

FILED
Court of Appeals
Division III
State of Washington
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NO. 358526

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ODA R. CHARTIER,

Appellant.

Appeal from Stevens County Superior Court
Honorable Patrick Monasmith
Honorable Jessica Reeves
No. 14-1-00059-1

APPELLANT'S BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 1

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

IV. STATEMENT OF CASE 1

V. ARGUMENT 3

 A. LAW 3

 1. Standard of Review:..... 3

 2. Available Remedies for Involuntary Plea
 Agreement:..... 4

 3. Ambiguous Plea Agreement May Be
 Withdrawn: 4

 B. ANALYSIS..... 5

VI. CONCLUSION..... 6

TABLE OF AUTHORITIES

Cases

In re Coats, 173 Wash.2d 123, 135, 267 P.3d 324 (2011) 3
State v. Bisson, 156 Wash.2d 507, 523, 130 P.3d 820 (2006) 4, 5
State v. Harrison, 148 Wash.2d 550, 556, 61 P.3d 1104 (2003) 3
State v. Miller, 110 Wash.2d 528, 531, 756 P.2d 122 (1988) 4
State v. Turley, 149 Wash.2d 395, 398–99, 69 P.3d 338 (2003) 4
Tyrrell v. Farmers Ins. Co. of Wash., 140 Wash.2d 129, 133, 994
P.2d 833 (2000) 3

Statutes

RCW 10.73.090 3

Rules

CrR 7.8 3

I. INTRODUCTION

Defendant appeals the trial court's denial of his *pro se* motion to vacate his 2014 Judgment and Sentence. The trial court erred because both the Judgment and Sentence and the Plea Agreement are clearly ambiguous because they explicitly state he has no criminal history, yet his offender score is listed as six. Defendant is entitled to withdraw an ambiguous plea agreement and the motion to do so is not time barred because ambiguity is a facial invalidity.

II. ASSIGNMENTS OF ERROR

The trial court erred when it refused to vacate defendant's Judgment and Sentence because it and the Plea Agreement were clearly ambiguous, reserving for Defendant the right to withdraw that plea.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether the Plea Agreement and Judgment and Sentence in this matter were ambiguous because they explicitly state defendant has no criminal history, yet his offender score is listed as six.

IV. STATEMENT OF CASE

Defendant filed a *pro se* motion to "modify" his 2014 judgment and sentence pursuant, it appears, to CrR 7.8. *See*, October 5, 2017 Motion, CP 51. The motion has its flaws, but it is clear defendant believes he did not understand what his offender score and criminal history was at sentencing, and that he should be entitled to relief.

The motion was heard before the Superior Court on January 30, 2018, and denied in relevant part. *See* VRP. Defendant appealed.

The defendant signed a Plea Agreement (CP 001-007) that was ambiguous and contradictory. First, Paragraph 1.4 “Criminal History” is not checked. This Paragraph states “The defendant agrees that the prosecutor’s statement of defendant’s criminal history set forth in paragraph 1.11, below, is accurate, and that the defendant was represented by counsel or waived counsel at the time of each prior conviction.” This led defendant to reasonably believe he had no criminal history, because it is not checked. Paragraph 1.5, which is checked, makes this even clearer with explicit language inserted by counsel, emphasis added: “**Defendant has no criminal history** of which the prosecutor knows which would count under the SRA; and defendant represents that he has not been convicted of a crime which would count under the SRA (defendant’s attorney has told him which crimes which would count at sentencing under the SRA in this case).” Paragraph 1.9, which is checked, states “the defendant agrees to the Prosecutor’s statement of defendant’s criminal history set forth in paragraph 1.11, below, and the State makes the sentencing recommendation set forth below.” Paragraph 1.11, titled “Prosecutor’s statement of defendant’s criminal history” confirms, yet again, “none known which counts under SRA” under the prior crimes section. Paragraph 1.12 “Sentencing Data” begins the list of counts with a “0” under “Offender Score,” yet under the other counts lists “6.”

The Judgment and Sentence confirms the language in the Plea Agreement. Paragraph 2.2 (CP 026, J&S-p. 4) “Criminal History” it states “None known that counts under the SRA.”

V. ARGUMENT

A. LAW

CrR 7.8(5) “RELIEF FROM JUDGMENT OR ORDER” authorizes a defendant to move to vacate a judgment and sentence on reasonable grounds if done within one year, subject to RCW 10.73.090. RCW 10.73.090, “Collateral attack—One year time limit.” states in relevant part (emphasis added):

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment

“The term “valid on its face” does not itself illuminate its meaning. In addressing the cases before us, we have not found it necessary in the past, nor do we now, to articulate an unyielding definition, and we hesitate to do so given the rich and complicated history of collateral challenges.” *In re Coats*, 173 Wash.2d 123, 135, 267 P.3d 324 (2011).

