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Division II
State of Washington
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No. 52772-3-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

James Earl Eaton,

Appellant.

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

BRIEF OF APPELLANT

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A. INTRODUCTION

James Eaton pleaded guilty to 12 various non-violent theft and drug related offenses, including four counts of theft of a motor vehicle for taking four snowmobiles, even though snowmobiles do not qualify as motor vehicles under that statute.

Because the trial court lacked a factual basis to impose judgment on Mr. Eaton for the four offenses of theft of a motor vehicle, his plea was involuntary, and he is entitled to reversal and remand for these convictions to be dismissed, and his choice of remedy on remand.

B. ASSIGNMENT OF ERROR

The trial court lacked a factual basis for entering judgment on Mr. Eaton's guilty plea to four counts of theft of a motor vehicle, rendering his plea involuntary in violation of due process.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A guilty plea is constitutionally invalid if there is no factual basis for finding the alleged conduct constituted the crime charged. Did the trial court err in accepting Mr. Eaton's plea to four counts of theft of a motor vehicle for taking four snowmobiles, when snowmobiles are not motor vehicles under RCW 9A.56.065? U.S. Const. Amend. XIV.

D. STATEMENT OF THE CASE

Mr. Eaton has suffered from an untreated drug addiction for most of his life, beginning in childhood. RP¹8-9.

In 2018, Mr. Eaton was charged with 12 counts of various property and drug crimes, including seven counts of theft of a motor vehicle, possession of a controlled substance (methamphetamine), theft in the first degree for taking a travel trailer, unlawful possession of a stolen motor vehicle,² and the misdemeanor offense of failing to remain at the scene of an accident. CP 1, 4, 298-313. Four of these seven counts of theft of a motor vehicle involved snowmobiles (counts II-V). CP 298-302. Mr. Eaton pleaded guilty to all the charged offenses. CP 4, 303.

Mr. Eaton was clean and sober for the eight months while he was incarcerated in Pierce County jail pending trial on these charges. RP 11. Mr. Eaton has never been to prison before. RP 12. He requested a prison-based DOSA so that when he came out of prison, he would be ready to work again and raise his one and two-year-old children. RP 12; CP 14.

Despite the fact that Mr. Eaton would have served a significant prison sentence for these drug and property crimes through a prison-based

¹ Report of Proceedings (RP) references the 11/15/18 sentencing hearing. Any references to other dates will include a date followed by "RP."

² This charge was from 2017, but Mr. Eaton pleaded to this along with the 2018 offenses.

DOSA, the prosecutor characterized Mr. Eaton's request as a "get-out-of-jail-free-card" and urged the court to deny his request for prison-based treatment because of Mr. Eaton's prior failed participation in drug court. RP 5-7.

The court denied Mr. Eaton's request for a prison-based DOSA and sentenced him to the high end of the standard sentencing range, running all 12 offenses concurrent for a total sentence of 84 months. CP 331, 341.

E. ARGUMENT

Mr. Eaton's guilty plea was involuntary because the trial court lacked a factual basis for entering judgment on four counts of theft of a motor vehicle where this offense does not encompass theft of a snowmobile.

a. The trial court lacked a factual basis for Mr. Eaton's guilty plea to the four charges of theft of a motor vehicle for the four snowmobiles, which rendered his plea involuntary.

The trial court lacked a sufficient factual basis for entering judgment on Mr. Eaton's guilty plea to counts II-V of theft of a motor vehicle, because snowmobiles are not motor vehicles under RCW 9A.56.065.

In Washington, theft of a snowmobile is not encompassed by RCW 9A.56.065, which makes it a class B felony to commit theft of a motor vehicle. RCW 9A.56.065 is limited to "cars and other automobiles designed for transport of people or cargo, but not machines designed for

other purposes yet capable of transporting people or cargo.” *State v. Van Wolvelaere*, 440 P.3d 1005, 1007 (Wash. Ct. App. 2019), *petition for review filed*, no. 97283-4 (citing *State v. Barnes*, 189 Wn.2d 492, 496-497, 403 P.3d 72 (2017)). The Court of Appeals thus determined “[a] snowmobile obviously is not a car or other automobile.” *Van Wolvelaere*, 440 P.3d at 1007.

In *Barnes*, the Court relied on RCW 9A.56.065’s plain meaning and legislative intent to determine that a riding lawnmower was not a “vehicle” encompassed by the theft of a motor vehicle statute. *Barnes*, 189 Wn.2d at 496-498. The plain meaning of RCW 9A.56.065 is equally clear for snowmobiles: the legislature “explicitly indicated it intended to focus this statute on cars and other automobiles,” which does not include snowmobiles. *Van Wolvelaere*, 440 P.3d at 1006-1007.

Mr. Eaton pleaded guilty as charged to four theft of a motor vehicle counts for taking four snowmobiles. CP 303-13. The court accepted Mr. Eaton’s plea and entered judgment on these four counts. 10/31/18 RP 48-58; CP 324-42.

