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No. 36492-5-III

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

STATE OF WASHINGTON,

Appellant,

v.

EDUARDO IBARRA-VALENCIA,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRANT COUNTY

RESPONDENT IBARRA-VALENCIA'S BRIEF

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A. ISSUE

Where a defendant pleads guilty based upon misinformation about the standard sentence range, the plea is involuntary and the defendant is entitled to withdraw it. He need not demonstrate prejudice from the misinformation if he moves to withdraw the plea prior to judgment. The sentence is the judgment. If the sentence is erroneous and the court vacates it, that vacates the judgment. No valid judgment exists until the court resentences the defendant and a new judgment is entered. Here, Eduardo Ibarra-Valencia pled guilty based upon misinformation about the standard sentence range. The court vacated the sentence as erroneous. Prior to resentencing, Ibarra-Valencia moved to withdraw the plea. Was the court correct in ruling that he moved to withdraw the plea prior to judgment and was therefore not required to demonstrate prejudice?

B. STATEMENT OF THE CASE

- 1. At the time he pled guilty, Ibarra-Valencia was misinformed about the offender score and standard sentence range.**

Ibarra-Valencia worked at Callahan Manufacturing in Royal City. CP 6. He had serious mental health problems and delusions that his coworkers were going to kill him and his family. CP 9, 219.

According to the State's allegations, on the morning of November 20, 2015, Ibarra-Valencia brought a pistol to work and shot two of his coworkers, Joel Valeriano Rodriguez and Agustin Verduzco Sanchez. CP 6-7. Rodriguez died at the scene but Sanchez received medical care and survived. CP 6-7. Ibarra-Valencia turned himself in to the police shortly after the incident. CP 9.

The State charged Ibarra-Valencia with one count of first degree premeditated murder and one count of attempted first degree premeditated murder, both with firearm enhancements. CP 1-2.

In May 2017, the court found Ibarra-Valencia's capacity to form the intent to commit the crime was at issue and ordered that he be evaluated for capacity in accordance with RCW 10.77.060 at Eastern State Hospital. CP 44-50. At the omnibus hearing in August 2017, defense counsel asserted he would pursue a defense of insanity and/or diminished capacity. CP 85; 8/28/17RP 2-4.

In order to avoid the possibility of an acquittal on the basis of either insanity or diminished capacity, the State agreed to amend the charges to one count of first degree manslaughter and one count of attempted first degree manslaughter, and to recommend a sentence of 20 years, in exchange for Ibarra-Valencia's agreement to plead guilty.

CP 203. But the court denied the State's motion to amend the information. CP 203-04; 11/13/17RP 6. Based on its own review of Ibarra-Valencia's mental health evaluations, the court concluded the evidence would be insufficient to establish a defense of either diminished capacity or insanity, and that the proposed reduction in the charges was unwarranted. CP 203-04. At the same time, the court noted, "If Mr. Ibarra Valencia were to be convicted of murder, the court could take his mental state into account as being something that diminished his ability to conform to the law, that did not amount to a total offense [sic] and take that into account in fashioning a mitigated sentence of some sort." 11/13/17RP 6-7.

The parties entered into another plea agreement. The State agreed to amend the charges to one count of second degree intentional murder and one count of attempted second degree intentional murder, both with firearm enhancements, in exchange for Ibarra-Valencia's agreement to plead guilty. CP 214. The State also agreed to recommend a mitigated exceptional sentence of 240 months—80 months on the second degree murder charge, plus 60 months for the firearm enhancement, and 40 months on the attempted second degree murder charge, plus 60 months for the firearm enhancement, to be served

consecutively. CP 214. The court granted the motion to amend the information. CP 206-09.

Ibarra-Valencia pled guilty to the amended charges on November 20, 2017. CP 210-20. He had no prior felony history. CP 242. On the guilty plea statement, he was informed that each offense counted as two points in the offender score for the other offense. CP 211. He was informed that the standard sentence range for count I was 144 to 244 months, plus 60 months for the firearm enhancement, and for count II was 108 to 183 months, plus 60 months for the firearm enhancement. CP 211.

