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Division III
State of Washington
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36492-5-III

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

EDUARDO IBARRA VALENCIA, RESPONDENT

ON APPEAL FROM THE SUPERIOR COURT
OF GRANT COUNTY

Superior Court Cause No. 15-1-00766-4

The Honorable John D. Knodell

APPELLANT'S REPLY BRIEF

GARTH DANO
GRANT COUNTY PROSECUTING ATTORNEY

Katharine W. Mathews, WSBA# 20805
Deputy Prosecuting Attorney
Attorneys for Respondent

P.O. Box 37
Ephrata, Washington 98823
PH: (509) 794-2011

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I. ARGUMENT

Eduardo Ibarra-Valencia (Ibarra) argues his plea was involuntary under the technical legal definition of that term, that he timely moved to withdraw his plea, and that because his motion was timely, he is not required to show prejudice before the trial court may grant his motion. The State of Washington (the State) replies that Ibarra is correct on only two of his three assertions. Ibarra filed his motion after entry of a voidable judgment and sentence. Criminal Rules 4.2 and 7.8 and Washington case law establish that withdrawal of a guilty plea after entry of judgment requires a showing of actual and substantial prejudice. *State v. Buckman*, 190 Wn.2d 51, 60, 409 P.3d 193 (2018) (citing *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 598-99, 602, 316 P.3d 1007 (2014)). The trial court determined Ibarra failed to make such a showing and Ibarra has not asserted otherwise. Ibarra may not withdraw his guilty plea.

A. THAT IBARRA'S PLEA WAS "INVOLUNTARY" WITHIN THE TECHNICAL MEANING OF THAT TERM IS INSUFFICIENT GROUNDS FOR WITHDRAWAL ABSENT A SHOWING OF PREJUDICE BECAUSE HIS MOTION WAS FILED AFTER ENTRY OF JUDGMENT.

Ibarra was misinformed of the direct consequences of his plea when he was told that, if convicted at trial of first degree murder and attempted first degree murder, his offender score would be two instead of zero and when that same error was repeated when he accepted the State's

offer to plead to second degree murder and attempted second degree murder. CP at 211. A score of two on the second degree murder charge yielded a standard range of 144 to 244 months and, for attempted second degree murder, 108 to 183 months, plus 60 consecutive months for each firearm enhancement. CP at 211. Ibarra's true standard range on second degree murder, with a score of zero, was 123 to 220 months, 21 to 24 months less, and his true standard range on the attempted second degree murder count was correspondingly lower as well, 92.25 to 165 months. RCW 9.94A.510, .515, .595. An involuntary plea constitutes a manifest injustice within the meaning of CrR 4.2(f). *State v. Walsh*, 143 Wn.2d 1, 6, 17 P.3d 591 (2001). Had Ibarra moved to withdraw his plea before the trial court entered its defective judgment and sentence, CrR 4.2(f) would have made granting his motion mandatory. *State v. A.N.J.*, 168 Wn.2d 91, 106, 225 P.3d 956 (2010).

B. BECAUSE IBARRA'S JUDGMENT AND SENTENCE WAS VOIDABLE INSTEAD OF VOID, HE WAS NOT ENTITLED TO WITHDRAW HIS PLEA WITHOUT FIRST PROVING ACTUAL AND SUBSTANTIAL PREJUDICE, WHICH THE TRIAL COURT HELD HE DID NOT DO.

When a motion to withdraw a plea is made after entry of judgment it is governed by the stricter standards of CrR 7.8(b), in addition to the more lenient requirements of pre-judgment motions made under CrR 4.2(f). *Stockwell*, 179 Wn.2d at 595. When collaterally attacking a plea

made involuntary by misinformation through CrR 7.8(b), the defendant is required to demonstrate actual and substantial prejudice. *Id.* at 603.

The trial court correctly determined the scoring errors had no effect on Ibarra's decision to accept the plea agreement. However, after either misapprehending the differing legal effects of void versus voidable judgments or failing to understand the legal definitions of "void" and "voidable," the trial court committed error when it allowed Ibarra to withdraw his plea without any showing of prejudice, much less the "actual and substantial prejudice" Washington law unambiguously requires.

