

NO. 350631

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON

Respondent,

v.

MANUEL ARGOMANIZ-CAMARGO,

Appellant.

Appeal from the Superior Court of Adams County

Cause No. 16-1-00019-3

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENT OF ERROR

Mr. Argomaniz-Camargo was denied his constitutional and statutory right to the effective assistance of counsel for his motion to withdraw his plea of guilt.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Although the appointment of counsel on a motion to withdraw a plea of guilty is discretionary, once the court actually appoints counsel, the appointed attorney must provide effective representation. In this case, the court appointed an attorney who did not act as an advocate, implied the motion to withdraw the guilty plea was without merit, failed to coherently argue relevant legal authority in support of the motion, and ultimately argued a contradictory legal theory premised upon the unhelpful testimony he elicited. Was Mr. Argomaniz-Camargo denied his right to effective assistance of counsel?

III. STATEMENT OF THE CASE

i. Introduction/Procedural History

Manuel Argomaniz-Camargo was charged on March 3, 2016, by Information with Murder in the First Degree for the killing of Ana Veronica Montelongo Garcia on March 1, 2016, which was alleged to have occurred in the presence of the couple's three-year-old child. CP 1-6; CP 7-9.

Detective Hampton testified about the active scene upon his early morning arrival during the CrR3.5 hearing:

There was a dark-colored SUV near the fog line. There was -- The back hatch was open. There was luggage clothing items just all over the ground that appeared to have come from the back hatch area of that vehicle. There was a body of a female laying in the lane of travel near the fog line. There was just a large amount of debris around that vehicle. The passenger door was open still.

RP1 75 at lns. 8-15.

There was what appeared to be a large amount of blood on the passenger's side of the vehicle. *Id.* at lns. 18-19.

The three-year-old child was present when Mr. Argomaniz-Camargo was arrested by the Washington State Patrol about a mile from the deceased woman's location. See CP 165. Mr. Argomaniz-Camargo was in-custody when investigating officers arrived and was covered in blood up to his elbows. RP1 at 13-14. The deceased victim was found nude, beaten and had a screwdriver protruding from her chest. RP1 25 at ln. 1; RP1 128 at lns. 10-11. Accordingly, the Information contained two aggravating factors: deliberate cruelty to the victim (RCW 9.94A.535(3)(a), and within sight or sound of the victim or offender's minor children (RCW 9.94A.535(3)(h)(ii)). CP 8.

Mr. Argomaniz-Camargo invoked his right to counsel. RP1 21 at lns. 18-23. Subsequently, he prevailed (in part) in the pretrial motion to suppress statements pursuant to CrR 3.5. CP 10-11; CP 165-173. The trial

court's decision rendering some of the statements attributed to Mr. Argomaniz-Camargo inadmissible, was entered on 4/29/16. CP 10-11. Findings of fact were later filed by the time of sentencing. CP 165-173.

On July 22, 2016, the State extended a plea offer, which removed the aggravating factors, but added a deadly weapon enhancement and an additional count related to drug possession. CP 16-18. With the plea agreement, Mr. Argomaniz-Camargo's standard range was was 250-333 months with an additional 24 months for the deadly weapon enhancement. *Id.* Removal of the aggravating circumstances eliminated the possibility of an exceptional sentence of up to life imprisonment and limited the court's discretion with regard to the standard range. The plea agreement explicitly allowed for the State to argue for a high-end sentence of 357 months and for Mr. Argomaniz-Camargo to request imposition of 274 months – the low end. See CP 19-30. The matter was set on for a plea on August 30, 2016. See RP2 317 at lns. 10-12.

Following a motion by the State pursuant to the plea agreement, the trial court permitted the filing of an Amended Information. CP 12. The Second Amended Information charged Murder in the First Degree in Count One (with a deadly weapon enhancement) and Unlawful Possession of a Controlled Substance-Methamphetamine in count II. CP 13-15. On that same date, Mr. Argomaniz-Camargo pled guilty to the charges

contained in the Second Amended Information. CP 19-30. He is not fluent in English, so a Spanish language interpreter translated the Statement of Defendant on Plea of Guilty for him, and a Spanish language interpreter assisted him in the courtroom. CP 29. During the hearing (?), Mr. Argomaniz-Camargo indicated he had no difficulty understanding the interpreter. RP2 272 at lns. 22-24. The trial court undertook a guilty plea colloquy with Mr. Argomaniz-Camargo. RP2 274-281. Specifically, Mr. Argomaniz-Camargo acknowledged he understood that by pleading guilty he gave up his right to a trial, his right to call witnesses, his presumption of innocence, and other rights. RP2 at 277. Following the colloquy, the trial court made findings that the plea was entered into knowingly, intelligently, and voluntarily. RP2 281 at lns. 13-18. A sentencing hearing was scheduled for October 4, 2016. RP2 282 at ln. 15.

