

28902-8-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LARRY GATEWOOD, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
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Mark E. Lindsey
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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The trial court erred by denying defendant's motion to withdraw his guilty plea because defendant was coerced into entering his plea.

II.

ISSUE PRESENTED

1. Is a guilty plea that is entered knowingly, intelligently, and voluntarily by a defendant subject to withdrawal based upon an unsupported claim that the plea was entered due to coercion?

III.

STATEMENT OF THE CASE

The respondent accepts the appellant's statement of the case with the following additional items. On February 24, 2010, the trial court accepted the amended information as offered by the State. CP 130-132. Thereafter the defendant entered his change of plea to the amended information as outlined in his Statement on Plea of Guilty. CP 146-154. Therein, defendant stipulated to the trial court using the Investigating Officer's Affidavit of Facts and/or police reports (CP 4-15) filed in

support of the original Information as the factual basis for the guilty plea. CP 146-154; 2/24/10-RP 13. Defendant's Statement on Plea of Guilty acknowledged his constitutional rights and his waiver thereof by his execution of the Statement. CP 146-154; 2/24/10-RP 4-13.

The parties agreed to recommend to the court that defendant be sentenced to exceptional sentences both above and below the standard range to reach the bargained for sentence. CP 146-154; CP 143-154; 2/24/10-RP 5-7. The trial court entered formal factual findings and legal conclusions in support of imposing such sentences. CP 143-145.

At the change of plea hearing, the court went through Defendant's statement on plea of guilty section by section. CP 146-154; 2/24/10-RP 4-13. The defendant acknowledged and agreed that he had thoroughly gone over the plea statement and signed it with his counsel. CP 146-154, 2/24/10-RP 4-13. Defendant orally acknowledged that he understood that the sentencing judge was not bound by the plea recommendation. CP 146-154, 2/24/10-RP 4-13. Defendant acknowledged and agreed to waive the rights set forth in the plea statement. Defendant acknowledged that the court would consider the document as defendant's own statement. Defendant indicated that he understood what he was giving up and that he did not have any other questions regarding his pleading guilty. 2/24/10-RP 4-13. As a result, the

court indicated that it had reviewed the defendant's written statement, listened carefully to his verbal statement, and was satisfied that the plea had been given freely and voluntarily with an adequate understanding of the nature of the charge and the consequences of the plea. CP 146-154, 2/24/10-RP 4-13.

At sentencing, the State recommended the sentence per the plea agreement. 2/24/10-RP 4-13. The court listened to the comments of the counsel and defendant before imposing the sentence. 2/24/10-RP 14-19. Thereafter, the trial court imposed the sentence as agreed upon and recommended by the parties. CP 158-173, 174-187; 2/24/10-RP 19-20.

On March 11, 2010, the trial court heard defendant's motion to withdraw his guilty plea. Defense counsel advised the trial court that the parties had negotiated the resolution presented after defendant had initially offered to plead guilty with an agreed sentence of fourteen years while the State had offered eighteen years. 3/11/10-RP 5. Defense Counsel acknowledged that: the facts and law are agreed upon by the parties; defendant's plea statement was the standard plea statement that is used on every case; the statement was reviewed with defendant prior to his signing the document; the trial court had reviewed the statement with defendant in the normal colloquy and there was not anything unusual about the plea. 3/11/10-RP 4. Defense Counsel further observed that:

[T]here was even some negotiating...up to the last minute on the morning the trial was starting. He ended up accepting the plea for the total sentence of 18 years. ...he [defendant] had started out that morning asking for 14. The numbers went back and forth, and we all agreed on the 18.

3/11/10-RP 5. Defense Counsel further observed that it appeared that defendant had experienced some “buyer’s remorse a few days afterwards.”

3/11/10-RP 5. Finally, Defense Counsel acknowledged that defendant’s ex-wife had been released from custody on bond as of the trial date, yet defendant believed that she could be rebooked if she failed to appear for trial and that affected his decision to plead guilty. 3/11/10-RP 5.

The trial court noted that defendant entered this case with a criminal history that qualified defendant as a “two-striker” and that conviction on only one of the serious offenses charged by the original Information would have resulted in a sentence of life imprisonment without the possibility of parole. 3/11/10-RP 5. Defendant entered this case with substantial prior court experience so that defendant was well acquainted with the court’s process and procedure. 3/11/10-RP 8. There was a plea negotiation and defendant was fully advised by his Guilty Plea Statement of his rights and what he faced by pleading guilty. 3/11/10-RP 9. Defendant freely acknowledged to the trial court at the time of entering his guilty plea that he was making his plea freely and voluntarily, and that *there had been no threats of any kind to him or any*

other person to cause him to make the plea. CP 146-154; 3/11/10-RP 9-10. Finally, the trial court denied the motion because defendant had failed to satisfy his burden of demonstrating that a manifest injustice had occurred. CP 197; 3/11/10-RP 11-12.

This appeal followed.

IV.

ARGUMENT

- A. A GUILTY PLEA IS ENTERED KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WHEN THE TRIAL COURT FORMALLY ACCEPTS IT FOLLOWING A REVIEW OF THE WRITTEN PLEA STATEMENT WITH THE DEFENDANT ON THE RECORD.