Ibarra continues to assert that the offender score error caused his judgment and sentence to be void, as if it never existed, rendering his withdrawal motion "pre-judgment" and eliminating the prejudice showing required by CrR 7.8. This reasoning is flawed. Although Ibarra's judgment and sentence contained an error that needed correcting, the error did not render it void ab initio. It was fully enforceable as soon as it was entered and was thus a valid, albeit voidable, judgment and sentence within the meaning of CrR 7.8. Ibarra was required to demonstrate actual and substantial prejudice.

1. *The distinction between void and voidable judgments rendered Ibarra's judgment voidable, not void.*

Black's Law Dictionary defines void and voidable judgments as follows:

voidable judgment. A judgment that, although seemingly valid, is defective in some material way; esp., a judgment that, although rendered by a court having jurisdiction, is irregular or erroneous.

void judgment. A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. *It is incapable of being confirmed, ratified, or enforced in any manner or to any degree.* One source of a void judgment is the lack of subject-matter jurisdiction.

JUDGMENT, Black's Law Dictionary (11th ed. 2019) (emphasis added). A void judgment is no judgment at all, whereas a voidable judgment maintains its legal effect until withdrawn by the court. "Where a court lacks subject matter jurisdiction to issue an order, the order is void." *Buecking v. Buecking*, 179 Wn.2d 438, 446, 316 P.3d 999 (2013). "Subject matter jurisdiction refers to a court's ability to entertain a type of case, not to its authority to enter an order in a particular case." *Buecking*, 179 Wn.2d at 448. Jurisdiction is constitutional. *Id.* While the legislature can put restrictions on a court's ability to exercise its authority, it cannot change its constitutional jurisdiction. An example of non-jurisdictional restraints are statutes of limitations, which the legislature is free to change. *State v. Peltier*, 181 Wn.2d 290, 296, 332 P.3d 457 (2014). Because the

trial court had subject matter jurisdiction over the criminal case, and the legislature is free to change the sentencing scheme where the errors occurred, the flaws in Ibarra's judgment and sentence were not jurisdictional. The trial court had subject matter jurisdiction to enter Ibarra's flawed judgment.

Judgments in criminal cases entered by a court having jurisdiction over both the defendant and the subject matter, and vested with jurisdiction to render that particular judgment, are not void if they pertain to the offense charged, are in accordance with a verdict or plea, and are sufficiently definite, certain and specific to identify the offense involved. *State ex rel. Plumb v. Superior Court, Spokane Cty.*, 24 Wn.2d 510, 515, 166 P.2d 188 (1946) (citations omitted).

The defective judgment and sentence entered here meets all of these requirements. Although it is voidable, it is not void. Ibarra moved to withdraw his plea after entry and is bound by the requirements of CrR 7.8. CrR 4.2.

2. *Washington case law consistently considers criminal sentencing documents containing errors voidable, not void.*

Washington law clearly supports the State's assessment of the ramifications of Ibarra's enforceable judgment and sentence. That Ibarra and the trial court misapprehend the efficacy of a voidable judgment and

sentence is underscored by the facts in *Dress v. Washington State Dep't of Corr.*, 168 Wn. App. 319, 279 P.3d 875 (2012). There, the Department of Corrections (DOC), believing a judgment and sentence to have incorrectly applied sentencing law, independently tried to correct the error. Division One of this Court ruled DOC did not have the authority to make such a correction, holding only the sentencing court had authority to correct its error, either by working with the parties in the trial court or through RCW 9.4A.585(7).¹ *Dress*, 168 Wn. App. at 328. The Court unequivocally held DOC is required to execute a judgment and sentence promulgated by the trial court, regardless of errors. *Id.* DOC has no authority to ignore an erroneous final judgment and sentence. *Id.* *Dress* makes very clear that a defective judgment and sentence remains legally binding, but subject to correction. It is not a nullity. If Ibarra's argument, that a flawed judgment and sentence is no judgment and sentence at all, *Dress* was wrongly decided and the DOC would be precluded from carrying out any orders contained in a defective sentencing document.

¹ RCW 9.4A.585(7) provides: "The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted."