On the guilty plea statement, Ibarra-Valencia explained his actions:

On November 20, 2015, in Grant County, Washington, I was suffering from severe and well documented mental health conditions. As a part of my mental health sickness I was suffering from delusions that my coworkers were going to kill me and my family. On November 20, 2015, I brought a gun to work and it resulted in the death of Joel Valeriano Rodriguez when I shot him. During that shooting I also hit Agustin Verduzco Sanchez with bullets from my gun causing him to nearly die.

CP 219.

At the guilty plea hearing, Ibarra-Valencia was again expressly informed that the offender score for each count was two, and that the

standard sentence range for count I was 144 to 244 months, plus 60 months for the firearm enhancement, and for count II was 108 to 183 months, plus 60 months for the firearm enhancement, all to run consecutively. 11/20/17RP 3-4, 10-11. The court accepted the plea as knowing, intelligent and voluntary. 11/20/17RP 13-14.

The defense submitted a memorandum urging the court to accept the parties' agreed recommendation for a mitigated exceptional sentence of 240 months. CP 223-27. The defense explained, "[t]he joint recommendation between the State of Washington and Mr. Ibarra-Valencia was achieved by mutual recognition of his mental health condition as a mitigating factor." CP 223; 1/22/18RP 61.

A sentencing hearing was held on January 22, 2018. Consistent with the parties' understanding, the court calculated the offender score as two for each count and determined the standard sentence range for count I was 144 to 244 months and for count II was 108 to 183 months. CP 247. But contrary to the parties' understanding, the court determined that the two firearm enhancements totaled 240 months rather than 120 months. CP 248.

The court rejected the parties' recommendation for a mitigated sentence and imposed a sentence within what it believed to be the

standard range. 1/22/18RP 74-75; CP 248. The court imposed 314 months on count I and 265.5 months on count II, which included 240 months of firearm enhancements. 1/22/18RP 75; CP 248. The court ordered the sentences to run consecutively, for a total of 579.5 months. 1/22/18RP 75; CP 248.

2. Ibarra-Valencia moved to withdraw his guilty plea as soon as he learned of the error in the standard range and prior to resentencing.

Soon after sentencing, the parties realized that the offender score and standard sentence range were erroneous. In fact, because both second degree murder and attempted second degree murder are “serious violent offenses,” the offender score for each count is zero rather than two. See RCW 9.94A.589(1)(b). Based on the correct offender score of zero, the standard sentence range for count I is 123 to 220 months rather than 144 to 244 months, and for count II is 92.25 to 165 months rather than 108 to 183 months. See RCW 9.94A.510, .515, .595.

Also, the parties and the court realized that the court had miscalculated the firearm enhancements. The firearm enhancement for each count was 60 months rather than 120 months. See RCW 9.94A.533(3)(a); CP 248; 11/28/18RP 3, 7.

On February 16, 2018, the State filed a motion to amend the judgment and sentence. CP 276. A resentencing hearing was scheduled for April 25, 2018. CP 301, 311.

On April 5, 2018, Ibarra-Valencia filed a motion to withdraw his guilty plea. CP 299-314. A hearing was held on November 28, 2018. Defense counsel argued the plea was involuntary in violation of due process due to the misinformation Ibarra-Valencia received about the sentence. CP 310-12; 11/28/18RP 3. In a declaration, Ibarra-Valencia asserted, “when I entered my plea, I did so based upon the representation of the State of Washington that my offender score was two and not zero and that I would receive 120 months of time for two firearm enhancements and not 240 months of time.” CP 302. He further explained,

Had I known that my offender score was zero and not two, I would have proceeded to trial with the hopes of an acquittal or conviction of lesser included offenses and then arguing for a low end sentence. Subsequent to my guilty plea, I learned that an offender score of zero results in a substantially less standard range sentence than an offender score of two and had I known that was the range I would have gone to trial in hopes of being convicted of lesser degree charges with firearm enhancements.

CP 302.

The State conceded that Ibarra-Valencia's guilty plea was involuntary because he had been misadvised of the offender score. CP 323-25. But the State argued he must show he was actually and substantially prejudiced by the error because his motion to withdraw the plea was in effect a collateral attack on the judgment. The State argued the court should deny the motion because Ibarra-Valencia had not established prejudice. CP 323-25; 11/28/18RP 6-7, 10-12.

