the state's omission was harmless because the same judge sentenced both defendants, the judge knew of the package deal, at the hearing on the motion to withdraw the plea Williams did not assert that there

were any threats from his son, and the record indicated that the plea was freely and voluntarily made. *Id* at 400-401.

In Ward's case, unlike *Williams*, the state clearly advised the court of the package deal at the guilty plea hearing. 1RP 12-13. Ward unequivocally informed the court that no one had forced him to plead guilty. 2RP 15. Ward has never alleged that his wife pressured or threatened him to get him to plead guilty. The same judge sentenced both defendants. *Williams* does not support Ward's argument.

At page 6 of his brief, Ward incorrectly cites *Williams* and *United States v. Caro*, 997 F.2d 657 (9th Cir. 1993), claiming that the court *must* specifically inquire regarding whether a co-defendant pressured the defendant into pleading guilty. He argues that the failure to do so is error. Neither *Caro* nor *Williams* supports this argument.

The *Caro* court stressed that a prosecutor *must* advise the court when there is a package deal. *Id* at 659-660. This is significant because the prosecutor's failure to do so deprives the court of notice that further inquiry may be required. The *Caro* court cited *United States v. Castello*, 724 F.2d 813 (9th Cir. 1994), cert. denied, 467 U.S. 1254, 104 S.Ct. 3540, 82 L. Ed.2d 844 (1984) in stating: "the trial court *should* make a more careful examination of the voluntariness of a plea when [it might have been] induced by ... threats or promises from a third party." *Caro* at 659, *Castello*

at 815. As mentioned earlier, *Caro* and *Williams* are distinguishable from Ward's case because the state clearly notified the court that Ward was pleading guilty pursuant to a package deal. 1RP 12-13. Despite that information being before the court, Ward did not produce any evidence that any third party had made threats or promises to induce his plea – in fact, Ward stated the opposite was true.

The cases Ward cites fail to establish that the court commits reversible error by failing specifically to inquire regarding whether a co-defendant pressured the defendant into pleading guilty when there is a package deal. The cases merely establish that the state *must* inform the court if there is a package deal and that the court *should* specifically inquire regarding whether or not the co-defendant threatened the defendant if the court determines, in its discretion, that the plea may have been induced by threats.

In Ward's case the State informed the court that Ward was pleading guilty pursuant to a package deal. Ward informed the court that no one had made any threats to get him to enter his plea. The necessity or extent of any further inquiry is properly left to the sound discretion of the court.

The court in Ward's case informed the parties on the record that it had carefully reviewed all of the lengthy materials submitted by the parties and was very familiar with the facts. Ward's responses to the court's

questions gave no indication of any threats or pressure exerted by his wife. The court did not abuse its discretion in deciding not to inquire further into this area. Ward's plea was voluntary.

**C. The Court Did Not Err In Denying Ward's Motion To Withdraw His Guilty Plea**

CrR 4.2 (f) governs the withdrawal of a guilty plea. It provides that "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."

Footnote 2 of Appellant's brief at page 3 mischaracterizes the record. The trial court granted the agreed motion dismissing counts II and III at sentencing because Ward had paid at least half of the restitution prior to sentencing, as provided in his plea agreement. 5RP 15. The dismissal of counts II and III had nothing to do with Ward's earlier motion to withdraw his guilty plea. Ward pled guilty on November 18, 2013. 2RP 13. Ward's motion to withdraw plea was denied on July 1, 2016. 4RP 64. The court dismissed counts II and III at sentencing on September 21, 2016. 5RP 56-59.

In *State v. Taylor*, 83 Wn.2d 594, 521 P.2d 699 (1974) our Supreme Court described the standard for withdrawal of a guilty plea as a "demanding standard." *Id.* at 596. The Court pointed out that withdrawal

should only be allowed to correct a manifest injustice, an injustice which is “obvious, directly observable, overt, not obscure.” *Id.* at 597. Ward has failed to meet this standard.

In *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982), the Court of Appeals, Division II, stated:

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. *In re Keene*, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980); *In re Teems*, 28 Wn. App. 631, 626 P.2d 13 (1981); *State v. Ridgeley*, 28 Wn. App. 351, 623 P.2d 717 (1981).

The *Perez* court then explained that:

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. *Perez* at 262.

Under these controlling authorities, Ward’s written guilty plea and the trial court’s careful colloquy result in a presumption of voluntariness. Ward has failed to overcome this strong presumption.

Ward assured the court that no threats were made to get him to plead guilty. As the *Williams* court held:

Where, as here, there is no evidence of any promises or threats to the defendant other than those represented in the written plea agreement, where the defendant signs the written plea agreement acknowledging guilt in his own words, and where the defendant states that no other promises

were made other than those in the plea agreement, the trial court properly accepts the plea as being the result of the defendant's own volition and freely and voluntarily made.

*Williams* at 401-402.

The record shows clearly that Ward freely and voluntarily entered his plea of guilty.

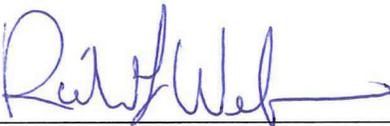
#### V. CONCLUSION

Ward did not establish the "obvious, directly observable, overt, not obscure" injustice required to justify withdrawal of his guilty plea. He knowingly, intelligently and voluntarily pled guilty. The trial court did not abuse its discretion in denying his motion to withdraw his guilty plea. This court should affirm the trial court's denial of Ward's motion to withdraw his guilty plea and should affirm his conviction.

RESPECTFULLY SUBMITTED this 29th day of September, 2017.

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NO. 49493-I

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

DAISY LOGO declares as follows:

On September 29, 2017, I deposited into the United States Mail,  
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P.O. Box 761  
Manchester, WA 98353

Copies of the following documents:

- 1) Brief of Respondent
- 2) Declaration of Service

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

RESPECTFULLY SUBMITTED this 29th day of September, 2017.

  
\_\_\_\_\_  
DAISY LOGO  
Legal Assistant

**WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION**

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