

FILED

JAN 12, 2015

Court of Appeals
Division III
State of Washington

NO. 325334-III
(consolidated with 325385-III)

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

JUSTIN EDWARD MUELLER, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 14-1-00043-3
(consolidated with 14-1-00150-2)

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The defendant's pleas of guilty were knowingly, intelligently, and voluntarily made.
2. The trial court did not abuse its discretion when it denied the defendant's request for a prison DOSA.

II. STATEMENT OF FACTS

The Statement of Case appearing in Appellant's brief at pages 2-3 adequately sets forth the facts relevant to the issues presented.

III. ARGUMENT

1. **The record establishes that the defendant's plea was knowingly, intelligently, and voluntarily made.**

A defendant is entitled to withdraw his guilty plea only if he establishes that withdrawal is necessary to correct a manifest injustice. *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). A manifest injustice is an "injustice that is obvious, directly observable, overt, not obscure." *Id.* As a consequence of the many safeguards that precede a defendant's plea of guilty, the manifest injustice standard for a plea withdrawal is demanding. *Id.* A defendant's signature on a plea form that complies with the requirements of CrR 4.2 is "strong evidence" that the plea is voluntary. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228

(1996), *see generally Wood v. Morris*, 87 Wn.2d 501, 554 P.2d 1032 (1976).

Our Supreme Court has suggested four indicia of manifest injustice that would allow a defendant to withdraw his guilty plea: (1) the defendant received ineffective assistance of counsel, (2) the defendant did not ratify his plea, (3) the plea was involuntary, and (4) the prosecution did not honor the plea agreement. *Taylor*, 83 Wn.2d at 597. The defendant in the present case makes a showing of none of these factors.

At the trial court level, the defendant asserted in his declaration that he wanted to withdraw his pleas of guilty because his prior counsel was ineffective. (CP 20-22). However, at the motion hearing he changed the focus of his complaint from ineffective assistance of counsel onto the fact that he had not seen the victim's impact statement until after his guilty plea. (RP 05/14/2014 at 24-30). After hearing the testimony at the motion hearing, the trial court properly concluded that the defendant failed to establish that withdrawal of his pleas was warranted. (*Id.* at 31).

Now, on appeal, the defendant requests that this Court allow him to withdraw his pleas, not due to ineffective assistance of counsel, nor because he did not see the victim impact statement prior to entry of his plea, but instead he argues that the colloquy the trial court conducted at the time of the defendant's plea was inadequate. (Appellant's Brief at 3).

However, the defendant's argument is supported neither by the record nor by case law.

While the trial court's colloquy at the time of the defendant's guilty pleas may have been brief, the record clearly establishes that the defendant's pleas were knowingly, intelligently, and voluntarily made. The defendant twice stated on the record that he had reviewed the Statements on Plea of Guilty with his lawyer. (RP 03/12/2014 at 6; RP 05/14/2014 at 27). His lawyer also testified that she reviewed the Statements on Plea of Guilty with him. (RP 05/14/2014 at 22). The defendant's signature appears on both documents and both documents conform with CrR 4.2, and properly advised him of all the rights he was relinquishing at the time his plea was entered. (CP 8-17, 60-69). Consequently, the record establishes that the court properly accepted the defendant's pleas of guilty, and did not abuse its discretion when it denied his motion to withdraw them.

2. The trial court did not abuse its discretion by denying the defendant's request for a prison DOSA.

Generally, a standard range sentence, of which DOSA is an alternative form, cannot be appealed. *State v. White*, 123 Wn. App. 106, 97 P.3d 34 (2004). However, a trial court's imposition of a standard range sentence will be reviewed to correct a legal error or cure an abuse of

discretion. *Id.* at 114. Neither of which occurred in this case.

The defendant argues that the trial court abused its discretion by failing to consider the defendant's request for a prison-based DOSA. The defendant's assertion is simply not supported by the record. "A trial court abuses its discretion when it can be said that no reasonable person would adopt the trial court's view." *White*, 123 Wn. App. at 114 (citing *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997)). Such cannot be said of the trial court's decision in this case. Instead, the trial court ordered the Department of Corrections to complete a DOSA screening which included a Risk Assessment / Pre-Sentence Investigation (PSI). (CP 18 and 70). At the time of the sentencing hearing, the court listened to the arguments of the State and the defense, and the court reviewed the PSI before denying the defendant's request for a prison-based DOSA sentence. While the trial court did not elaborate as to the basis for his denial of the DOSA option, the defendant cites to neither case law nor statute that indicates such an explanation is required. Failing to establish that the trial court did not properly exercise its discretion, the defendant is not entitled to be resentenced.

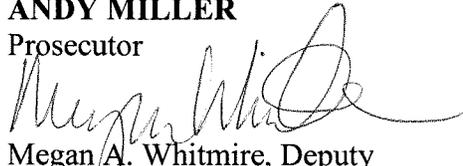
IV. CONCLUSION

Based upon the arguments above, the defendant's convictions and sentences should be affirmed.

RESPECTFULLY SUBMITTED this 12th day of January, 2015.

ANDY MILLER

Prosecutor

A handwritten signature in black ink, appearing to read "Megan A. Whitmire". The signature is fluid and cursive, with a large, stylized initial "M".

Megan A. Whitmire, Deputy

Prosecuting Attorney

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

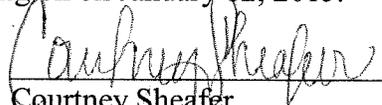
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Signed at Kennewick, Washington on January 12, 2015.


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