On September 16, 2016, trial counsel alerted the court that Mr. Argomaniz-Camargo wished to withdraw his plea. A hearing was held on September 19, 2016. See RP2 at 285. The trial court allowed former counsel to withdraw based on the inherent conflict regarding Mr. Argomaniz-Camargo's desire to withdraw the guilty plea and appointed substitute counsel for purposes of the motion to withdraw the plea of guilty. RP2 288 at lns. 13-16. A Waiver of Speedy Sentencing was filed. CP 34; RP2 290. Mr. Argomaniz-Camargo's substitute counsel, Mr.

Trageser, subsequently filed a notice of appearance. CP 36-37. On October 3, 2016, Mr. Argomaniz-Camargo represented though counsel he had changed his mind, that he would not now seek to withdraw his plea, and wished to schedule sentencing. RP2 296-97. Despite this representation, a written motion to withdraw the guilty plea was later filed by substitute counsel for Mr. Argomaniz-Camargo. CP 38-47.

ii. Motion to Withdraw Plea of Guilt

Substitute counsel filed a Motion to Withdraw Plea on 10/21/16. CP 38-47. An Amended Motion to Withdraw Plea and affixed Certificate of Defendant in Support of Motion to Withdraw Guilty Plea were filed three days later on 10/24/16. CP 48-57; CP 186-190. The Amended Motion was purportedly submitted as “more sensible and to the point in light of remaining discovery reviewed” with Mr. Argomaniz-Camargo. CP 48 at lns. 21-22. Nonetheless, the principal claims raised in both motions and the affixed Certificate of Defendant in Support of Motion to Withdraw Guilty Plea were coercion by his former counsel prior to the time of the plea and ineffective assistance of trial counsel in failing to review all discovery with the defendant and failing to adequately investigate the case. CP 42; CP 52. The motions were virtually identical in both facts and argument. CP 48 at ln. 22. Counsel requested a fact finding hearing for the motion to withdraw the guilty plea. CP 46 at lns. 21-22; CP 57 at

ln. 18.

The motion represented that substitute counsel had reviewed the court file and listened to the transcript of the guilty plea hearing, and neither demonstrated misunderstanding or coercion involved in the plea. CP 39, lns. 4-6; CP 49 at lns. 18-19. Substitute counsel went on to accept prior counsel's representations¹ that he saw Mr. Argomaniz-Camargo no less than 15 times, spoke to him telephonically, and received all discovery. CP 39 at lns. 7-10; CP 49 at lns. 20-24. Substitute counsel represented a Spanish-speaking interpreter was used to assist in communications between Mr. Argomaniz-Camargo and his former attorney. *Id.* Mr. Argomaniz-Camargo reported an eighth grade education, and substitute counsel indicated he did not report any intellectual or cognitive functioning issues to him when asked. CP 39 at lns. 10-13; CP 50 at lns. 1-2. Substitute counsel went on to represent to the trial court he received complete discovery (18 compact discs) and reviewed it all with Mr. Argomaniz-Camargo over a series of seven visits. CP 39 at lns. 16-22; CP 50 at lns. 5-7.

Substitute counsel only briefly articulated the manifest injustice standard in his briefing pursuant to CrR 4.2 (f), by citing to *State v. Wakefield*, 130 Wn.2d 464 (1996), and delineated the test for ineffective

¹ Presumably, this was revealed to substitute counsel in an interview because there is no reference to obtaining the attorney's file.

assistance of counsel from *Strickland v. Washington*, 466 US 688 (1984). CP 42; CP 52-53. Notably, in detailing the second prong of the test, counsel added emphasis to the words ‘**the result would be different.**’ CP 42 at ln. 14. (emphasis in original); CP 53 at lns. 9-10.

Mr. Argomaniz-Camargo’s former trial counsel did not support any of his claims. CP 42 at ln. 21-22; CP 53 at ln. 15. Substitute counsel accepted prior counsel’s representation there were no psychological defenses or diminished capacity claims to be raised. CP 44 at lns. 4-6; CP 55 at lns. 14-16. Substitute counsel noted though that the discovery revealed Mr. Argomaniz-Camargo was making statements that would indicate his state of mind at the time was altered. CP 44 at lns. 16-17; CP 54 at lns. 22-24. Counsel also documented Mr. Argomaniz-Camargo’s bizarre statements about seeing “other people, shadows, or strange things both in his automobile and following him in other cars prior to pulling off the roadside.” CP 43 at lns. 14-16; CP 54 at lns. 3-5.

Substitute counsel accepted former trial counsel’s representation that the viability of a “self-defense” claim under RCW 9A.16 was explored with the defendant. CP 44 at lns. 7-8; CP 55 at lns. 17-18. In the written motion, Counsel went on to refute any evidence to support such a claim: “A more robust set of self-defense facts simply cannot be found in the discovery by this writer that he wasn’t already aware of at the time of the

plea.” CP 45 at lns 22-23; CP 56 at lns. 13-15. Counsel additionally wrote in the motion:

Assuming for a moment that trial counsel did not interpret in Spanish every word on every page of discovery, there is nothing in discovery that Mr. Argomaniz-Camargo did not allegedly review **that could be attached as an exhibit to this motion** that would support a defense of self-defense claim under the current undisputed facts.