The defendant argues that his guilty plea was not knowingly, intelligently, and voluntarily entered because he was coerced. Defendant contends that the guilty plea should be set aside based upon his “certificate” filed March 4, 2010. Defendant asserts that his guilty plea was coerced because he was threatened with life imprisonment if he did not accept the State’s plea offer. CP 190-191. Defendant further asserted that he was coerced by “the threats and pressure on my wife to testify or else be held in jail on a material witness warrant.” CP 190-191. This claim disregards the fact that the court followed the very procedure set forth by the Supreme Court in CrR 4.2(d).

CrR 4.2 outlines the procedures for a plea, but strict compliance with CrR 4.2 is not of constitutional magnitude. *In re Vensel*, 88 Wn.2d 552, 554, 564 P.2d 326 (1977). CrR 4.2(d) prohibits a court from accepting a guilty plea that is not made voluntarily, competently, and with a complete understanding of the nature of the charges and the consequences of the plea. A defendant's guilty plea must be knowing, voluntary, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). CrR 4.2(g) mandates that the court be certain that defendant has read or had the statement read to him and that he understands the rights that he is waiving as a result. Here, the court properly viewed the defendant's statement upon a plea of guilty as the formal written memorandum of the fact that the guilty plea was entered knowingly, intelligently, and voluntarily. CP 146-154, 2/24/10-RP 4-13. Defendant's written guilty plea statement set forth each of the constitutional rights which he was waiving by the entry of the guilty plea. CP 146-154. The court orally reviewed the written statement with the defendant on the record before formally accepting the change of plea. 2/24/10-RP 4-13. The court only accepted the guilty plea after defendant acknowledged in writing and orally the rights she was waiving by signing the statement. CP 146-165, 2/24/10-RP 4-13.

When a defendant completes a plea statement and admits to reading, understanding, and signing such a statement, there is a strong presumption that the plea is voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Here, the trial court's oral inquiry into the voluntariness of defendant's plea with his signed plea statement gives rise to a presumption of voluntariness that is "well nigh irrefutable." *Id.* To overcome this presumption, Mr. Gatewood must provide objective proof that his plea was entered involuntarily. No such proof has been proffered. Defendant filed a certificate that references the original threat of facing his "third strike" and life imprisonment if convicted as originally charged or that his ex-wife might be arrested as a material witness. Defendant's Counsel noted at the time of the plea that defendant's ex-wife had bonded out of custody. Neither one of these concerns was raised by defendant to the trial court in response to its inquiries regarding threats to make defendant enter his guilty plea at the time that he entered same.

The Statement on Plea of Guilty reflects that: defendant certified to the court that his counsel had explained to him, and they had fully discussed, all the sections of the Statement; he understood all the sections; he had no further questions to ask the judge; defendant's counsel certified to the trial court that they had read and fully discussed his Statement and believed that defendant is competent and fully understands his statement.

CP 146-154; 2/24/10-RP 4-13. Finally, defendant's Statement reflects that the trial court found that defendant had read the entire Statement and fully understood its content and effect. CP 146-154; 2/24/10-RP 4-13. The trial court found that defendant's counsel had previously read to him the entire statement and that he fully understood its content and effect. CP 146-154; 2/24/10-RP 4-13. The record reflects that the trial court did not finally accept defendant's guilty plea until after it had gone over his written plea statement with him and was satisfied that he was entering his guilty plea knowingly, intelligently, and voluntarily. CP 146-154; 2/24/10-RP 4-13.

There is nothing in the record which supports the claim that the defendant was coerced into entering his guilty plea. The trial court specifically inquired of defendant whether he or anyone else had received threats to make him enter his guilty plea. Defendant clearly and unequivocally responded that no such threats had been received. 2/24/10-RP 4-13. There is nothing in the record to support the claim that defendant did not enter his guilty plea knowingly, voluntarily, and intelligently.

At no point during the plea and sentencing, did the defendant claim not to understand the events. The circumstances support quite the contrary perspective. Defendant was best positioned in this change of plea and sentencing process to know what he stood to gain if the court accepted the

negotiated plea. Here, Mr. Gatewood specifically and affirmatively advised the trial court that neither he nor anyone else had been threatened as he was entering his guilty plea. 2/24/10-RP 4-13. Moreover, defendant did not express any concerns regarding his guilty plea during the second hearing before the trial court to correct the judgment and sentence regarding one count. See 2/25/10-RP 1-4. As noted, defendant's claim is unsupported by the record and should be rejected as an insufficient basis to permit him to withdraw his guilty plea. The trial court committed no error.

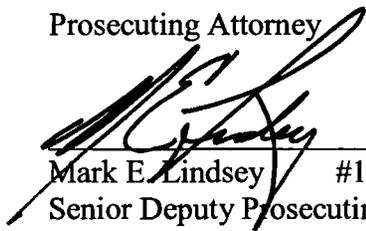
V.

CONCLUSION

For the reasons stated above the defendant's convictions and the sentences imposed thereon should be affirmed.

Dated this 15th day of December, 2010.

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