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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JAMISON PARKER NYLAND,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 17-1-02410-6
The Honorable Jack Nevin, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Jamison Nyland's motion to withdraw his guilty plea.
2. The trial court erred when it stated in Finding of Fact 53 (CP 51) that Nyland's "entry of his pleas were made knowingly, intelligently and voluntarily."
3. Jamison Nyland's guilty plea was not knowing, intelligent and voluntary because he was pressured into entering the plea.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where criminal court rule 4.2(f) directs a court to allow a defendant to withdraw a guilty plea when withdrawal is necessary to correct a manifest injustice, and where Jamison Nyland showed that his plea was involuntarily coerced due to pressure from his attorneys to plead guilty and fear that his attorney was unprepared for trial, should the trial court have allowed Nyland to withdraw his guilty plea? (Assignments of Error No. 1, 2 and 3)
2. Where a guilty plea is involuntary if it is the product of coercive fear, promise or persuasion, was Jamison Nyland's plea involuntary where the agreement was negotiated on the

day of trial and involved the addition of several new very serious charges, where his attorneys pressured him to accept the plea, and where he believed that his attorney was unprepared to proceed to trial that day? (Assignments of Error No. 1, 2 and 3)

III. STATEMENT OF THE CASE

On June 11, 2017, two armed individuals entered the home of Susan Grazer. (CP 3) At the time, Susan's sons, Jared and Jacob, were living with her and their friend, Joseph Hopkins, was visiting.¹ At gunpoint, the men ordered Susan, Jared, Jacob and Joseph to lie on the floor, and demanded access to a safe where Jared and Jacob were known to stash prescription pills. (CP 3)

The safe was empty, but the men started collecting other items from the Grazer house. (CP 3) The men could be overheard discussing a third participant and wondering where that person was. (CP 3) During a subsequent scuffle, the two intruders shot Jared and Jacob, then fled with property taken from the Grazers. (CP 4)

A few days later, investigators learned that some of the

¹ Several victims in this case share a last name. In order to avoid confusion, the victims will be referred to by their first names in this brief.

stolen items had been pawned at a shop in Auburn by a man named Jamison Parker Nyland. (CP 4) Investigators located and detained Nyland. (CP 4) During questioning, Nyland acknowledged that he was the third participant, but claimed the two gunmen forced him to assist them. (CP 5)

On June 23, 2017, the State charged Nyland with one count of first degree robbery and one count of first degree burglary. (CP 1-2) On February 5, 2018, the State filed an Amended Information charging Nyland with one count of first degree burglary, three counts of first degree robbery, and one count of attempted first degree robbery. (CP 34-37)

Trial was continued several times to allow for additional investigation and plea negotiations. (07/19/17 RP 3-4; 10/10/17 RP 6-7; 10/27/17 12-13; 01/17/18 26; 06/29/18 RP 63-64; CP 147-49)² On October 10, 2017, the parties filed a signed stipulation waiving Nyland's right to challenge admission at trial of custodial statements made by Nyland that amounted to a confession. (CP 15-20)

On February 5, 2018, Nyland asked the court to allow him to

² The transcripts will be referred to by the date of the proceeding.

fire his current attorney, Michael Underwood, and hire private counsel. (02/05/18 RP 8-12; CP 148) Nyland was unhappy with counsel's representation. He told the court that counsel had rarely visited or spoken to him about the case, that counsel had prejudged the case and was convinced Nyland would be convicted, that he was supposedly negotiating a plea deal but the offers from the State were getting progressively worse, and that counsel was not communicating with Nyland about any developments or new investigation in the case. (02/05/18 RP 8-11) Because it was clear to the court that the attorney/client relationship had broken down, the court allowed counsel to withdraw. (02/05/18 RP 18; CP 148)

New counsel, Matthew McGowan, was appointed on February 14, 2018. (02/14/18 RP 31-22; CP 149) On July 26, 2018, the day trial was set to begin, defense counsel announced that the State and the defense had reached a plea agreement. (07/26/18 RP 4-5; CP 149) The court recessed so that counsel could discuss the terms of the agreement with Nyland. A little over an hour later, court reconvened and Nyland entered guilty pleas to a Second Amended Information charging one count of first degree burglary, three counts of first degree robbery, and one count of attempted first degree robbery, one count of second degree

kidnapping, and two counts of second degree assault. (07/26/18 RP 10-11; CP 67-71)

The trial court reviewed the rights Nyland was waiving and the terms and consequences of the plea agreement on the record. (07/26/18 RP 11-24) The court eventually asked Nyland if any threats or promises were made to induce him to plead guilty, and Nyland responded in the negative. (07/26/18 RP 24) Nyland agreed with the court when asked if he felt his plea was knowing and voluntary. (07/26/18 RP 24) The court found that the plea was knowing, voluntary and intelligent. (07/26/18 RP 25-26)