CP 45 at lns. 18-21; CP 56 at lns. 7-15 (emphasis in original).

Additionally counsel also wrote (in the amended motion), there was nothing Mr. Argomaniz-Camargo “became aware of after the plea and prior to this writers appointment supporting his change of heart.” CP 56 at lns. 17-19. Counsel also opined Mr. Argomaniz-Camargo “had a general understanding of the case when I interviewed him.” CP 52 at lns. 9-10.

On November 1, 2016, a hearing was held. RP2 at 303. The trial court noted the date had originally been scheduled for sentencing, but in light of Mr. Argomaniz-Camargo’s intervening motion(s) a new date for fact-finding and decision on the Motion to Withdraw Guilty Plea was necessary. *Id.* at lns. 17-25. An oral waiver of speedy sentencing was entered. RP2 305 at ln. 12. A hearing was then scheduled for x date for the motion to withdraw.

An Agreed Order Permitting Limited Disclosure of Attorney-Client Communications was filed on 11/21/16, and allowed Mr. Argomaniz-Camargo’s former counsel (Mr. Morgan) and other trial team members to

be interviewed and give testimony at the Motion to Withdraw Plea. CP 58-61. The order limited questions of the lawyers who assisted Mr.

Argomaniz-Camargo to the following areas:

1. Review of the discovery with the defendant and discussions surrounding the review of discovery.
2. Opinions expressed to the defendant about the strength of the State's evidence and how it could influence the outcome of the trial and sentencing.
3. Counsel and discussions with the defendant pertaining to the State's plea offer and the consequences of pleading guilty.
4. Mr. Morgan's review of the plea form with the defendant and any discussions surrounding it.
5. Prehearing discussions with the defendant pertaining to the change of plea hearing and any discussion with the defendant about the change of plea during the plea hearing.

CP 60.

The State filed a Response to the Motion to Withdraw Plea. CP 62-160. The State argued the record from the plea hearing established a presumptively voluntary plea, and Mr. Argomaniz-Camargo had failed in his burden to establish a manifest injustice had occurred. CP 62-78.

iii. Testimony at the Hearing on Motion to Withdraw Guilty Plea

The trial court heard testimony and argument on the motion to withdraw plea on December 1, 2016. RP2 at 308. Mr. Argomaniz-Camargo's substitute counsel called his former attorney, Mr. Morgan, to the stand. RP2 308 at Ins. 20-22. Mr. Morgan was asked by substitute

counsel about when he began representing Mr. Argomaniz-Camargo:

A. Yes. I believe it was the first or second week of March of 2016.

Q. And you received that appointment from his Honor, this Court?

A. Yes.

Q. And at the time you received the appointment, did you meet with Mr. Argomaniz-Camargo?

A. Yes.

Q. Okay. And was he in custody or out of custody?

A. He was in custody at the Adams County Superior Court jail.

Q. Was he always in custody during your representation?

A. Yes.

Q. Did you receive the discovery that being the police reports and materials, related to this particular charge?

A. Yes, eventually.

Q. Did you review the discovery?

A. Yes.

Q. Did you meet with your client at the time, the defendant, and did you review the discovery with him?

A. Yes, I did.

RP2 310.

Mr. Morgan testified he met with Mr. Argomaniz-Camargo at the jail 20 times and spoke 2-3 times on the phone. RP2 311 at Ins. 2-6. Mr. Morgan testified Mr. Argomaniz-Camargo was very interested in pursuing a plea bargain, but wanted something in the vicinity of 15 years. RP2 311 at Ins.

24-25; 312 at lns. 1-14. This was not possible. RP2 312 at lns. 15-16.

An offer was conveyed by the Attorney General:

Well, initially we received a formal offer from the attorney general. I think it was in mid July. And we had at least a couple of weeks to discuss it and decide what to do. And Mr. Argomaniz-Camargo was pretty adamant that he didn't want to agree to anything in excess of around fifteen years as a rough approximation. So we discussed, again, the possible outcomes of going to trial, we made counteroffers to the Attorney General's Office, and it was clear that their offer was, *Take it or leave it*. And initially we were given a deadline. I think it was the first or second week of August to make a decision. And he rejected the plea offer, and I communicated the same to the State's attorneys.

RP2 312 at lns. 22-25; 313 at lns. 1-11.

