

FILED
Court of Appeals
Division III
State of Washington
8/22/2018 8:00 AM
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

BRIEF OF RESPONDENT

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I. Introduction

The Defendant argues that 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.

Defendant is mistaken on several points: 1) Defendant did not raise the ambiguity issue in his motion, thus it was not preserved for appeal; 2) when viewed properly, there is no ambiguity in the Plea Agreement or Judgment and Sentence; 3) Defendant's motion, and the relief that he requests, are time-barred.

For all of these reasons, Defendant's appeal must be denied.

II. Statement of the Case

On September 2, 2014, Defendant entered into a Plea Agreement with the State of Washington. (Plea Agreement, CP at 1-7). That same day Defendant signed a Statement of Defendant on Plea of Guilty to Sex Offense. (Statement of Defendant on Plea of Guilty to Sex Offense, CP at 8-21).

Paragraph 1.5 of the Plea Agreement is checked, and indicates that Defendant had no known criminal history that would count against his offender score under the SRA. (CP at 2). Paragraph 1.11 is labeled

“PROSECUTOR’S STATEMENT OF DEFENDANT’S CRIMINAL HISTORY” and it indicates again that Defendant has no known criminal history that would count against him under the SRA. (CP at 2).

Paragraph 1.12 of the Plea Agreement is labeled “SENTENCING DATA” and it contains a statement of Defendant’s Offender Score and the standard range sentence that corresponds to each count with which the Defendant was charged. (CP at 3). By agreement of the parties, count 1 was to be dismissed, therefore it contained no information regarding a standard range sentence, although the “Offender Score” box is marked “0”. (CP at 3). Counts 2-4 all state that Defendant was being sentenced with an offender score of 6. (CP at 3).

The manner in which Defendant’s offender score was calculated was described in the State’s Opposition to Motion to Modify Judgment and Sentence. (CP at 79-82). To summarize, the Defendant had no criminal history that counted against him in his offender score, but each of the 3 counts to which he was pleading guilty counted as an “other current offense,” within the meaning of RCW 9.94A.589. Each current offense counted as 3 points against the offender score for each of the other 2 counts, leading to a total offender score of 6 on each count. (CP at 80-81).

Paragraph 1.5 and Paragraph 1.11 of the Plea Agreement, both of which indicate that Defendant had no known criminal history that would count against his offender score under the SRA, are both consistent with the offender score which was ultimately determined to be 6. The offender score of 6 was not the result of any prior criminal history in Defendant's past. Rather, it was the result only of the "other current offenses" with which Defendant was charged. (CP at 80-81). Thus, paragraphs 1.5 and 1.11 of the Plea Agreement accurately stated Defendant's relevant criminal history (he had none), and paragraph 1.12 accurately stated his offender score to be 6. Those paragraphs were not ambiguous or in conflict with each other.

The Statement of Defendant on Plea of Guilty to a Sex Offense contains the same information regarding Defendant's offender score and standard sentencing range as the Plea Agreement. (CP at 11). Nothing in that document contradicts anything in the Plea Agreement.

The Judgment and Sentence (CP at 23-40), entered at the sentencing hearing held on October 7, 2014, contains the same information regarding Defendant's criminal history—he had none—in paragraph 2.2 (CP at 26) and the same information regarding the offender score and sentencing range in paragraph 2.3. (CP at 26). The Judgment

and Sentence does not conflict with either the Plea Agreement or the Statement of Defendant on Plea of Guilty.

On October 5, 2017, Defendant filed his Motion to Modify Judgment and Sentence. (CP at 51-73). Defendant's motion states specifically, "Defendant Chartier declares that he is [N]ot challenging the validity of the conviction. Defendant Chartier is challenging the [V]alidity of his sentence, which was based upon a 'Miscalculated Offender Score', thus making his sentence invalid on his face." (CP at 51). The alleged miscalculation of his offender score was the only issue raised in the motion. He did not ask the trial court to vacate his pleas of guilty, but only to re-sentence him using an offender score of 0. (CP at 58).

