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Court of Appeals
Division II
State of Washington
12/10/2019 1:38 PM

NO. 53114-3

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD SNIDER,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Garold E. Johnson

No. 17-1-03643-1

BRIEF OF RESPONDENT

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I. INTRODUCTION

On October 2, 2018, Ronald Snider, hereinafter referred to as the “defendant”, pleaded guilty to one count of failure to register as a sex offender – third offense. CP 54-63, 10/2/18 RP 63¹. The court engaged in a thorough colloquy with the defendant to ensure that his plea was entered knowingly, voluntarily, and intelligently prior to accepting his guilty plea. 10/2/18 RP 55-63. Specifically, the court inquired into whether the defendant fully understood the nature of his charges and was making his plea knowingly.

COURT: Do you understand that now you’re charged with the crime of failure to register as a sex offender third offense? Do you understand that?

THE DEFENDANT: Yes, Your Honor.

COURT: Do you have any questions about the elements of that crime?

THE DEFENDANT: No, Your Honor.

COURT: Did you go through that carefully?

THE DEFENDANT: Yes, Your Honor.

10/2/18 RP 57.

The court additionally reviewed the defendant’s statement of defendant on plea of guilty, made sure the defendant had gone over the

¹ The verbatim report of proceedings (VRPs) are separated by date. For the purposes of clarity, the State will refer to the relevant VRPs by date: 10/2/18 RP and 12/14/18 RP.

terms of his plea with standby counsel and asked whether he had any questions about his decision to plead guilty before accepting the guilty plea. 10/2/18 RP 55-63. The record reflects that the defendant knowingly, voluntarily, and intelligently entered a plea of guilty.

II. RESTATEMENT OF THE ISSUES

- A. Did the defendant enter his plea knowingly, voluntarily and intelligently when the record reflects that he was fully and correctly informed of the nature and elements of the charge of failure to register as a sex offender?

III. STATEMENT OF THE CASE

On September 22, 2017 the State charged the defendant with one count of failure to register as a sex offender – third offense.² CP 1-2. On October 2, 2018, the parties appeared for trial. 10/2/18 RP 2. The defendant represented himself with the assistance of standby counsel Mary Martin. 10/2/18 RP 2. The defendant requested a two-week continuance in order to obtain medical documents to support a diminished capacity defense. 10/2/18 RP 2. The court denied the defendant's request for a continuance for two reasons: (1) the defendant had already been granted three continuances over the course of a year, one of which he agreed that there would be no more continuances; and (2) the defendant was unable to show

² The State subsequently filed an amended information as to the charging period. CP 4-5, 18-19.

how the documents relating to diminished capacity were admissible or relevant to the case. 10/2/18 RP 3-6, 14. The case proceeded to trial and the parties argued motions in limine. 10/2/18 RP 18. After the defendant's motions were denied, he decided to enter a plea of guilty. 10/2/18 RP 55-56. The court engaged in a lengthy colloquy with the defendant before accepting his plea as knowing, voluntarily, and intelligently made. 10/2/18 RP 63.

Sentencing was held on December 14, 2018. 12/14/18 RP 2. The defendant was sentenced to a sentence within the standard range of 48 months in custody with credit for 256 days served. CP 69-85, 12/14/18 RP 15. The court also imposed legal financial obligations in the amount of \$500. CP 69-85, 12/14/18 RP 15. The defendant timely filed a Notice of Appeal. CP 86-101.

IV. ARGUMENT

DEFENDANT'S PLEA WAS KNOWING, INTELLIGENT, AND VOLUNTARY

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. U.S. Const. amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Personal Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *Wood v. Morris*, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976). Whether a plea is