From the point Mr. Argomaniz-Camargo rejected the offer, Mr. Morgan testified the defense looked at diminished capacity, voluntary intoxication, and also at self-defense. RP2 313 at lns. 19-25. Mr. Morgan testified the defense retained a psychologist, Dr. Gregory Wilson, to meet with Mr. Argomaniz-Camargo to assess the viability of defenses. RP2 314 at lns. 1-6. He also testified they spoke with "two different toxicologists" about the evidence of methamphetamine use in relation to voluntary and involuntary intoxication. *Id.* at lns. 6-12. Mr. Morgan testified the retained psychologist was unable to support mental health or substance related defenses after meeting with Mr. Argomaniz-Camargo on three different occasions. RP2 314 at lns. 17-25. Why this was the case was not clearly articulated during the hearing. Mr. Morgan testified he discussed self-defense with Mr. Argomaniz-Camargo "generally" quite a

bit. RP2 315 at lns. 16-22. Substitute counsel went on to elicit from Mr.

Morgan:

Q. So would you say that you were comfortable in the defense preparation that you had made and the investigation that you had done on behalf of your client?

A. Yeah. I think we had exhausted all possible avenues in preparing for trial, yes.

Q. Okay. So why then if my -- **you did what you did and did a good job and did it on behalf of my client**, why do you believe my client changed his mind and pled guilty after all of that was done?

A. I can only speculate. You know, he was really between a rock and a hard place. The facts of this case were not good. It was a pretty egregious incident that happened. And with the aggravating factors, it would have been difficult to take to trial. Mr. Argomaniz-Camargo, he really struggled with the decision on what to do. When we initially had to -- initially had to make a decision on whether to accept the State's offer, he rejected it. And from that point, you know, I was under the impression and perceived that we were going to trial, you know, and moved accordingly. It wasn't until, I believe, a week or two after we had formally rejected the offer he contacted me from the jail and we had a telephone conversation where he asked if the State's offer was still available and if we could pursue that. And from there, that's when I contacted the Attorney General's Office and just said that we could still work something out --

RP2 315 lns. 23-25; 316; 317 lns. 1-3 (emphasis added).

In terms of trial preparation, a private investigator was hired in the case and conducted interviews to deal with the issue of Mr. Argomaniz-Camargo's alleged confession. Law enforcement and corrections officers were interviewed. RP2 318 at lns. 2-6.

By mid-August, Mr. Morgan testified, Mr. Argomaniz-Camargo reached out to him to see about reopening negotiations. RP2 317 at lns.

10-12. Mr. Argomaniz-Camargo was wrestling with whether to accept the State's plea offer right up until the time that he actually went in for the change of plea hearing. RP2 319 at lns. 9-11. Mr. Morgan, Kyle Smith (an attorney that was assisting him on the case), and an interpreter met with him at the jail prior to the plea. *Id.* at lns 17-19. Mr. Morgan testified to his impression Mr. Argomaniz-Camargo was not happy with the terms of the offer. RP2 320 at lns. 15-18. While acknowledging Mr. Argomaniz-Camargo was feeling pressured, Mr. Morgan directly contradicted the allegations of coercion through use of the autopsy photos and of failing to review portions of discovery with him prior to the time of the plea. RP2 321 at lns. 13-25; 322 at lns. 1-10; RP2 323 at lns. 1-10.

The change of plea went forward:

Q. You had represented to the Court at the time of the plea that you found no reason for the Court to not accept the plea; correct?

A. Correct.

Q. And then that you're still confident in those representations –

A. Yes.

Q. -- today?

A. Yes.

Q. And if you weren't, would you say so?

A. Yes. I would not allow a client to enter a plea or sign off on the paperwork if I didn't have that confidence.

RP2 320 at lns 19-25; 321 at lns 1-6.

Substitute counsel subsequently established Mr. Morgan met the standards and qualifications for representation of an indigent defendant in a first-degree murder case. RP2 326-28.

Mr. Morgan was then cross-examined by the Assistant Attorney General. RP2 328. Among the questions Mr. Morgan was asked on cross:

Q. I think you already answered this on direct, but you believe that you went over every salient, relevant fact about the murder charge with the defendant?

A. Yes.

RP2 332 at Ins. 12-15.

Q. Okay. And in discussing the State's plea offer with the defendant and going over the Statement of Defendant on Plea of Guilty, did the defendant appear to understand the consequences of accepting the offer and pleading guilty even if it didn't make him happy?

A. Yeah. I think he understood what was happening, yes.

RP2 338 at Ins. 6-13.

Subsequently, Mr. Morgan testified, he sought to withdraw-- both because he didn't have a good-faith basis to file a motion to withdraw Mr. Argomaniz-Camargo's plea and because one of the claims was that he (Morgan) had done an inadequate investigation, which created a conflict for him. RP2 344 at Ins. 18-23

On redirect, substitute counsel asked the following of Mr. Morgan:

Q. So, it's true then -- I'm **not accusing you**, but it's true that during your meetings you were not -- you were not bringing the discovery with you.

A. Oh, I probably had discovery with me, but in terms of physically sharing it with him, no.

RP2 346 at. lns 23-25 (emphasis added).