Prior to sentencing, Nyland moved to withdraw his plea on the grounds that his attorneys provided ineffective assistance and had pressured him into accepting the plea agreement. (CP 89-100) In his written motion prepared by a third attorney, Paula Olsen, Nyland explained that neither of his first two attorneys spent adequate time preparing to defend him at trial, and that their meetings focused entirely on convincing Nyland to plead guilty instead of going to trial. (CP 97-100) His first attorney forced him to sign the CrR 3.5 stipulation, thereby allowing the State, unchallenged, to introduce highly prejudicial statements that Nyland asserted were made when he was high on pain pills. (CP 94, 98)

Nyland stated that both attorneys pressured him into waiving his right to trial by guaranteeing he would be convicted of all charges at trial, and using his children as emotional leverage to convince him to plead guilty. (CP 97-100) Nyland did not believe his attorney was prepared to go to trial the day he entered the plea, and feared that if he did not plead guilty his attorney would not mount an adequate defense. (CP 99-100)

The trial court reviewed the pleadings and heard arguments of counsel, and denied Nyland's motion. (09/14/18 RP 2-20; CP 146-52) The court then sentenced Nyland to the high end of his standard range on each count, for a term of confinement totaling 171 months. (09/14/18 RP 38; CP 122) Nyland filed a timely Notice of Appeal. (CP 138)

IV. ARGUMENT & AUTHORITIES

A. THE TRIAL COURT IMPROPERLY REFUSED NYLAND'S REQUEST TO WITHDRAW HIS GUILTY PLEA WHERE THE PLEA WAS INVOLUNTARY.

Nyland established that his guilty plea was the result of pressure from counsel and fear counsel was not prepared for trial, and therefore was not truly knowing, intelligent and voluntary. Nyland should have been allowed to withdraw his appeal in order to correct a manifest injustice.

Under the due process clauses of the Washington Constitution and United States Constitution, all guilty pleas must be knowingly, voluntarily, and intelligently entered. Wash. Const. Article 1, § 3; U.S. Const. Amd. 14; *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001). To be valid, a plea must represent a voluntary and intelligent choice among the alternatives available to the defendant. *In re Pers. Restraint of Peters*, 50 Wn. App. 702, 704, 750 P.2d 643 (1988). The remedy for an invalid plea is the opportunity to withdraw the plea. *State v. Miller*, 110 Wn.2d 528, 535, 756 P.2d 122 (1988).

A guilty plea involves the simultaneous waiver of several fundamental constitutional rights. The defendant bears the burden of showing a manifest injustice. *State v. Branch*, 129 Wn.2d 635, 641, 919 P.2d 1228 (1996). On the other hand, the State bears the burden of proving the validity of a guilty plea. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996) (citing *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976)). The denial of a motion to withdraw a plea is reviewed for abuse of discretion. *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192 (2001).

A guilty plea that is the product of, or is induced by coercive

threat, fear, persuasion, promise, or deception is involuntary and in violation of due process. *Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966). CrR 4.2(f) permits a defendant to withdraw a guilty plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” A “manifest injustice” is obvious, directly observable, overt, not obscure. *Branch*, 129 Wn.2d at 641. “Manifest injustice is proved by showing that the plea is involuntary.” *State v. Hurt*, 107 Wn. App. 816, 829, 27 P.3d 1276 (2001) (citing *State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)); see also *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

CrR 4.2(d) provides:

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

Thus, in order to be valid, a guilty plea must be voluntary. The voluntariness of a plea can be determined only by considering all of the relevant circumstances surrounding it. *Brady v. United States*, 397 U.S. 742, 749, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970).

In this case, there are compelling reasons to allow Nyland to

withdraw his guilty plea. The record shows Nyland was pressured into pleading guilty by his fear that his attorney was unprepared for trial and that his attorney predicted that Nyland would be convicted if he went to trial, and because his attorneys continually pressured him into feeling he had no choice but to waive his rights and plead guilty. The pressure Nyland experienced leading up to the 11th hour plea offer, and the pressure exerted on him during the short time he had to consider the offer, compelled Nyland to enter a plea that was not a product of free and voluntary choice. Under these circumstances, the trial court should have permitted Nyland to withdraw his plea.

In *State v. Frederick*, the Court explicitly rejected the argument that a defendant's denial of improper influence in open court precludes him or her from claiming coercion at some later time. 100 Wn.2d 550, 557, 674 P.2d 136 (1983).³ The Court held that “[t]he federal courts have clearly held that such a denial, while highly persuasive, is not conclusive evidence that a plea is voluntary.” 100 Wn.2d at 557 (citations omitted).

Coercion may render a guilty plea involuntary, irrespective of

³ Overruled on other grounds by *Thompson v. Department of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999).

the State's involvement. Nyland argued that his plea was pressured or coerced because he was given a choice of taking the plea for 171 months in prison, or facing that time plus an additional 23 years in prison by going to trial with an attorney who predicted conviction and who did not appear, from Nyland's perspective, to be prepared for trial. (CP 97-100; 09/14/18 RP 3-5, 10-11) The plea, therefore, was the product of coercive pressure.

