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NO. 53715-0-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

Jacklynn Cuba Wilson,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 18-1-04345-1

BRIEF OF RESPONDENT

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I. INTRODUCTION

During the time that defendant Jacklynn Wilson acted as the bookkeeper for local business Mattress Makers, she stole \$53,995.61 through forged checks she wrote to herself. Her actions resulted in one first degree theft charge and thirty-two forgery charges.

Wilson had other outstanding cases in Pierce and King Counties. After initially agreeing to a State's global plea offer to resolve all of her Pierce County cases and run the sentence concurrent to her King County cases, Wilson backed out of the agreement. The State advised her that it would be seeking consecutive sentences on all thirty-three charges and a free crimes aggravator if the case proceeded to trial.

Wilson eventually entered into a global plea agreement with the State in which she resolved her outstanding Pierce County cases with concurrent sentences to her King County cases.

Under this cause number, Wilson pleaded guilty to one count of first degree theft and ten counts of forgery. Wilson entered an *In re Barr* plea to one count of first degree identity theft. Wilson now appeals her plea, alleging the trial court insufficiently inquired into her *In re Barr* plea, rendering it involuntary.

The record demonstrates Wilson entered a knowing, voluntary, and intelligent plea to the amended information that afforded her great benefits, including avoiding consecutive sentences, an aggravating circumstance, and twenty-two criminal convictions. Her written letter to the court, signed plea paperwork, and the court's colloquy all show that Wilson knew the State could not prove she committed first degree identity theft, but was pleading guilty because of the benefit the State's offer afforded her.

This appeal is without merit.

II. RESTATEMENT OF THE ISSUES

- A. Whether Wilson's *In re Barr* plea to one count of identity theft in the first degree was knowing, voluntary and intelligent, where it was part of a global resolution to three Pierce County cause numbers, and resulted in concurrent sentences in all three Pierce County cause numbers and three King County cause numbers? (Appellant's Assignments of Error 1 and 2).

III. STATEMENT OF THE CASE

The State charged Jacklynn Wilson with one count of theft in the first degree and thirty-two counts of forgery. CP 4-15. These charges stemmed from the allegation that Wilson, a bookkeeper for the business Mattress Makers, had been writing checks to herself and forging the owner's signature. CP 1-2. The checks totaled \$53,995.61. CP 2.

Wilson had two other cause numbers pending in Pierce County in addition to the cause number for this appeal: 15-1-04607-3 and 18-1-01160-

6. The parties reached an original plea agreement on all three cases and set a plea date for May 1, 2019. 05/01/19 RP 2. Wilson elected to strike the plea agreement on that date and file a motion for substitution and withdrawal of counsel. 05/01/19 RP 2, 4. The prosecutor and defense counsel had agreed, as part of the plea, that the sentences for the three outstanding Pierce County cause numbers would run concurrent to each other, as well as with Wilson's outstanding King County matters. 05/01/19 RP 2-3. However, because Wilson struck the hearing, the State advised her that it would be seeking consecutive sentences on each of the Pierce County cause numbers, as well as the King County cause numbers.¹ 05/01/19 RP 2-3. Additionally, the State would consider adding a free crimes aggravator should the case proceed to trial.² 05/01/19 RP 3.

The State filed an amended information charging Wilson with one count of theft in the first degree, one count of identity theft in the first degree, and ten counts of forgery. CP 17-21. The parties reached a global resolution – in exchange for Wilson's guilty plea to the amended information and agreement to pay restitution to the victims, the State would recommend 57 months on count one, 84 months on count two with 12

¹ Wilson had two cases in King County where she had entered pleas, but had not yet been sentenced, and one pending King County case. 05/01/19 RP 3.

² The transcript reads "three-crimes," but appears to be a reference to RCW 9.94A.535(2)(c).

months of community custody, and 29 months on the remaining counts. CP 31. Additionally, the State would recommend that the sentences be concurrent to the two other Pierce County cause numbers that she was pleading guilty to the same day, as well as the three King County cause numbers. CP 31. Wilson stipulated to her criminal history, which included similar crimes of dishonesty dating back to 1977. CP 41. Wilson's offender score was calculated at 9+ for all three counts. CP 29.

Wilson pleaded guilty to counts one and three. CP 36. Wilson entered an *In re Barr*³ guilty plea to count two, identity theft in the first degree. CP 26, 36. Wilson attached the following signed statement in regard to her *In re Barr* plea:

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As to Count II, I make the following statement:

In addition to my factual admissions in the plea form, I recognize that I am entering a plea of guilty to a crime that I in fact did not commit. My attorney has discussed with me all of the elements of the original charges and the elements of the amended charges, and I understand them all. There is a factual basis for the original charge. I understand that the prosecution would be unable to prove the amended charges at trial, but I see pleading guilty to the amended charge as beneficial to me because it will allow me to avoid the risk of conviction on the charges I would face at trial. Based upon a review of the alternatives before me, I have decided to plead guilty to a crime I did not commit in order to take advantage of the state's offer. I understand the consequences of this plea agreement and I am making a voluntary and informed choice to enter into it.