Substitute counsel then called Kyle Smith as a witness. RP2 348. Mr. Smith was present in the courtroom throughout Mr. Morgan's testimony. RP2 349 lns. 2-6. Mr. Smith refuted Mr. Argomaniz-Camargo's allegations of coercion and any material failure by Mr. Morgan to review discovery or the terms of the plea with him. RP2 353 at lns. 11-25; 358 at lns. 22-25; 359-360.

Defense counsel next called Mr. Argomaniz-Camargo to the stand. RP2 364. He testified he requested to withdraw his plea because:

Q. Why did you originally request to withdraw your guilty plea?

A. I'm not very happy with what's happening. I always asked for the entire file. I asked to view the entire file.

RP2 367 at lns. 20-24.

Substitute counsel elicited from Mr. Argomaniz-Camargo the numerous visits they shared since his appointment, and the discovery that was reviewed for the first time by substitute counsel. RP2 368-69. Mr. Argomaniz-Camargo testified this was the first time he had seen or reviewed certain photographs contained in discovery, the investigation and collateral witness interviews, as well as the recording of the interview with

his son. RP2 368-370; 376 at lns. 19-24; 377 at lns. 1-7. Mr. Argomaniz-Camargotestified he was shown a graphic photo of the deceased victim the day before the plea by his former attorneys, and also that he was convinced by his former attorney not to go to trial. RP2 371; 372 at lns. 21-24.

When asked by substitute counsel what his former attorney did not do during the case that he had specifically asked him to do, Mr. Argomaniz-Camargo testified:

A. I always asked him to review the file, the entire file. He -- he say that he didn't have the time to do it. And then he would say, "I will do it later. Next time I see you, I'll do it." And I would say, "Show me all the documents." And he would say, "I will do it next week." He would always say "Later. I'll go through it later."

He also said that there was a lot of paperwork and that he wouldn't be able -- he couldn't be carrying around all the paperwork all the time.

RP2 373 at lns. 1-11.

Mr. Argomaniz-Camargo testified to confusion about the plea form. RP2 378 at lns. 20-21. Additionally, Mr. Argomaniz-Camargo could not accurately describe what he, in fact, had pled guilty to. RP2 379 at lns. 16-22. He testified the standard sentencing range was never explained to him, or that, he did not remember. RP2 380 at lns. 1-17.

On cross-examination, without objection, the Assistant Attorney General essentially elicited a confession from Mr. Argomaniz-Camargo:

A. It's ugly.

Q. It is. And part of the reason you felt guilty is because you knew that you were the one that had done those things to her; correct?

A. In part, yes. But I also think that she is partly to blame too. I don't know.

Q. Now, when Mr. Morgan talked to you about the case, he told you that your DNA was on the handle of the screwdriver that was in Veronica's chest; correct?

A. Yes. I think he explained that to me.

Q. And he also told you that your DNA was on the handle of the hammer that was used to bash her face in; correct?

A. Yes, because those were the tools that I used for work for my DNA was going to be there.

Q. And Mr. Morgan also told you that your DNA was found on the handle of the knife that was used to stab Veronica; correct?

A. I think so.

Q. And you knew all of those things when you told the judge that you were guilty and changed your plea to guilty; correct?

A. I think so. I can't (unintelligible due to background noise).

RP2 386.

Substitute counsel called no further witnesses, and the State did not call any witnesses. RP2 392-93. The trial court heard argument on the motion after a break. RP2 393.

iv. Argument on the Motion to Withdraw Guilty Plea

Mr. Argomaniz-Camargo's counsel argued that manifest injustice was "a broad term", and he didn't know if the court had to find *anyone did anything wrong* to find a manifest injustice. RP2 394 at lns. 20-25; 395 at

lns. 1-5 (emphasis added). He stated he was not challenging the credibility of the former attorneys, but also asked the court to find Mr. Argomaniz-Camargo credible, whose testimony (in many instances) was diametrically opposed to his former lawyers. RP2 395 at lns. 9-12. Counsel argued the real issue was that discovery was not fully reviewed with Mr. Argomaniz-Camargo. RP2 395 at lns. 22-25; 396 at lns. 1-12. Subsequently, he complemented Mr. Morgan's other work on the case as "outstanding work really." RP2 396 at lns. 22-25. He conceded he had not actually produced, "something from the evidence that his client hadn't seen." RP2 397 at lns. 1-3. In attempting to argue the ineffectiveness of former counsel, he conceded a total review of discovery, whether you have an interpreter or not, may not necessarily be required. RP2 398 at lns. 19-25; 399 at ln. 1. He stated the trial court did everything to make sure the plea was free and voluntary, but then argued it was not-- due to circumstances not captured in the record. RP2 398 at lns. 13-18. Other than a brief mention of Superior Court rules, no authority or case law was cited to in the argument. See RP2 at 394.

