

FILED
Court of Appeals
Division II
State of Washington
7/23/2018 1:42 PM

NO. 51997-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON

Respondent,

v.

SATNAM SINGH RANDHAWA

Appellant.

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

APPELLANT'S OPENING BRIEF

Robert S. Huff
Attorney for Appellant

LAW OFFICE OF ROBERT S. HUFF
13401 BEL RED ROAD SUITE B5
BELLEVUE, WA 98005
(425) 283-0394

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT.....1

B. ASSIGNMENTS OF ERROR.....1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

D. STATEMENT OF THE CASE.....3

E. ARGUMENT.....5

1. Randhawa’s plea was involuntary because the trial court was unaware of the separate agreement that he entered with the Pierce County Prosecuting Attorney and never inquired into the agreement.....5

2. Randhawa’s plea was also involuntary because the statement of defendant on plea of guilty falsely indicated that no other promises had been made to him other than those set forth in the plea agreement.....7

3. The trial court erred by not providing Randhawa with an evidentiary hearing on his motion to withdraw his plea.....8

F. CONCLUSION.....9

TABLE OF AUTHORITIES

Washington Supreme Court Cases

<i>State v. Saas</i> , 118 Wn.2d 37, 42, 820 P.2d 505 (1991).....	5
<i>State v. Taylor</i> , 83 Wn.2d 594, 597, 521 P.2d 699 (1974).....	5
<i>State v. Walsh</i> , 143 Wn.2d 1, 17 P.3d 591 (2001).....	8

Washington Court of Appeals Cases

<i>State v. Kissee</i> , 88 Wn. App. 817, 947 P.2d 262 (1997).....	8
<i>State v. Williams</i> , 117 Wn.App. 390, 72 P.3d 741 (2003).....	6, 7, 8, 9

Rules

CrR 4.2(d).....	5
CrR 4.2(f).....	1, 2, 5, 6, 9

A. SUMMARY OF ARGUMENT

The trial court should have permitted Satnam Randhawa to withdraw his guilty plea pursuant to CrR 4.2(f). Withdrawal of the plea was necessary to correct a manifest injustice because Randhawa's guilty plea was involuntary. Randhawa's guilty plea was involuntary because promises had been made to Randhawa that were not set forth in his statement of defendant on plea of guilty.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Randhawa's motion to withdraw his guilty plea pursuant to CrR 4.2(f) because the plea was involuntary.

2. The trial court erred in not providing Randhawa with an evidentiary hearing on his motion to withdraw his guilty plea.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Randhawa entered into an agreement with the Pierce County Prosecuting Attorney's Office that was separate from the plea agreement that he entered. Randhawa's separate agreement with the Pierce County Prosecuting Attorney made promises to Randhawa if Randhawa satisfied certain conditions. The trial court was unaware of this separate agreement with the Pierce County Prosecuting Attorney at the time it accepted Randhawa's plea and did not reference the separate agreement during its plea colloquy with Randhawa. Randhawa's statement of

defendant on plea of guilty does not reference any separate agreement with the Pierce County Prosecuting Attorney. The statement of defendant on plea of guilty falsely indicated that “[n]o person has made promises of any kind to cause me to enter this plea except as set forth in this statement.”

a. Was Randhawa’s plea voluntary if the trial court was unaware that Randhawa had entered into a separate agreement from the plea agreement that made promises that were not set forth in the plea agreement at the time it accepted Randhawa’s plea?

b. Was Randhawa’s plea voluntary if the trial court did not make any inquiry of Randhawa regarding the separate agreement from the plea agreement at Randhawa’s plea hearing?

c. Was Randhawa’s plea voluntary if the statement of defendant on plea of guilty that he signed falsely indicated that no other promises had been made to Randhawa other than the promises stated in the statement of defendant on plea of guilty?

2. The trial court denied Randhawa’s motion to withdraw his plea pursuant to CrR 4.2(f) after hearing oral argument and receiving briefing from both parties. However, the trial court did not take any testimony from Randhawa or any party

regarding his motion to withdraw his plea. Did the trial court err in not providing Randhawa with an evidentiary hearing on his motion to withdraw his plea?