The court agreed with Ibarra-Valencia. The court concluded the guilty plea was not knowing, voluntary or intelligent because it "was based on an incorrect offender score and misinformation about the standard range of the crimes to which he pleaded guilty." CP 537-38; 11/28/18RP 3. The court reasoned that Ibarra-Valencia need not establish he was prejudiced by the misinformation because his motion to withdraw the plea was not actually a collateral attack on the judgment. 11/28/18RP 14-15. No valid judgment existed because the court had imposed a sentence above the standard range. 11/28/18RP 14-15. Because Ibarra-Valencia had not yet been resentenced, "the sentence hasn't been completed at this point." 11/28/18RP 14. The court therefore granted the motion to withdraw the guilty plea, vacated

the judgment and sentence, and ordered that the matter proceed to trial.

CP 377; 11/28/18RP 3, 18, 26.

The State now appeals the order granting the motion to withdraw the guilty plea and vacating the judgment and sentence. CP 380.

C. ARGUMENT

The trial court did not abuse its discretion in granting Ibarra-Valencia's motion to withdraw his guilty plea.

Ibarra-Valencia's guilty plea was involuntary in violation of due process because it was based upon misinformation about a direct sentencing consequence. The trial court correctly concluded that Ibarra-Valencia was entitled to withdraw the plea without demonstrating he was prejudiced by the error. The motion to withdraw the plea was not a collateral attack on the judgment because no valid judgment existed. The motion was timely because Ibarra-Valencia moved to withdraw the plea as soon as he learned of the sentencing error. This Court should affirm the trial court's order granting the motion to withdraw the plea.

The Court reviews a trial court's ruling on a motion to withdraw a guilty plea for abuse of discretion. State v. Zhao, 157 Wn.2d 188, 197, 137 P.3d 835 (2006). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable

grounds or for untenable reasons. State v Dixon, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006).

1. Ibarra-Valencia's guilty plea was involuntary in violation of due process because it was based upon misinformation about a direct sentencing consequence.

Because a defendant pleading guilty waives multiple fundamental constitutional rights, due process requires that the plea be knowing, voluntary, and intelligent. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006); Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); CrR 4.2(d); U.S. Const. amend.

XIV.

To qualify as a knowing and intelligent plea, a guilty plea must be made with a correct understanding of the direct sentencing consequences. Mendoza, 157 Wn.2d at 590-91. The offender score and standard sentence range are direct sentencing consequences of which the defendant must be correctly informed. Id. A defendant's guilty plea is involuntary when based upon misinformation regarding the standard sentence range regardless of whether the actual range is lower or higher than anticipated. Id.

Here, Ibarra-Valencia's guilty plea was involuntary in violation of due process because it was based upon misinformation regarding the

offender score and standard sentence range. At the time he pled guilty, Ibarra-Valencia was misinformed that the offender score for each count was two and that the standard sentence range for count I was 144 to 244 months, and for count II was 108 to 183 months. CP 211; 11/20/17RP 3-4, 10-11. In fact, the offender score for each count was zero. RCW 9.94A.589(1)(b). The correct standard range for count I was 123 to 220 months, and for count II was 92.25 to 165 months. RCW 9.94A.510, .515, .595.

Because Ibarra-Valencia was misinformed of the offender score and standard sentence range when he pled guilty, his guilty plea is not knowing, intelligent and voluntary. Mendoza, 157 Wn.2d at 590-91.

2. Ibarra-Valencia may withdraw his guilty plea without demonstrating prejudice because he moved to withdraw the plea prior to judgment.

When a defendant moves to withdraw a guilty plea in the trial court prior to “judgment,” the motion is governed by CrR 4.2. In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 595, 316 P.3d 1007 (2014). “CrR 4.2 is a trial court rule.” Id. at 601. Under the rule, a trial court must allow a defendant to withdraw a guilty plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” CrR 4.2(f).

“Manifest injustice” includes an involuntary guilty plea. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

When a defendant moves to withdraw an involuntary guilty plea prior to judgment, he “need not establish a causal link between the misinformation and his decision to plead guilty.” State v. Weyrich, 163 Wn.2d 554, 556-57, 182 P.3d 965 (2008) (citing Mendoza, 157 Wn.2d at 590; In re Pers. Restraint of Isadore, 151 Wn.2d 294, 302, 88 P.3d 390 (2004)). He is entitled to withdraw the plea as long as he makes his motion in a timely manner after learning of the sentencing error.