The State argued substitute counsel had incorrectly described the manifest injustice standard, and that, in any event, the records ran counter to the claims of manifest injustice. RP2 399 at lns. 21-25; 400 at lns. 1-19. Additionally, the State pointed out the inherently contradictory argument

that was being made by substitute counsel:

They can't argue on the one hand, you didn't show me everything; and, therefore, you were ineffective in representing me. But then on the other hand, when you do show me the discovery, including the parts I specifically asked for, I'm so overwhelmed with emotion that I feel *pressured to plead*. Those are contradictory arguments, and he can't have it both ways.

RP2 402 at lns. 20-25; 403 at lns. 1-2 (emphasis in original).

The State articulated the standard for ineffective assistance of counsel in referencing Mr. Morgan's testimony. RP2 404 at lns. 21-25. In addressing the discovery issue specifically, the State argued Mr. Argomaniz-Camargo had to show that those items (not reviewed) would have made some difference in his bargaining position or in the outcome of a potential trial, and he had not met his burden because nothing had been brought forth or attached. RP2 406 at lns. 3-12. The State pointed out Mr. Argomaniz-Camargo's counsel did not attach to the Motion to Withdraw Guilty Plea any exhibits, provide any testimony, or enter anything into evidence that showed actual prejudice. RP2 406 at lns. 20-25.

The trial court found the former attorneys' testimony credible, and found Mr. Argomaniz-Camargo's testimony to be lies. RP2 408 at lns. 5-

12. Specifically, the trial court went on to hold:

It's incredible to claim a manifest injustice here. He got better representation -- he got excellent representation from all accounts. I remember his colloquy. He said that the statement was true, voluntary, considered.

RP2 410 at lns. 7-11.

Finding no manifest injustice, the trial court denied the motion. RP 410 at lns. 12-13; CP 161-162.

v. Sentencing

Sentencing occurred on January 23, 2017. RP2 at 415. Ms. Garcia-Rubio, the mother of Veronica Montelongo Garcia, spoke. RP2 at 416. The State recommended the high-end of the standard sentencing range on count one², which was for 333 months plus 24 consecutive months (for the deadly weapon enhancement) for a total of 357 months. RP2 419 at lns. 16-24. In making his presentation, substitute counsel stated:

“And one thing that was noticeable was that he was very well represented by his two attorneys and he was getting bad advice from people in the jail and bad advice from outside influences that conflicted with the sound advice given by his attorneys. And because of this conflict and because of the – his listening to other people, he wanted to bring this motion to the Court to withdraw his plea, and that we know was problematic.”

RP2 423 at lns. 21-25; RP2 424 at lns. 1-4 (emphasis added).

Mr. Argomaniz-Camargo was permitted his right of allocution. RP2 426. The trial court followed the State’s sentencing recommendation (but for waiving the discretionary \$1,000 fine associated with the drug possession count) and sentenced Mr. Argomaniz-Camargo to the high-end of the standard range. CP 174-184. Mr. Argomaniz-Camargo timely appealed on February 14, 2017. CP 185. An Amended Notice of Appeal

² The recommendation for the drug possession charge in count two was for 0 months to be run concurrent to count one. RP2 421 at lns. 1-11.

was thereafter filed on February 24, 2017. CP 193.

IV. ARGUMENT

A. **MR. ARGOMANIZ-CAMARGO WAS DEPRIVED OF HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE ATTORNEY APPOINTED TO REPRESENT HIM ON HIS MOTION TO WITHDRAW HIS PLEA IMPLIED THE MOTION LACKED MERIT, FAILED TO ADVOCATE, AND MADE A CONTRADICTIONARY ARGUMENT.**

a. *Appointed counsel must provide effective representation.*

The Sixth Amendment guarantees a criminal defendant the effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A broader right to the effective assistance of counsel is provided by statute in Washington:

The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.

RCW 10.101.005 (emphasis added).

Appointment of counsel for purposes of a motion to withdraw a guilty plea falls squarely within the trial court's discretion. *State v. Robinson*, 153 Wn.2d 689, 696, 107 P.3d 90 (2005). Once the court appoints counsel for such a motion, counsel must provide effective representation. RCW 10.101.005 (requiring "effective legal representation ... in all cases where the right to counsel attaches"); see *In re the Welfare of J.M.*, 130 Wn. App. 912, 921-22, 125 P.3d245 (2005) (although the U.S. Supreme Court

has held there is no constitutional right to counsel in parental termination proceedings, attorneys appointed pursuant to statute must provide effective representation). In short, “the right to counsel is the right to the effective assistance of counsel.” *Strickland*, 466 U.S. at 686.

b. Appointed counsel failed to provide effective representation; instead he did not act as an advocate, implied the motion lacked merit, argued a contradictory theory premised upon unhelpful testimony he elicited, and failed to provide or attach authority to support the motion.