D. STATEMENT OF THE CASE

On April 5, 2016, the State charged Randhawa with two counts of unlawful sale of a controlled substance, one count of unlawful possession of a controlled substance with intent to deliver, and one count of unlawful possession of a firearm in the second degree. CP 15. On January 18, 2017, Randhawa entered into an agreement with the Pierce County Prosecuting Attorney. CP 37-41. This agreement provided that if Randhawa pled guilty to certain charges, the State would agree to recommend that Randhawa receive a sentence of time served if Randhawa worked as a confidential informant for the Puyallup Police Department. *Id.* One of the conditions of the agreement was that Randhawa “[r]efrain from violating any municipal, county, state, or federal law.” CP 37. If Randhawa failed to comply with the agreement, the agreement indicated that the parties would agree to jointly recommend a sentence of eighty months of imprisonment. CP 38-39.

On February 2, 2017, Randhawa entered a plea of guilty to an amended information that charged him with two counts of unlawful possession of a controlled substance with intent to deliver, one count of unlawful possession of a firearm in the second degree, one count of unlawful delivery of a controlled

substance, and one count of unlawful use of a building for drug purposes. CP 1-3, 5-14. Randhawa's statement of defendant on plea of guilty did not reference the agreement with the Pierce County Prosecuting Attorney. CP 5-14. Randhawa's statement of defendant on plea of guilty also included a sentence stating that "[n]o person has made promises of any kind to cause me to enter this plea except as set forth in this statement." CP 13.

At Randhawa's plea hearing on February 2, 2017, the trial court never inquired into the separate agreement that Randhawa entered with the Pierce County Prosecuting Attorney on January 18, 2017. RP 1-9. There is no indication that the trial court even knew about the separate agreement. RP 1-9, CP 5-14. The trial court did engage in the following exchange with Randhawa:

THE COURT: Other than the State's offer, has anyone promised you anything to get you to plead guilty?

THE DEFENDANT: No.

RP 6. The trial court accepted Randhawa's plea of guilty to the charges in the amended information. RP 6, CP 14.

On February 21, 2017, the State charged Randhawa with assault in the second degree and felony violation of a court order relating to an incident that allegedly took place on February 18, 2017. CP 43-44. The State regarded the assault allegation from February 18, 2017 as a violation of the separate agreement

that Randhawa entered with it. CP 27-31. The State would no longer recommend a sentence of time served. *Id.*

On December 5, 2017, Randhawa filed a motion to withdraw his plea pursuant to CrR 4.2(f). CP 15-26. The State filed a response to Randhawa's motion on December 18, 2017. CP 27-58. The trial court heard oral argument on Randhawa's motion on December 18, 2017. RP 10-37. The trial court did not take any testimony from Randhawa or any other party. *Id.* The trial court denied Randhawa's motion. RP 32.

E. ARGUMENT

1. Randhawa's plea was involuntary because the trial court was unaware of the separate agreement that he entered with the Pierce County Prosecuting Attorney and never inquired into the agreement.

CrR 4.2(f) provides that a "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." An example of a manifest injustice is if the defendant involuntarily entered the plea. *See State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)(quoting *State v. Taylor*, 83 Wn.2d 594, 597, 521 P.2d 699 (1974)). The trial court bears the burden in ascertaining the voluntariness of a guilty plea before accepting it. CrR 4.2(d).

The trial court did not properly ascertain the voluntariness of Randhawa's plea. It never inquired into the separate agreement that Randhawa entered with the Pierce County Prosecuting Attorney at Randhawa's plea hearing on February 2, 2017. RP 1-9. The trial court did not even know that Randhawa had entered into an agreement with the State separate from the plea agreement at the time it accepted Randhawa's plea. *Id.* The trial court had a duty to inquire into an agreement and learn about an agreement that made promises to Randhawa that were not set forth in Randhawa's plea agreement.

The trial court's duty in this case is analogous to the trial court's duty when confronted with a plea that a defendant takes as part of an agreement to benefit a third party. In *State v. Williams*, 117 Wn.App. 390, 72 P.3d 741 (2003), the Court of Appeals evaluated a claim from a defendant who alleged that a trial court should have been permitted him to withdraw his plea pursuant to CrR 4.2(f). The defendant in *Williams* argued that his plea was involuntary because he had entered the plea as part of a package deal where his co-defendant son would receive the benefit of a reduced charge. *Williams*, 117 Wn.App. at 394-97.