I understand that the court must find a factual basis for the original charges and I agree that the court may consider the declaration for determination of probable cause and any other information presented by the prosecutor at the time of this plea to support the factual basis for the original charge.

In re Barr, 102 Wn.2d 265 (1984)

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CP 26.

³ 102 Wn.2d 265, 684 P.2d 712 (1984).

The trial court addressed all three cause numbers at the same plea hearing. 06/04/19 RP 2, 5. At the hearing, defense counsel told the court that she had gone over the original and amended informations with Wilson, discussed the constitutional rights she would waive by entering a plea, explained Wilson's offender score, as well as discussed the sentencing ranges, minimums, and maximums, for each of the charges. 06/04/19 RP 3. Defense counsel indicated that she believed Wilson was entering the pleas knowingly, intelligently, and voluntarily. 06/04/19 RP 4.

The court first addressed the nature of entering a guilty plea generally, addressing all three plea forms. 06/04/19 RP 5. The court asked Wilson if she talked to her attorney about the pleas, if her questions were answered, and if she understood the forms and how they apply to her. 06/04/19 RP 5. Wilson answered affirmatively. 06/04/19 RP 5.

The court then listed the charges contained within the amended information in this case. 06/04/19 RP 7-8. The court explained each of the sentences for the crimes, before asking Wilson if she understood the charges she faced. 06/04/19 RP 8. Wilson answered affirmatively. 06/04/19 RP 8. Wilson also told the court that she understood the elements of the crimes, the sentences accompanying the crime, and the constitutional rights she was giving up by entering her plea, including the right to appeal. 06/04/19 RP 9; CP 29. Wilson indicated she understood the court did not have to follow

the agreed recommendation, as long as the sentence was within the standard range. 06/04/19 RP 9-10. Wilson did not have any questions about the State's sentencing recommendation. 06/04/19 RP 11.

The court went through Wilson's factual statement on a plea of guilty as to the theft and forgery counts, confirming Wilson wrote,

On the following dates in Pierce County, Washington, I did unlawfully alter a written instrument and did put off as true such written instrument: August 4, 2016; August 12, 2016; August 23rd, 2016; September 13, 2016; October 12th, 2016; October 24, 2016; October 28, 2016; January 24th, 2017; February 16, 2017 and February 17, 2017.

06/04/19 RP 16; CP 36. The court then specifically addressed count two, explaining what an *In re Barr* plea is:

Okay. And as it relates to Count 2, I'd asked Ms. Tofflemire when I started this discussion about *In Re Barr*, so I'm sure she explained to you, did she not, that *In Re Barr* stands for the proposition that if there's a substantial likelihood you're going to be convicted as originally charged, you can plead guilty to something else, even if everybody in the courtroom agrees that's not what you really did, right, in order to facilitate resolving a criminal case. Do you understand that?

THE DEFENDANT: Yes.

06/04/19 RP 17. The court clarified that count two was originally forgery, and Wilson agreed there was substantial likelihood she would have been found guilty of that charge at trial. 06/04/19 RP 18. The court agreed, stating,

And the Court has reviewed the Declaration for Determination of Probable Cause and finds that there is a substantial likelihood that she would be found guilty under Count 2, forgery, and therefore under *In Re Barr* can accept a plea to an amended charge. And you understand that whether you admit you committed identity theft in the first degree or not, when you plead guilty to it, it's the same thing; it becomes a conviction on your record, you get sentenced just as if you admitted that that's what you committed? Do you understand that?

THE DEFENDANT: Yeah. I've been fighting this for three months. I got it.

06/04/19 RP 17-18. The court found Wilson was entering all of her guilty pleas freely and voluntarily. 06/04/19 RP 18, 19-20.

The victim, Ray Burgess, addressed the court at sentencing and explained that Wilson's actions not only ruined his 32-year-old business, but his reputation as well. 06/04/19 RP 22-23. The court imposed the recommended sentence. 06/04/19 RP 30; CP50.

This appeal follows. CP 58.

IV. ARGUMENT

A. Wilson's *In re Barr* plea to one count of identity theft in the first degree was knowing, voluntary and intelligent, making her waiver to appeal valid.

Courts generally will not allow a defendant to withdraw a guilty plea unless withdrawal is necessary to correct a manifest injustice. CrR 4.7(f). A manifest injustice exists if there was a denial of effective counsel, if the plea was not ratified by the defendant, if the agreement was not kept by the prosecution, or if the plea was involuntary. *State v. Wakefield*, 130 Wn.2d

464, 925 P.2d 183 (1996). Wilson bears the burden of demonstrating that she suffered a manifest injustice warranting withdrawal. *State v. Wilson*, 16 Wn. App. 409, 253 P.3d 1143 (2011).

Wilson contends that her plea was involuntary because the trial court inadequately inquired into whether Wilson understood she was pleading to a greater crime or understood the risks and benefits of doing so. Brief of Appellant, 1, 8. Wilson cannot establish that she suffered a manifest injustice warranting withdrawal of her guilty plea. The record clearly indicates she entered a knowing, intelligent, and voluntary plea as a part of a global resolution, resolving three outstanding cause numbers and resulting in a decrease of twenty-two criminal convictions under this cause number alone.