The trial court found that Defendant's offender score was correctly calculated to be 6 and denied Defendant's request that he be re-sentenced with an offender score of 0. (CP at 117).

Defendant appeals the trial court's denial of his motion.

III. Argument

A. The issues of ambiguity and the validity of Defendant's conviction were not raised in Defendant's motion, and were not preserved for appeal.

The general rule in Washington is that issues not raised before the trial court may not be raised for the first time on appeal. RAP 2.5(a); State v. Scott, 110 Wn.2d 682, 686, 757 P.2d 492 (1988). There is an exception for “manifest error[s] affecting a constitutional right.” RAP 2.5(a)(3).

Defendant’s motion states specifically, “Defendant Chartier declares that he is [N]ot challenging the validity of the conviction. Defendant Chartier is challenging the [V]alidity of his sentence, which was based upon a ‘Miscalculated Offender Score’, thus making his sentence invalid on his face.” (CP at 51). The alleged miscalculation of his offender score was the only issue raised in the motion. He did not ask the trial court to vacate his pleas of guilty, but only to re-sentence him using an offender score of 0. (CP at 58). Nowhere does Defendant’s motion claim that any of the plea documents were ambiguous.

Defendant argues for the first time on appeal that the Plea Agreement and associated documents were ambiguous with regard to his offender score, and that the court should therefore vacate his convictions and allow him to withdraw his guilty plea. But these issues were never raised before the trial court. The only issue raised in the trial court was the alleged “miscalculation” of his offender score, and the only relief requested was re-sentencing. There was no allegation of ambiguity and no

request to withdraw his guilty plea. In fact the motion explicitly states, “Defendant Chartier declares that he is [N]ot challenging the validity of the conviction.”

This court should refuse to hear this issue as it was never raised before the trial court and thus it was not properly preserved for appeal.

B. There is no ambiguity as alleged by Defendant.

Defendant argues that he should be allowed to withdraw his guilty plea because the Plea Agreement and associated documents were ambiguous with regard to his offender score. But, as outlined in the Statement of the Case, supra, there is no ambiguity in any of the relevant documents.

Defendant’s argument for ambiguity rests in the fact that the Plea Agreement and associated documents state simultaneously that Defendant had no known criminal history, and that he had an offender score of 6. This, however, is not a contradiction. A person such as the Defendant may not have any criminal history, and yet may have a non-zero offender score if he is pleading guilty to multiple offenses at the same time that do not count as the same criminal conduct. In such cases, counts that are considered “other current offenses” under the law will increase a defendant’s offender score. Thus it is not ambiguous to state on the one

hand that Defendant had no known criminal history that would count against him under the SRA, and also that he had an offender score of 6 due to the fact that he was simultaneously pleading guilty to “other current offenses.”

Properly interpreted, there is no ambiguity in the language in any of the documents. While it is true that the language could be clearer in certain places, nothing in the Plea Agreement or associated documents was false or misleading with regard to Defendant’s criminal history or his offender score. Nor is there any indication that Defendant was misled with regard to the sentence that he could receive. The documents clearly state the offender score and standard range sentence for the crimes that he was pleading guilty to, and Defendant does not on appeal argue that any of that information was inaccurate.

C. The relief requested by Defendant is time-barred.

Defendant’s motion was filed more than one year after the Judgment and Sentence in this case making it subject to the one-year time-bar contained in CrR 7.8(b) and RCW 10.73.090. Defendant argues that this one-year time-bar does not apply because the documents are invalid on their face.

However, as stated in the previous section, the documents are not ambiguous. They are all consistent with each other. They contain no materially misleading statements. The information contained therein relating to Defendant's criminal history, his offender score, and his standard sentencing range are all consistent and accurate. The documents are valid on their face, and are thus subject to the one-year time-bar.

IV. Conclusion

For all the reasons stated above, Defendant's appeal must be denied.

Submitted this 21st day of August, 2018.

/s/ Aaron M. Rasmussen
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August 21, 2018 - 11:18 PM

Transmittal Information

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Appellate Court Case Title: State of Washington v. Oda Roy Chartier
Superior Court Case Number: 14-1-00059-1

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