Even stronger support for the State’s argument comes from the factual parallels between this case and *Buckman, supra*, 190 Wn.2d 51, 409 P.3d 193 (2018). The slight differences weigh in favor of the State’s position here. Both Buckman’s plea statement and his judgment and sentence incorrectly recited that he faced the possibility of life imprisonment when he actually faced a maximum sentence of 114 months. Upon realizing the error, Buckman filed a motion to withdraw his plea. The Supreme Court held that while Buckman’s plea was not voluntary, he failed to establish actual and substantial prejudice sufficient to withdraw his plea. *Id.* at 71. Courts “require something more than a ‘bare allegation that a petitioner would not have pleaded guilty’ to establish prejudice. *Id.* at 69 (quoting *In re Personal Restraint of Riley*, 122 Wn.2d 772, 863 P.2d 554 (1993) and citing *In re Personal Restraint of Yates*, 180 Wnh.2d 33, 41, 321 P.3d 1195 (2014) (concluding the petitioner failed to make any showing of prejudice by claiming merely “that he would not have taken the plea deal” but for the constitutional error)).

Although Ibarra’s plea statement also contained materially erroneous information, he, like Buckman, is required “to show ‘actual and substantial prejudice.’” *Buckman*, 190 Wn.2d at 198 (quoting *Stockwell*, 179 Wn.2d at 598–99). Ibarra must demonstrate “that the outcome of the guilty plea proceedings would more likely than not have been different”

had he known when he pleaded guilty he faced 21 to 24 fewer months in prison than he believed at the time of his plea.² *Buckman*, 190 Wn.2d at 199; CP at 320. The trial court has already determined Ibarra failed to demonstrate prejudice. CP at 522.

To conclude Ibarra correctly argues that a defective sentence is no sentence at all and that he should be allowed to withdraw his plea without demonstrating prejudice would require this Court to first conclude *Buckman* was wrongly decided.

The defendant in *In re Personal Restraint of Adams*, 178 Wn.2d 417, 309 P.3d 451 (2013), was also sentenced with a facial error in his offender score. He successfully moved for resentencing, then argued that a subsequent motion claiming ineffective assistance of counsel was timely under RCW 10.73.090 because it was filed within one year of his resentencing. *Id.* at 421. This, he asserted, opened his case to all challenges, not just those satisfying time bar exceptions. *Id.* The Supreme Court rejected that argument and held that an untimely challenge based on facial invalidity was limited to correcting the facial invalidity and that “entry of a corrected judgment does not trigger a new one-year window for judgment provisions that were always valid on their face.” *Id.* at 424.

² The judgment and sentence, with its erroneous offender score of two, stated the standard range for second degree murder was 144–244 months, with a 60 month firearm enhancement.

For Ibarra's theory of his case to be accepted, this Court would have to conclude *Adams*, too, was wrongly decided because facial invalidity would have rendered Adams' entire judgment and sentence a nullity. Any challenge would have been timely if brought within a year of resentencing.

These examples establish that Washington courts consistently reject Ibarra's argument that his motion to withdraw his plea came before entry of a judgment and sentence. A judgment and sentence entered by a court of competent jurisdiction is a legally binding judgment and sentence, even if it contains an error. It may be subject to correction, but it is still a lawfully entered judgment and its orders must be carried out.

II. CONCLUSION

Washington case law make clear that CrR 7.8 requires Ibarra to demonstrate actual and substantial prejudice before the trial court may grant a plea withdrawal motion filed after entry of judgment, regardless of the scoring error under which he agreed to plead and was sentenced. The judgment and sentence, although voidable, was in full force and effect immediately upon entry. Ibarra failed to demonstrate prejudice, as the trial court correctly held.

This Court should reverse the trial court's order allowing withdrawal of Ibarra's guilty pleas to second degree murder while armed

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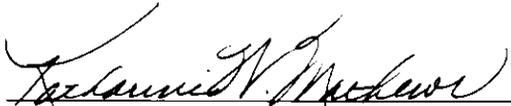
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with a firearm and attempted second degree murder while armed with a
firearm and remand the case to the trial court for entry of a corrected
judgment and sentence.

DATED this 19th day of August, 2019.

Respectfully submitted,

GARTH DANO
Grant County Prosecuting Attorney


Katharine W. Mathews, WSBA# 20805
Deputy Prosecuting Attorney
Attorneys for Respondent
kwmathews@grantcountywa.gov

CERTIFICATE OF SERVICE

On this day I served a copy of the Appellant's Reply Brief in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

Maureen Marie Cyr
maureen@washapp.org

Gregory C. Link
greg@washapp.org

wapofficemail@washapp.org

Dated: August 19, 2019.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

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