knowing, voluntary, and intelligent is determined from a totality of the circumstances. *Wood*, 87 Wn.2d at 506; *State v. Branch*, 129 Wn.2d 635, 919 P.2d 1228 (1996). If a defendant has received the information and pleads guilty pursuant to a plea agreement, there is a presumption that the plea is knowing, voluntary, and intelligent. *In re Personal Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191, *review denied*, 123 Wn.2d 1009, 869 P.2d 1085 (1994). “A defendant’s signature on the plea form is strong evidence of a plea’s voluntariness.” *State v. Branch*, 129 Wn.2d at 642; *State v. Stephan*, 35 Wn. App. 889, 893, 671 P.2d 780 (1983) (*quoting State v. Perez*, 33 Wn. App. 258, 261-262, 654 P.2d 708 (1982) (*citing In re Personal Restraint of Keene*, 95 Wn.2d 203, 206-207, 622 P.2d 13 (1981))). If the trial court orally inquires into a matter that is on that plea form, the presumption that the defendant understands this matter becomes “well nigh irrefutable.” *Branch*, 129 Wn.2d at 642 n.2; *State v. Stephan*, 35 Wn. App. at 893. After a defendant has orally confirmed statements in this written plea form, that defendant “will not now be heard to deny these facts.” *In re Keene*, 95 Wn.2d 203, 207, 622 P.2d 13 (1981).

For a court to conclude that a guilty plea is made knowingly, voluntarily, and intelligently, it must have facts sufficient to satisfy three tests. First, the defendant must understand “the direct consequences of [the] guilty plea,” and the record of the plea hearing “must show on its face that

the plea was entered voluntarily and intelligently.” *Wood v. Morris*, 87 Wn.2d 501; *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (citing *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). The defendant must “understand the sentencing consequences” of his plea. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); *State v. Turley*, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003). He must also understand that he is waiving certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. *Boykin v. Alabama*, 395 U.S. at 243. Second, a defendant must “be informed of the requisite elements of the crime charged, [and]... understand that his conduct satisfies those elements.” *In re Personal Restraint of Hews*, 99 Wn.2d 80, 87, 88, 660 P.2d 263 (1983); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); *See also United States v. Johnson*, 612 F.2d 305, 309 (7th Cir. 1980). Third, the court must be “satisfied that there is a factual basis for the plea.” CrR 4.2(d).

For a plea to be voluntary the defendant must be advised of the nature of the charge. *Henderson v. Morgan*, 426 U.S. 637, 645 n.18, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). But the court in that same case indicates that advising the defendant of the offense does not mean going through every element of the offense. *Keene, supra*, at 207 (citing *Henderson*, at

647). The minimum would be that the defendant needs to be made aware of the acts and state of mind required to constitute the crime. *State v. Holsworth*, 93 Wn.2d 148, 153 n.3, 607 P.2d 845 (1980).

In *Keene*, the defendant signed a plea agreement that indicated, among other things, that he had received a copy of the information. *Keene*, at 205. The court found that the defendant had notice of the elements of the crime he was pleading to since he plead to the crime as charged in the information and acknowledged receiving a copy. *Id.* at 208-9.

Similarly, in *State v. Smith*, 74 Wn. App. 844, 848, 875 P.2d 1249 (1994), the defendant claimed his plea was involuntary because he did not understand the nature of his charge. However, the court determined the defendant was made aware by the amended information as well as his own statement on plea of guilty. *Id.* at 849.

In the instant case, the written documents show defendant was informed of the charge against him. The State indicated that it had filed an amended information charging defendant with failure to register as a sex offender – third offense, but that the charging period was amended. CP 18-19; 10/2/18 RP 14. Defendant also acknowledged receiving the amended information on the record and in his statement of defendant on plea of guilty. 10/2/18 RP 15, CP 54, page 1 paragraph 4(b). The statement also indicated that defendant was pleading guilty as charged to the amended

information and that the amended information contained the elements of the crime of which he was charged. CP 54, page 1 paragraph 4(b). Defendant was certainly informed of the charges against him.

Defendant himself makes several statements indicating his plea was knowing, intelligent, and voluntary. On the second to last page, defendant's statement reads:

Between July 6, 2007 and April 1, 2018 in Pierce County Washington, I knowingly failed to comply with the sex offender registration law having previously been convicted of a felony sex offense and it was my third offense or subsequent offense.

CP 62, paragraph 11.

Just below that there is a sentence that reads:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this 'Statement of Defendant or Plea of Guilty.' I have no further questions to ask the judge.

CP 62, paragraph 12.

Defendant's signature appears on this page just below this sentence. Directly below defendant's signature there is a sentence that reads, "I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement." CP 62. The standby attorney's signature appears directly below this statement. CP 62. The court also signed a statement on the last page which read "I find the

defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged." CP 63. The written plea agreement supports a knowing, intelligent, and voluntary entry into a plea of guilty.