A court’s judgment upon a plea of guilty must have a factual basis for the plea by both court rule and the constitution. CrR 4.2(d); *see e.g. Henderson v. Morgan*, 426 U.S. 637, 644-645, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976) (“a plea cannot support a judgment of guilt unless it was

voluntary in a constitutional sense”). The trial court’s judgment on conviction must be supported by evidence sufficient to conclude the defendant is guilty. *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976) (citing *United States v. Webb*, 433 F.2d 400, 403 (1st Cir. 1970)). A plea cannot be voluntary “unless the defendant possesses an understanding of the law in relation to the facts” *Hews v. Evans*, 99 Wn.2d 80, 87, 660 P.2d 263 (1983) (citing *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed.2d 418 (1969)). Mr. Eaton’s challenge to the validity of the plea can be raised for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 7, 17 P.3d 591 (2001); RAP 2.5(a)(3).

Here, the court lacked a factual basis for entering judgment on the four theft of a motor vehicle counts based on Mr. Eaton’s admission that he “unlawfully stole four different snowmobiles.” CP 313. Absent a sufficient factual basis, his guilty plea was constitutionally invalid. *Hews*, 99 Wn.2d at 88.

And though a person may enter a plea to an amended charge that lacks a factual basis in order to take advantage of a favorable plea offer, due process is satisfied only “if the record establishes that the defendant did so knowingly and voluntarily and that there at least exists a factual basis for the original charge, thereby establishing a factual basis for the plea as a whole.” *State v. Zhao*, 157 Wn.2d 188, 200, 137 P.3d 835

(2006); *see also In re Thompson*, 141 Wn.2d 712, 721, 10 P.3d 380 (2000) (citing *In re Personal Restraint of Barr*, 102 Wn.2d 265, 270-71, 684 P.2d 712 (1984) (Barr’s plea was voluntary and intelligent because he “was fully aware that the State’s information alleging indecent liberties was potentially *defective*. The plea bargain, with its *factually suspect information*, was completely disclosed to the trial court”) (emphasis in original)). Here Mr. Eaton pleaded guilty as charged, so there was never a factual basis for the court to accept his plea to theft of a motor vehicle for taking snowmobiles as charged by the State. CP 298-300. Unlike in *Zhao* and *Barr*, the record does not reflect that either Mr. Eaton or the court were aware that this factual allegation was insufficient to support the charged offenses. CP 298-302; 324-343; *Zhao*, 157 Wn.2d at 202; *Barr*, 102 Wn. 2d at 270-71.

Mr. Eaton’s plea was involuntary because the trial court lacked a sufficient basis for entering judgment on theft of a motor vehicle, because a snowmobile does not qualify as a motor vehicle under the statute.

b. Mr. Eaton is entitled to reversal for dismissal of the four theft of a motor vehicle offenses and his choice of remedy on remand.

Because there was an insufficient factual basis for the court to enter judgment on Mr. Eaton’s plea to these four charges, Mr. Eaton is entitled to remand for the four convictions to be vacated and dismissed.

Matter of Keene, 95 Wn.2d 203, 211-13, 622 P.2d 360 (1980) (where defendant's admission in guilty plea did not support conviction, the count must be vacated and charge set aside).

On remand, Mr. Eaton should be given his choice of remedy, including either specific performance of the prosecutor's plea offer, minus the vacated charges, or withdrawal of his guilty plea, because it was involuntarily entered. *State v. Barber*, 152 Wn. App. 223, 226, 217 P.3d 346 (2009) (citing *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003) (Once a plea is invalid, the defendant has the initial choice of specific performance or withdrawing his plea)); *see also Walsh*, 143 Wn.2d at 8-9 (where a court sentences the defendant based on the wrong offender score due to misinformation, generally the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea).

Specific performance of a plea bargain requires that the prosecutor recommend the agreed upon sentence. *Barber*, 152 Wn. App. at 227 (citing *State v. Harrison*, 148 Wn.2d 550, 557, 61 P.3d 1104 (2003)). In other words, Mr. Eaton must be permitted to replead without being penalized for the court's error. *See State v. Powell*, 29 Wn. App. 163, 167, 627 P.2d 1337 (1981) (court set aside defendant's plea of guilty and remanded, allowing him to replead where the record did not contain a sufficient factual basis for the plea). In the alternative, Mr. Eaton should

be allowed to withdraw his guilty plea on remand. *Walsh*, 143 Wn.2d at 8-9.

The court's lack of a factual basis for the four charges of theft of a motor vehicle requires remand for these convictions to be vacated and dismissed, and Mr. Eaton is entitled to his choice of remedy on remand. *Van Wolvelaere*, 440 P.3d at 1007; *Walsh*, 143 Wn.2d at 8-9.

F. CONCLUSION

Mr. Eaton was convicted and sentenced on four class B felony offenses for which the court lacked a sufficient factual basis to enter judgment. This rendered his plea involuntary and requires reversal and remand to vacate these convictions and for Mr. Eaton to choose his remedy for resentencing.

DATED this 19th day of June 2019.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 52772-3-II
v.)	
)	
JAMES EATON,)	
)	
Appellant.)	

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