The Court of Appeals cited federal precedent that indicated that trial courts should take special care when evaluating guilty pleas that defendants enter in exchange for lenient treatment of a third party and that disclosure of the existence of a package deal was crucial at the plea hearing. *Id.* at 399. The Court of Appeals

was aware of the package deal at the defendant's plea hearing and asked the defendant about the package deal. *Id.* at 395-96. The Court of Appeals denied the defendant's appeal in part because the trial court stated on the record during the defendant's plea hearing that the defendant knew his plea was part of a package deal. *Id.* at 400-01.

What distinguishes this case from *Williams* is that the trial court was unaware of Randhawa's separate agreement with the Pierce County Prosecuting Attorney. RP 1-9. Unlike the trial court in *Williams*, the trial court in Randhawa's case never asked Randhawa any questions about his separate agreement with the State. *Id.* Unlike *Williams*, there is no reference in the record of Randhawa's plea hearing to any separate agreement apart from the plea agreement. *Id.*

None of the circumstances that allowed the Court of Appeals to find that the defendant's plea in *Williams* was voluntary were present in Randhawa's case.

2. Randhawa's plea was also involuntary because the statement of defendant on plea of guilty falsely indicated that no other promises had been made to him other than those set forth in the plea agreement.

The statement of defendant on plea of guilty that Randhawa signed did not include any reference to the separate agreement he entered with the Pierce County Prosecuting Attorney. CP 5-14. The statement did include the sentence that "[n]o person has made promises of any kind to cause me to enter this plea except as set

forth in this statement.” CP 13. This sentence was false as the separate agreement that Randhawa entered with the Pierce County Prosecuting Attorney did make promises to Randhawa that were not referenced in the statement of defendant on plea of guilty.

In *State v. Kisse*, 88 Wn. App. 817, 947 P.2d 262 (1997), the Court of Appeals permitted a defendant to withdraw his guilty plea because the defendant was mistakenly told that he was eligible for a sentencing alternative. *Kisse*, 88 Wn. App. at 822. In *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), the Washington Supreme Court held that a defendant who had been misinformed as to the length of his standard sentencing range was entitled to withdraw his plea. *Walsh*, 143 Wn.2d at 9-10.

Randhawa was as similarly misinformed as the defendants in *Kisse* and *Walsh*. The statement of defendant on plea of guilty in Randhawa’s case made it seem as if no other promises had been made to Randhawa other than what was stated in the plea agreement when the separate agreement clearly offered additional promises to Randhawa.

3. The trial court erred by not providing Randhawa with an evidentiary hearing on his motion to withdraw his plea.

The trial court heard Randhawa’s motion to withdraw his plea without taking any testimony from Randhawa or any other party. One reason why the

Court of Appeals upheld the trial court's denial of the defendant's motion to withdraw his plea in *Williams* is that the trial court provided the defendant with an evidentiary hearing on the motion. *Williams*, 117 Wn. App. at 401. The trial court provided the defendant with an opportunity to testify regarding whether any party subjected him to undue pressure. *Id.*

Randhawa did not receive the same opportunity from the trial court in this case to present testimony regarding whether he understood that additional promises had been made to him apart from the promises stated in his plea agreement.

F. CONCLUSION

The Court of Appeals should reverse the denial of Randhawa's motion to withdraw his plea pursuant to CrR 4.2(f) and the matter should be remanded for further proceedings.

DATED this 23rd day of July, 2018.

Respectfully submitted,

s/ Robert S. Huff
Robert Huff, WSBA #20507
Law Office of Robert S. Huff
13401 Bel Red Road Suite B5
Bellevue, WA 98005
T: (425) 283-0394
F: (425) 283-0353
BOB@HUFFLAW.NET

LAW OFFICE OF ROBERT S. HUFF

July 23, 2018 - 1:42 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51997-6
Appellate Court Case Title: State of Washington, Respondent v. Satnam Randhawa, Appellant
Superior Court Case Number: 16-1-01398-0

The following documents have been uploaded:

- 519976_Affidavit_Declaration_20180723125455D2956294_2974.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was randhawa.open brief.service.pdf
- 519976_Briefs_20180723125455D2956294_7597.pdf
This File Contains:
Briefs - Appellants
The Original File Name was randhawa.open brief.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@co.pierce.wa.us

Comments:

Sender Name: Robert Huff - Email: bob@hufflaw.net
Address:
13401 BEL RED RD STE B5
BELLEVUE, WA, 98005-2322
Phone: 425-283-0394

Note: The Filing Id is 20180723125455D2956294