The court not only accepted the written documents, but also engaged in a colloquy with defendant and standby counsel on the record. 10/2/18 RP 55-63. Defendant told the court he understood that he was charged with the crime of failure to register as a sex offender. 10/2/18 RP 57. The court also verbally read defendant's statement into the record and defendant confirmed that was his statement. 10/2/18 RP 56-64. Defendant never indicated any confusion. His answers are in accordance with his written plea and defendant received assistance from his standby counsel both in his written plea and in his colloquy with the court. CP 54-63; 10/2/18 RP 55-63. It is clear from the oral record as well as defendant's signed statement that defendant went over the plea with his standby attorney. In looking at defendant's statements both in the written plea document and in court, it is clear that the requirements of CrR 4.2(d) were met.

In the instant case, defendant alleges that his plea was not knowingly made because the trial court affirmatively misinformed him of the law regarding knowledge. Brief of Appellant at 4. This claim fails where the

information not only sufficiently apprised defendant of the nature of the charges against him, a review of the record shows defendant's plea was knowingly, voluntarily, and intelligently made.

In *Drake*, a sex offender, registered his apartment address with the police department. *State v. Drake*, 149 Wn. App. 88, 91, 201 P.3d 1093 (2009). On May 6, Drake failed to pay rent and was evicted. *Id.* Drake did not register a change of address between May 6 and May 20 and was convicted of failure to register as a sex offender. *Id.* at 91-92. On appeal, this Court determined that the State failed to prove beyond a reasonable doubt that Drake knowingly failed to register. *Id.* at 95. The court held that because the State did not produce evidence that Drake had notice of the eviction, the State did not prove the mens rea element – that Drake knew he needed to register a new address. *Id.* at 94. The court also determined that the State failed to present evidence that would infer that Drake did not intend to return. *Id.* at 95. “If Mr. Drake maintained his residence at the New Washington Apartment and intended to return there, he was under no duty to change in registration to another residence or declare that he had to fixed residence.” *Id.* at 94-95.

The defendant relies primarily on *Drake* for his argument that the trial court misinformed him of the elements of failure to register as a sex offender. Brief of Appellant at 4. Specifically, he claims that *Drake*

requires that the State is also required to prove that he knew that he had changed addresses and therefore the court misinformed him of the elements by omitting this on the record. Brief of Appellant at 4. This claim fails because *Drake* does not stand for that proposition. Rather, *Drake* requires that the State must prove a person's awareness that he is a transient in order to be convicted for failure to register in the manner specifically required for transients. *State v. McDonald*, 8 Wn. App.2d 1061 (2019)³. *Drake* is not applicable to this case. There is nothing in the record to indicate that the defendant was transient. The State would not have been required to prove that defendant was aware of his transient status. Rather, the record reflects that the defendant intended to raise a diminished capacity defense, but failed to provide any offer of proof in support of that claim or articulate any logical connection to how it related to his knowledge of the registration requirements. 10/2/2018 RP 8-9. Based on the preceding analysis showing the amended information notified defendant of the nature of the charges against him and the subsequent review of the written statement of defendant on plea of guilty and oral record of the colloquy, defendant is unable to show that his plea was anything other than knowingly made.

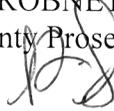
³ This decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate. *See* GR 14.1.

V. CONCLUSION

The court engaged in a thorough and lengthy colloquy with the defendant before accepting his plea of guilty. The record reflects that the defendant entered his plea knowingly, voluntarily, and intelligently. The trial court did not misinform the defendant of the elements of his offense where the holding in *Drake* is not applicable to this case. As such, the State respectfully requests that this Court dismiss the defendant's claim and affirm his conviction.

RESPECTFULLY SUBMITTED this 10th day of December, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



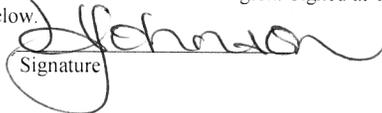
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Certificate of Service:

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PIERCE COUNTY PROSECUTING ATTORNEY

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