

FILED  
Court of Appeals  
Division II  
State of Washington  
8/16/2018 2:33 PM

NO. 51686-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS RAMOS-LOPEZ,

Appellant.

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

The Honorable Robert A. Lewis, Judge  
The Honorable Derek Vanderwood, Judge

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MOTION TO WITHDRAW AND BRIEF REFERRING TO MATTERS IN  
THE RECORD WHICH MIGHT ARGUABLY SUPPORT REVIEW

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I. IDENTITY OF MOVING PARTY

Nielsen, Broman and Koch, appointed counsel for appellant, respectfully requests the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

Appointed counsel for appellant requests permission to withdraw pursuant to RAP 15.2(i).

III. FACTS RELEVANT TO MOTION

By letter dated May 10, 2018, Nielsen, Broman & Koch was appointed to represent appellant Juan Ramos-Lopez on appeal from a standard range judgment and sentence entered by the Clark County Superior Court on November 20, 2017.

In reviewing this case for appellate issues, Christopher H. Gibson, a staff attorney at Nielsen, Broman and Koch, performed the following:

1. Read and reviewed the verbatim report of proceedings from the October 6, 2017 plea hearing before the Honorable Judge Robert A. Lewis, and the sentencing hearing held November 20, 2017, before the Honorable Judge Derek Vanderwood;
2. Read and reviewed the Clark County Superior Court file in State v. Juan Ramos-Lopez, No. 16-1-02357-6.
3. Researched all pertinent legal issues and conferred with other attorneys concerning legal and factual bases for appellate review;

4. Wrote to Mr. Juan Ramos-Lopez explaining the Anders<sup>1</sup> procedure and his right to file a pro se supplemental brief, and served him with a copy of this motion.

IV. GROUND FOR RELIEF

RAP 15.2(i) allows counsel to withdraw on appeal if counsel can find no basis for a good faith argument on review. In accordance with the due process requirements of Anders v. California, 386 U.S. 738, 83 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), State v. Hairston, 133 Wn.2d 534, 946 P.2d 397 (1997), State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970), and State v. Pollard, 66 Wn. App. 779, 825 P.2d 336, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992), counsel seeks to withdraw as appellate counsel and allow Mr. Ramos-Lopez to proceed pro se.

Nielsen, Broman and Koch submit the following argument and brief to satisfy its obligations under Anders, Theobald, Pollard, and RAP 15.2(i).

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<sup>1</sup> Anders v. California, 386 U.S. 738, 18 L. Ed. 2d 493, 83 S. Ct. 1396 (1967).

V. BRIEF REFERRING TO MATTERS IN THE RECORD THAT MIGHT ARGUABLY SUPPORT REVIEW

A. POTENTIAL ASSIGNMENT OF ERROR

The trial court erred in accepting Ramos-Lopez's guilty plea.

Issue Pertaining to Potential Assignment of Error

Did the trial occur err in accepting Ramos-Lopez's guilty plea?

B. STATEMENT OF THE CASE

On November 15, 2016, the Clark County Prosecutor charged Ramos-Lopez (d.o.b. 12/7/79) with two counts of first degree child molestation. CP 1-2. The prosecution alleged that between January 1, 2012 and March 1, 2016, Ramos-Lopez had sexual contact with R.S.-A., the daughter of his girlfriend, who was born December 29, 2004, and therefore was under the age of 12 at the time of the alleged acts, and at least 36 months younger than Daniels. *CP 69-72*.<sup>2</sup>

On October 6, 2017, Ramos-Lopez pleaded guilty to an amended charge of third degree assault with sexual motivation. CP 6-7 (amended information); CP 8-28 (Statement of Defendant on Plea of Guilty); RP<sup>3</sup> 1-8. At the plea hearing Ramos-Lopez agreed he was born December 7,

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<sup>2</sup> A supplemental designation of clerk's papers was filed in Clark County Superior Court on August 9, 2018, designating Sub no. 3, "Motion and Declaration for Order Authorizing Issuance of Warrant for Arrest, filed November 15, 2016. The italicized and bolded "CP" cite is to the anticipated index number counsel expects the clerk to assign based on the method employed for the original designation submitted.

<sup>3</sup> There is a single volume of verbatim report of proceedings for the dates of October 6, 2017 and November 20, 2017, cited as "RP."

1979, had discussed the plan to plead guilty with his attorney and had the plea statement read to him in his primary language, and that he had no remaining questions about pleading guilty to the amended charge. RP 1-2. Ramos-Lopez further agreed that he understood the rights he was giving up by pleading guilty, understood that he faced a standard range sentence of one to three months for the underlying assault, plus an additional 12 months of mandatory confinement for committing the crime with sexual motivation, followed by 36 months of community custody, and that the maximum confinement term was five years and maximum fine was \$10,000. RP 2-6. Ramos-Lopez also acknowledged he would be required to pay “[v]arious legal financial obligations.” RP 5-6.