The efforts of Mr. Argomaniz-Camargo’s second counsel were directed at chronicling for the trial court judge his thoroughness of preparation, while concomitantly telegraphing the lack of merit inherent in Mr. Argomaniz-Camargo’s motion to withdraw his pleas of guilt. See CP 42 at ln. 14; CP 53 at lns. 9-10; CP 45 at lns 22-23; CP 56 at lns. 13-15; CP 45 at lns. 18-21; CP 56 at lns. 7-15. Unsolicited to do so, he opined upon the lack of evidence for defenses and his client’s general understanding of the case. CP 44 at lns. 7-8; CP 55 at lns. 17-18; CP 45 at lns. 22-23; CP 56 at lns. 13-15. He apparently accepted at face value the representations of former counsel as to his efforts at exploring reasonable use of force, and perhaps more pertinently mental health defenses like insanity and/or diminished capacity defenses. CP 44 at lns. 406; CP 55 at lns. 14-16.

There is no indication, on the record available, substitute counsel ever

obtained and reviewed former counsel's file or notes. See CP 39, Ins. 4-6; CP 49 at Ins. 18-19 (only the "Court file" and "listening to the transcript of the plea" are referenced). There is no indication on the available record substitute counsel assessed or meaningfully considered the quality and/or fidelity of the English to Spanish/Spanish to English language interpretation at the time of the plea colloquy. Although Argomaniz-Camargo claimed to have no trouble understanding the interpreter, he subsequently claimed of some confusion and was unable to clearly articulate what he pled to and the consequences thereof. RP2 272 at Ins. 22-24; 379 at Ins. 20-21; 380 at Ins. 1-17. Substitute counsel had nonetheless blithely asserted there was no indication of coercion or misunderstanding at the plea. CP 39 at Ins. 4-6; CP 49 at Ins. 18-19. Further, there is also no indication on the available record substitute counsel independently reviewed the products of the expert psychological evaluation by Dr. Wilson of the defendant that were purportedly commissioned by former counsel. See RP2 314 at Ins. 1-6. Overall, however, these omissions all aggregate into a general failure to advocate, which was ineffective and a denial of Mr. Argomaniz-Camargo's right to counsel.

In *State v. Chavez*, 162 Wn. App. 431, 257 P.3d 1114 (2011), Division II dealt with a similar, albeit arguably more extreme, example of this issue

in the context of a motion to withdraw plea also pursuant to CrR 4.2(f). Like this matter, Chavez's motion to withdraw his plea was a critical stage of proceedings and no one contended otherwise. *State v. Davis*, 125 Wn. App. 59, 63–64, 104 P.3d 11 (2004) (CrR 4.2(f) (presentence motion to withdraw a guilty plea is a critical stage of a criminal proceeding for which a defendant has a constitutional right to be represented by counsel). In *Chavez*, like Mr. Argomaniz-Camargo's matter, the trial court found Chavez was entitled to representation and appointed substitute counsel to represent Chavez during a motion to withdraw his guilty plea. *Chavez* at 435-36

Specifically, the issue was whether substitute counsel failed to argue on behalf of his client. In *Chavez*, at the motion hearing, substitute counsel filed a brief—pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)—stating that he could not find a basis in law or fact supporting a meritorious challenge to entry of Chavez's guilty plea. Substitute counsel not only said he could not find any assignment of error that would support a meritorious challenge but then also went on to lay out Mr. Chavez's objections in a way that clearly distanced counsel from his client and suggested that his client's position was frivolous. *Id.*

The *Chavez* court held that an *Anders* brief is a procedure exclusive to

appeals and inappropriate for trial courts and, thus, substitute counsel's so-called *Anders* brief was equivalent to a total denial of counsel. 162 Wn. App. at 439–440. In such a circumstance, prejudice is presumed. *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 90 L.Ed.2d657 (1984).

Mr. Argomaniz-Camargo's lawyer at the time of the motion did not act as an advocate either, instead acting more as a neutral forensic expert in opining upon the record before him, and further created a record contrary to the underlying purpose of the motion. There is simply no logical explanation for why he would have called the former attorneys as witnesses when he knew that they were wholly unsupportive of Mr. Argomaniz-Camargo's account. Substitute counsel did not challenge their credibility though that is what the client sought in seeking to withdraw his pleas and, in fact, complemented them on the job they did on multiple occasions. RP2 395 at lns. 9-12 (not challenging credibility); RP2 396 at lns. 22-25 (“...outstanding work really”); RP2 424 at lns. 1-4 (“...very well represented...”). Substitute counsel also exceeded the scope of the Agreed Order Permitting Limited Disclosure of Attorney-Client Communications in asking former counsel their opinion as to the level of

understanding manifested by the defendant³. RP2 316-17; 320 at lns. 19-25; 321 at lns. 1-6; CP 60. In essence, substitute counsel was clearly reluctant to confront former counsel about the representations made by his client. See RP2 346 at lns 23-25 (“...I’m not accusing you..”).