Mendoza, 157 Wn.2d at 591.

In Weyrich, for example, Weyrich moved to withdraw his guilty plea prior to his sentencing hearing, arguing the plea was involuntary because he had been misinformed about the possible sentence. The supreme court held he did not waive the error because he timely moved to withdraw the plea before sentencing. Weyrich, 163 Wn.2d at 591.

Similarly, a defendant need not show prejudice when challenging an involuntary guilty plea on direct appeal. State v. Buckman, 190 Wn.2d 51, 68, 409 P.3d 193 (2018) (citing Boykin, 395 U.S. at 242). If the defendant pled guilty based upon misinformation about a direct sentencing consequence and raises the error on direct

appeal, the error is presumed prejudicial and the defendant is entitled to withdraw the plea. Stockwell, 179 Wn.2d at 595-96 (citing Mendoza, 157 Wn.2d at 592; Weyrich, 163 Wn.2d at 556; State v. Walsh, 143 Wn.2d 1, 10, 17 P.3d 591 (2001)).

But if the defendant moves to withdraw an involuntary guilty plea after “judgment,” the motion is considered a collateral attack on the judgment and is governed by CrR 7.8. Buckman, 190 Wn.2d at 56 n.1, 60. On collateral review, when the claimed error is a misstatement of sentencing consequences, the petitioner must show he was “actually and substantially prejudiced” by the error. Stockwell, 179 Wn.2d at 598-99.

“Actual and substantial prejudice” means “the outcome of the guilty plea proceedings would more likely than not have been different had the error not occurred.” Buckman, 190 Wn.2d at 60. “Prejudice at the guilty plea stage means that the defendant would more likely than not have refused to plead guilty and would have insisted on going to trial.” Id. at 65. This is “an objective, rational person inquiry, rather than a subjective analysis.” Id. at 66-67.

In Buckman, Buckman brought his motion to withdraw the guilty plea months after sentencing, arguing the plea was involuntary

because he had been misinformed of the statutory maximum and the term of community custody. Id. at 55. The supreme court agreed the plea was involuntary because Buckman was misinformed of the possible sentencing consequences. Id. at 58. But the court held he failed to establish “a rational person in his circumstances would have declined to plead guilty and would more likely than not have gone to trial.” Id. at 58. He therefore failed to establish prejudice and was not entitled to withdraw his plea. Id.

Similarly, in Stockwell, Stockwell filed a personal restraint petition several years after the judgment challenging his guilty plea on the basis that he had been misinformed of the statutory maximum sentence. Stockwell, 179 Wn.2d at 591-92. The supreme court held he was not entitled to withdraw the plea because he had not shown he was actually and substantially prejudiced by the misinformation. Id. at 603.

In a criminal case, the “judgment” is the sentence. In re Pers. Restraint of Skylstad, 160 Wn.2d 944, 950, 162 P.3d 413 (2007). No judgment exists until the sentence is pronounced. Id. If a court reverses the sentence, that “effectively vacates the judgment.” Id. at 954. “Without the sentence there can be no judgment.” Id. Thus, when a sentence is reversed, there is no judgment to collaterally attack. Id. A

person cannot bring a collateral attack against the judgment when there is no valid judgment. Id.

Here, Ibarra-Valencia brought his motion to withdraw his guilty plea prior to “judgment.” The original judgment was invalid because the sentence was erroneous. The court had miscalculated the offender score, the standard sentence range, and the firearm enhancements, and had imposed an illegal sentence above the top of the standard range. CP 247-48, 537-38; 11/28/18RP 3. Ibarra-Valencia brought his motion to withdraw his guilty plea before he was resentenced and a new valid judgment was entered. CP 299-314. As the trial court recognized, at that point, no valid judgment existed. 11/28/18RP 14-15; Skylstad, 160 Wn.2d at 954. There was therefore no judgment to collaterally attack. Skylstad, 160 Wn.2d at 954. Ibarra-Valencia’s motion to withdraw the plea cannot be considered a collateral attack because there was no valid judgment. Id.