Wilson's argument is focused on her *In re Barr* guilty plea to the charge of first degree identity theft. BOA, 1. Under *Barr*, 102 Wn.2d 265, a defendant may plead guilty to a charge he did not commit, so long as the plea confirms with due process. *State v. Harris*, 4 Wn. App. 2d 506, 512, 422 P.3d 482 (2018). Specifically, the plea must be based on "an informed review of all of the alternatives before the accused," the accused must understand the nature and the consequences of the plea bargain, and have determined the plea bargain is in their best interest. *Id.*, citing *Barr*, 102 Wn.2d at 270. "Before accepting a plea under *Barr*, the plea court must

find a factual basis to support the original charge, and determine that the defendant understand the relationship of his conduct to that charge. Moreover, the defendant must be aware that the State's evidence on the original offense is sufficient to convince and jury of his guilt." (internal citations omitted) *Harris*, 4 Wn. App. 2d at 513, citing *Barr*, 104 Wn.2d at 270-71.

Wilson claims that her plea falls short of the requirements in *Barr*, because the record does not indicate that her plea was based on "an informed review of all the alternatives before' her and that she 'has determined the course of action that [s]he believes is in h[er] best interest.'"⁴ BOA, 8 quoting *Barr*, 102 Wn.2d at 269-70. The record demonstrates exactly the opposite.

Approximately one month before Wilson entered her guilty plea, she struck a plea hearing. At that hearing, Wilson was advised that the State would be seeking consecutive sentences under all thirty-three counts, in addition to a three-count aggravator. Wilson avoided that possibility by accepting the plea agreement she now appeals.

⁴ Wilson does not claim the plea is inadequate because of a lack of a factual basis supported the original charge, that the court failed to determine Wilson understood the relationship of her conduct to that charge, or that insufficient evidence of that charge existed to convince a jury of her guilt.

Moreover, the colloquy Wilson had with the court makes clear that she understood the benefits bestowed upon her by this arrangement, as does the statement she provided regarding her *In re Barr* plea.

Wilson was able to resolve all of her outstanding Pierce County cases in one hearing. As a part of a global resolution, one of her cause numbers was pleaded guilty-as-charged, and the other, to an amended information. In addition to cutting the number of convictions almost in half by entering the plea to all of the cases she had outstanding at the time, Wilson was able to guarantee her sentences would be concurrent across the three Pierce County cases as well as her plead-but-not-sentenced King County cases. This fact alone indicates that Wilson was aware of, and voluntarily accepted, the benefits made available to her by way of her plea. Wilson appears to argue that benefit of less criminal convictions is insufficient because it did not change her sentence. BOA, 7-8. That argument ignores the fact that the State intended to seek consecutive sentences absent this plea agreement, and her plea avoided such possibility.

Wilson argues that, because she plead guilty to a greater crime, she exposed herself to a lengthier sentence and thus, it could not have been an informed decision. BOA, 7. But the record proves that Wilson was apprised of the sentencing difference between identity theft and forgery, and

that she knew she was exposing herself to a greater sentence by pleading to identity theft.

Specifically, on her plea paperwork, Wilson's sentencing ranges are spelled out clearly for her. She was aware that her range for identity theft was 63-84 months and her range for forgery was 22-29. CP 29. Her knowledge is evidenced by her signature on the paperwork listing that information, the fact that the judge explained to her that the sentencing ranges were different, and that both Wilson and her attorney told the court they discussed the sentencing consequences of her plea. There is no question that Wilson knew exactly what she was pleading guilty to, and the beneficial sentence she received by doing so. *See also*, CP 26.

The court's colloquy with Wilson was sufficient to ensure that Wilson was entering an intelligent, voluntary, and knowing plea. The trial court did inquire whether Wilson understood the plea she was entering, and Wilson told the court,

I understand that **the prosecution would be unable to prove the amended charges at trial**, but I see pleading guilty to the amended charge as beneficial to me because it will allow me to avoid the risk of conviction on the charges I would face at trial. **Based upon a review of the alternatives before me, I have decided to plead guilty to a crime I did not commit in order to take advantage of the state's offer. I understand the consequences of the plea agreement** and I am making a voluntary and informed choice to enter into it.

CP 26 (emphasis added). Wilson was notified in the sentencing difference she faced in writing and orally by the court. In addition to her written letter to the court explaining that Wilson understood exactly what she was bargaining for, Wilson told the court she discussed all of this information with her attorney. 06/04/19 RP 17. There was no error.

The trial court ensured that Wilson was making a decision based on an informed review of all the alternatives before her. Wilson has failed to meet the burden of demonstrating she suffered a manifest injustice warranting withdrawal of her guilty plea. This court should affirm.

V. CONCLUSION

For the above stated reasons, the State requests this Court affirm Wilson's convictions for theft, first degree identity theft, and forgery.

RESPECTFULLY SUBMITTED this 31st day of December, 2019.

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Angela Salyer
Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or email to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

Date

Signature

12/31/19 [Handwritten Signature]

PIERCE COUNTY PROSECUTING ATTORNEY

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