In *Frederick*, the Court recognized that plea bargaining pressures may, in particular circumstances, render a plea involuntary, and that coercion by someone other than the State may render a guilty plea involuntary. 100 Wn.2d at 556. The *Frederick* Court reversed the trial court's determination that the defendant was a habitual offender because the trial court did not permit the defendant to present evidence that a prior guilty plea was invalid because the plea was allegedly coerced by a co-defendant. The Court held:

We emphasize, however, that a defendant who seeks to later retract his admission of voluntariness will bear a heavy burden in trying to convince a court or jury that his admission in open court was coerced. The task will be especially difficult where there are other apparent reasons for pleading guilty, such as a generous plea bargain or virtually incontestable evidence of guilt. Nevertheless, a defendant should not be denied the opportunity to at least present

evidence on the issue.

Frederick, 100 Wn.2d 558.

In this case, Nyland presented ample evidence that he was coerced and pressured into taking the plea because he felt he had no other choice. Nyland felt that his trial attorney was unprepared to go to trial because his attorney had not discussed trial strategy with him and had predicted conviction. As a result, Nyland felt he had no choice except to plead guilty. This pressure made his plea involuntary. See *Frederick*, 100 Wn.2d at 556.

Nyland's concern that his counsel was unprepared to go to trial, the length of incarceration Nyland faced, and the feeling that he had no alternative except to agree to plead guilty were the factors motivating him to plead guilty, not the agreement by the State to forego additional charges or weapon enhancements. Nyland stated that his plea was the result of "scare tactics," not thoughtful consideration of all options. (CP 100) Nyland was facing over 37 years in prison. Moreover, he stated that his attorney repeatedly informed him he was not likely to prevail if he went to trial. (CP 97-100)

Thus, Nyland was presented with little choice but to plead guilty, given his lack of confidence in his attorney's ability to

convince a jury that he was not an accomplice to the crimes. Accordingly, Nyland has shown a manifest injustice justifying withdrawal of his guilty plea. *Frederick* 100 Wn.2d at 556. The court abused its discretion by denying the motion when its decision was based on untenable grounds and for untenable reasons. *Marshall*, 144 Wn.2d at 280.

Nyland presented adequate evidence to undermine the finding that his waiver of his right to trial and his decision to accept the State's plea offer was fully voluntary. The trial court should have permitted him to withdraw his plea.

B. NYLAND'S JUDGMENT AND SENTENCE CONTAINS COST PROVISIONS THAT ARE NO LONGER AUTHORIZED BY THE LEGAL FINANCIAL OBLIGATION STATUTES.

Nyland was sentenced on September 14, 2018. The trial court waived the \$500 discretionary DAC recoupment fee, but imposed a \$500.00 crime victim assessment fee, a \$100.00 DNA database collection fee, and a \$200.00 criminal filing fee. (CP 121) Additionally, the Judgment and Sentence includes a provision stating that "[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full[.]" (CP 121) However, the Judgment and Sentence also notes that "extraordinary circumstances exist that make payment of

nonmandatory legal financial obligations inappropriate[.]” (CP 120)
And the trial court found that Nyland did not have the financial resources to pay for his appeal, and signed an Order of Indigency. (CP 142-43)

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) amended the legal financial obligation (LFO) system in Washington State. The Bill amended several statutes related to the imposition of discretionary costs on indigent defendants and interest on such costs. Laws of 2018, ch. 269; *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). House Bill 1783’s amendments were effective as of June 7, 2018.

In this case the trial court imposed a \$100.00 DNA collection fee. (CP 121; 09/14/18 RP 38) But RCW 43.43.7541 now provides: “Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender’s DNA as a result of a prior conviction.” See also Laws of 2018, ch. 269, § 18. Nyland has previously been convicted of a felony, so DNA has previously been collected. (CP 119)

The trial court also imposed a \$200.00 criminal filing fee. (CP 121; 09/14/18 RP 38) But RCW 36.18.020(2)(h) now provides:

“Upon conviction or plea of guilty, . . . an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).” See also Laws of 2018, ch. 269, § 17(2)(h).

The portion of the amendments pertaining to interest accrual amended RCW 10.82.090. See Laws of 2018, ch. 269, § 1. That statute now provides, in relevant part, that “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1). Nyland was sentenced after June 7, 2018, but the trial court failed to strike or modify the improper interest accrual language. (CP 121)

The trial court did not have statutory authority to order Nyland to pay the DNA fee or criminal filing fee, or order that interest shall immediately begin to accrue on his non-restitution LFOs. Nyland’s case should be remanded to the trial court to amend the Judgment and Sentence so the improper fees and the interest accrual provision can be stricken.

V. CONCLUSION

Nyland respectfully urges this Court to reverse the denial of his motion to withdraw guilty plea, reverse his convictions, and

remand for further proceedings to allow him to withdraw his guilty plea. Alternatively, this Court should direct the trial court to strike the DNA collection fee, the criminal filing fee, and the interest accrual provision from Nyland's Judgment and Sentence.

DATED: February 27, 2019



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CERTIFICATE OF MAILING

I certify that on 02/27/2019, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Jamison P. Nyland, DOC# 410937, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326.



STEPHANIE C. CUNNINGHAM, WSBA #26436

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