1. Standard of Review:

Because a plea agreement is a contract, issues concerning the interpretation of a plea agreement are questions of law reviewed *de novo*. *State v. Harrison*, 148 Wash.2d 550, 556, 61 P.3d 1104 (2003); *Tyrrell v. Farmers Ins. Co. of Wash.*, 140 Wash.2d 129, 133, 994 P.2d 833 (2000).

2. Available Remedies for Involuntary Plea Agreement:

For a defendant's guilty plea to be deemed voluntary and valid, the “defendant must understand the sentencing consequences” of his plea. *State v. Miller*, 110 Wash.2d 528, 531, 756 P.2d 122 (1988); *State v. Turley*, 149 Wash.2d 395, 398–99, 69 P.3d 338 (2003). “Where the terms of a plea agreement conflict with the law or the defendant was not informed of the sentencing consequences of the plea, the defendant must be given the initial choice of a remedy to specifically enforce the agreement or withdraw the plea.” *Miller*, at 536; *Turley*, at 399.

3. Ambiguous Plea Agreement May Be Withdrawn:

In *State v. Bisson*, the Washington Supreme Court confirmed that an ambiguous plea agreement must be interpreted against that State and a defendant must be allowed to withdraw such an agreement:

Case law from other jurisdictions supports Bisson's view that the ambiguity rule should be applied to the interpretation of his plea agreement. In *United States v. Harvey*, 791 F.2d 294 (4th Cir.1986), at issue was **828 whether a plea agreement had promised that the defendant would not be subject to further prosecution. The court observed *523 that “both constitutional and supervisory concerns require holding the Government to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to commercial contracts) for imprecisions or ambiguities in plea agreements.” *Id.* at 300. The court added that the requirement was “particularly appropriate where, as will usually be the case, the Government has proffered the terms or prepared a written agreement—for the same reasons that dictate that approach in interpreting private contracts.” *Id.* at 301. The Harvey court held that the plea agreement provision “was, first off, imprecise or ambiguous as a matter of law” and that, given the foregoing principle, “the provision must be read against the Government.” *Id.* at 301, 303; see also *Mayes v. Galley*, 858 F.Supp. 490, 497 (Md.1994) (identifying available remedies for breach of a

plea agreement as withdrawal of the plea or “specific enforcement of the plea agreement construing ambiguities against the State”). Similarly, as the Supreme Court of Kansas reasoned, construing an ambiguity in a plea agreement against the State is consistent with the rule of lenity applied to ambiguous statutes:

A plea agreement reasonably susceptible to different interpretations is ambiguous. The plea agreement in the instant case is reasonably susceptible to different interpretation and is therefore ambiguous. Where a statute is ambiguous, we require that it be strictly construed in favor of the accused. *State v. Magness*, 240 Kan. 719, 721, 732 P.2d 747 (1987). We find no compelling reason to adopt a different rule in interpreting ambiguous plea agreements.

State v. Wills, 244 Kan. 62, 69, 765 P.2d 1114 (1988); see *State v. Tvedt*, 153 Wash.2d 705, 711, 107 P.3d 728 (2005) (applying rule of lenity to ambiguous criminal statute).

State v. Bisson, 156 Wash.2d 507, 523, 130 P.3d 820 (2006).

B. ANALYSIS

Here, the plea agreement states twice, explicitly, that the defendant has no criminal history. It is evident from defendant’s *pro se* motion to vacate the judgment that he thought he had no criminal history. It is understandable and reasonable for defendant to have believed his offender score, his “priors,” would thus be zero. In fact, paragraph 1.12 starts off with a “0” under his offender score. It is only in the lines below that “6” was inserted. Nowhere else in the plea agreement is he explicitly informed his offender score is six.¹

This plea agreement is clearly ambiguous. It is therefore not valid “on its face” because it is so blatantly ambiguous. Ambiguity is

¹ It is noteworthy that the numeral ‘6’ is not far from physical resemblance to the numeral ‘0.’

unquestionably a facial invalidity. The time limit to vacate the agreement does not then apply and this Court should permit defendant to withdraw his plea.

VI. CONCLUSION

This matter should be remanded to the trial court to provide defendant an opportunity to withdraw his guilty plea.

Respectfully submitted this 22nd day of June, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the date below I personally caused the foregoing document to be served via the Court of Appeals e-filing portal:

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Oda Chartier, DOC #376933
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DATED this 22nd day of June, 2018, South Bend, Washington.

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