Substitute counsel also failed to support the motion, which falls below an objective standard of competent representation. An appellate court reviews a trial court's denial of a motion to withdraw a guilty plea for abuse of discretion. *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). There is no indication the trial court here did so, because (in effect) substitute counsel provided no evidence in support of the motion for the court to meaningfully consider.

CrR 4.2(f) governs prejudgment motions for withdrawal of guilty pleas and requires that the trial court allow a defendant to withdraw his guilty plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” “[M]anifest injustice” means “an injustice that is obvious, directly observable, overt, [and] not obscure.” *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). Because of the many safeguards that precede a guilty plea, the manifest injustice standard for plea withdrawal is demanding. *Taylor*, 83 Wn.2d at 596, 521 P.2d 699.

³ The State also elicited opinion testimony about whether Mr. Argomaniz-Camargo understood absent any objection from substitute counsel. See RP2 338 at lns. 6-13.

Moreover, a manifest injustice is inherently the fault of others, whether through negligence or ill intention.

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, or (4) the prosecution did not honor the plea agreement. *Taylor*, 83 Wn.2d at 597, 521 P.2d 699. All indicia implicate someone doing something incorrectly, which is contrary to substitute counsel's formulation or belief. RP2 394 at Ins. 20-25; 395 at Ins. 1-5 (Arguing didn't know if court required to find "anyone did anything wrong...").

Looking exclusively at the first indicia, which was the only basis articulated by substitute counsel, the Sixth Amendment right to effective assistance of counsel encompasses the plea process. *McMann v. Richardson*, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L.Ed. 2d 763 (1970); *State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). Faulty advice of counsel may render the defendant's guilty plea involuntary or unintelligent. *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 88 L.Ed. 2d 203 (1985); *State v. Sandoval*, 171 Wn.2d at 169. To establish that the plea was involuntary or unintelligent due to counsel's inadequate advice, the defendant must show under the test

in *Strickland* that his attorney's performance was objectively unreasonable and that he was prejudiced by the deficiency. *Sandoval*, 171 Wn.2d at 169. While the standard for effective representation in the context of guilty pleas is that of reasonably effective assistance, it is determined only in the context of each particular client and the surrounding circumstances of the case. See *State v. Cameron*, 30 Wn. App. 229, 633 P.2d 901 (1981).

Substitute counsel in this instance did little to coherently express this in either briefing or in argument and failed to attach or seek to insert into the record any exhibit or testimony that supported it (apart from arguably the testimony of Mr. Argomaniz-Camargo). It is impossible to say that such evidence did not exist simply because it wasn't brought forth when considered in light of: substitute counsel's expressed attitude towards the motion; the apparent failure to review the file of former counsel; the repetitive compliments to former counsel, as well as the reluctance to confront former counsel. See RP2 423 at lns. 23-25; 424 at lns 1-4 ("very well represented...he wanted to bring this motion...we know was problematic").

A criminal defense lawyer may decline to assert an issue that he or she considers frivolous. RPC 3.1. However, in light of the constitutional right of a criminal defendant to assistance of counsel, he may assert issues that would otherwise be prohibited under professional rules of conduct. RPC

3.1 cmt. 3. Here, we have more than that. Substitute counsel both distanced himself from Mr. Argomaniz-Camargo and undercut his motion. In functional effect, substitute counsel filed and argued the *Anders* brief equivalent at issue in *Chavez*.

c. This Court should reverse and remand for a hearing with new substitute counsel.

Prejudice is to be presumed where there is a “complete denial of counsel” or where “counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing.” *Cronic*, 466 U.S. at 659. In this case, appointed counsel, although apparently very thorough in terms of the sheer volume of work effort, essentially put on a case against Mr. Argomaniz-Camargo’s motion to withdraw his plea of guilty or (at best) acted as a neutral chronicler of the record without digging any deeper, rather than as a zealous advocate. This constitutes a violation of the trial court’s order appointing counsel, and a violation of Mr. Argomaniz-Camargo’s rights. The remedy is reversal and remand for appointment of new substitute counsel and a full *adversarial* hearing on the motion to withdraw the guilty plea. See *Chavez*, 162 Wn. App. 431.

V. CONCLUSION

For the reasons set forth above Mr. Argomaniz-Camargo respectfully requests that this Court reverse the order denying the motion

to withdraw the guilty plea and remand for a hearing on the motion at which appointed substitute counsel will represent Mr. Argomaniz-Camargo.

Respectfully submitted this 6th day of September, 2017.



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DECLARATION OF SERVICE

I hereby declare that on September 6, 2017, I filed **Appellant's Opening Brief** in the Court of Appeals for Division III via Electronic Filing for the Court of Appeals and delivered via US Mail and E-mail the same to:

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I further declare that I delivered via US Mail the same to:

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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated September 6, 2017.

By 
Zachary W. Jarvis

HART JARVIS CHANG, PLLC

September 06, 2017 - 8:51 AM

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