Ramos-Lopez also acknowledge understanding the prosecution would be requesting the sentencing court to impose a high-end standard range sentence of three months for the underlying assault plus an additional 12 months for the sexual motivation enhancement for a total sentence of 15 months, and that he would not be allowed to request a Special Sex offender Sentencing Alternative (SOSSA). RP 3-4. Ramos-Lopez also acknowledged that the sentencing court did not have to follow the prosecutor’s sentence recommendation. RP 4.

Ramos-Lopez also acknowledged that by pleading guilty he would be required to register as a sex offender, could be deported if he was not a United States citizen, and would be required to provide a biological sample for DNA identification and also be tested for the HIV virus. RP 4-6. Ramos-Lopez agreed that by pleading guilty he would lose his rights to vote and possess firearms, and that no one had made threats or promises to him to induce him to enter the guilty plea. RP 4-7.

Ramos-Lopez also adopted as his own, the statement in his written guilty plea statement that he had both assaulted R.S.-A., between the dates of January 1, 2012 and March 1, 2016, and that he did so for purposes of his own sexual gratification. Ramos-Lopez then confirmed that he wished to plead guilty by stating "Guilty," when asked as to how he pled to the charge. RP 6.

Thereafter, in accepting the plea the court concluded that Ramos-Lopez's guilty plea was "knowingly, intelligently and voluntarily made." RP 7-8.

Sentencing was held November 20, 2017. At that hearing the prosecutor requested the court impose the sentence set forth in the plea agreement, which is attached as "Ex. 2" to Ramos-Lopez's signed guilty plea statement. RP 10; CP 22-26. Next the Court heard from the

complaining witness' father, who stated he did not want Ramos-Lopez anywhere near R.S.-A. RP 11.

Ramos-Lopez's counsel urged the court to impose the sentence contemplated by the parties in the plea agreement. RP 12. Ramos-Lopez declined to exercise his right to allocution. RP 13.

The sentencing court accepted the sentence recommendation of the parties and imposed a 15-month sentence. CP 41-42; RP 44. The court also ordered Ramos-Lopez to pay the \$500 Victim Penalty Assessment, \$200 criminal filing fee and a \$100 DNA collection fee, but waived all "non-mandatory financial obligations." CP 43-44; RP 13. Ramos-Lopez appeals. CP 57.

### C. POTENTIAL ARGUMENT

#### THE TRIAL COURT ERRED IN ACCEPTING RAMOS-LOPEZ'S GUILTY PLEA.

Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily with full knowledge of his legal and constitutional rights and of the consequences of the plea. Wood v. Morris, 87 Wn.2d 501, 506, 554 P.2d 1032 (1976); Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). Before a guilty plea can be knowingly made, a defendant must be advised of the direct consequences of his plea. State v. Ross, 129 Wn.2d 279, 286, 916

P.2d 405 (1996); State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980).

Before accepting a guilty plea, the court must ensure on the record that the defendant understands the nature of the charges against him and the consequences of the plea. State v. Walsh, 143 Wn.2d 1, 5-6, 17 P.3d 591 (2001). “A defendant must understand the sentencing consequences for a guilty plea to be valid.” Id. at 8 (quoting State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988)). Thus, the trial court is required to correctly inform a defendant who pleads guilty as to the maximum sentence on the charge. State v. Morley, 134 Wn.2d 588, 621, 952 P.2d 167 (1998).

A valid plea must represent “a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). It is a violation of due process for the court to accept a guilty plea without an affirmative showing that the plea was made intelligently and voluntarily. Boykin, 395 U.S. at 243, n.5; Barton, 93 Wn.2d at 304. The prosecution bears the burden of proving the validity of a guilty plea. Wood, 87 Wn.2d at 507.

An accused must possess an understanding of the law in relation to the facts before he or she can intelligently plead guilty and waive the right

to trial. In re Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980) (quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)). “Ignorance and incomprehension are not the trademarks of an intelligent waiver, and a guilty plea based upon these infirmities cannot be said to be knowingly and voluntarily made.” Lutton v. Smith, 8 Wn. App. 822, 824, 509 P.2d 58 (1973) (citing Boykin, 395 U.S. 238). If a misunderstanding has led an accused to plead guilty, the plea is invalid because it was the product of ignorance and incomprehension and therefore is not voluntary. Id.

Ramos-Lopez could argue his guilty plea was not knowing, intelligent or voluntary because he did not understand the law in relation to the facts or the sentencing consequences of his plea. He could also argue he was coerced into entering the pleas.

D. CONCLUSION

Counsel respectfully moves this Court for permission to withdraw as attorney of record, and to permit Daniel to proceed pro se.

DATED this 16<sup>TH</sup> day of August 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to be 'C. Gibson', written over a horizontal line.

CHRISTOPHER H. GIBSON

WSBA No. 25097

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Attorneys for Appellant

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**August 16, 2018 - 2:33 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51686-1  
**Appellate Court Case Title:** State of Washington, Respondent v. Juan Ramos Lopez, Appellant  
**Superior Court Case Number:** 16-1-02357-6

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