Had the trial court denied Ibarra-Valencia’s motion to withdraw his plea and proceeded to resentence him, and had the court entered a new valid judgment, Ibarra-Valencia would be entitled at that point to challenge the guilty plea on direct appeal. See RAP 2.2(a)(1) (party may appeal from final judgment). The error in misadvising him about

the sentencing consequences would be presumed prejudicial and would support a motion to withdraw the plea. Stockwell, 179 Wn.2d at 596.

The trial court correctly recognized that Ibarra-Valencia's motion was brought prior to judgment and was therefore governed by CrR 4.2(f). Stockwell, 179 Wn.2d at 595; Weyrich, 163 Wn.2d at 591. Because Ibarra-Valencia was misinformed of direct sentencing consequences, a manifest injustice occurred and he was entitled to withdraw the plea. Wakefield, 130 Wn.2d at 472; CrR 4.2(f). He was not required to establish prejudice. Stockwell, 179 Wn.2d at 596; Weyrich, 163 Wn.2d at 556; Mendoza, 157 Wn.2d at 591.

3. Because Ibarra-Valencia moved to withdraw the plea as soon as he learned of the sentencing error, he did not waive his right to challenge the voluntariness of the plea.

Where a defendant pleads guilty on the basis of misinformation about a direct sentencing consequence, he may waive the right to withdraw the plea if he does not object in a timely manner after learning of the error. Mendoza, 157 Wn.2d at 591.

In Mendoza, a miscalculated offender score resulted in a lower range than indicated in the plea agreement. Mendoza, 157 Wn.2d at 584-85. During sentencing proceedings, the State explained the error and requested a lower sentence within the correct range. Id. Mendoza

moved to withdraw his plea on grounds unrelated to the erroneous score. Id. at 585. The sentencing court rejected Mendoza’s motion. Id. On review, the supreme court stated that “[a]bsent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.” Id. at 591. But the court held Mendoza waived his right to challenge the plea as involuntary because he did not move to withdraw his plea when he learned of the mistake in the offender score before sentencing, and because he received a lower sentence than statutorily authorized by his correct score. Id.

By contrast, in Personal Restraint of Quinn, Quinn pled guilty based upon misinformation about the term of community custody. In re Pers. Restraint of Quinn, 154 Wn. App. 816, 821, 226 P.3d 208 (2010). Once he learned of the error, he moved to withdraw the plea. Id. at 824-25. The Court of Appeals held the challenge was timely because “Quinn was not lying in the weeds, in order to later spring this issue upon the prosecutor, nor was he acquiescing in the situation.” Id. at 841. He was entitled to withdraw the plea. Id.

Similarly, in State v. Gonzales, Gonzales pled guilty based upon misinformation about the offender score. State v. Gonzales, No. 38317-

9-II, 2009 WL 4309189, at *1 (Wn. App. Dec. 1, 2009) (cited as persuasive, non-binding, authority pursuant to GR 14.1(b)). On appeal, the Court reversed the sentence and remanded for resentencing. Id. At the resentencing hearing, Gonzales attempted to withdraw the plea but the court denied the request. Id. When Gonzales appealed again, the Court held he had not waived his right to challenge the voluntariness of his plea. Id. at *5. His challenge was timely because he “sought to withdraw his plea when he became aware of the issue and before the sentencing court resentenced him.” Id.

Here, similarly, Ibarra-Valencia moved to withdraw his plea in a timely manner once he learned of the error in his sentence. He became aware of the error in the offender score and standard sentence range on March 20, 2018. CP 306. On April 5, 2018, prior to resentencing, he moved to withdraw the guilty plea on the basis that he had been misinformed of the sentencing consequences. CP 301-14. He was “not lying in the weeds, in order to later spring this issue upon the prosecutor, nor was he acquiescing in the situation.” Quinn, 154 Wn. App. 841. His challenge was timely because he “sought to withdraw his plea when he became aware of the issue and before the sentencing

court resentenced him.” Gonzales, 2009 WL 4309189, at *5. Ibarra-Valencia was entitled to withdraw his plea.

D. CONCLUSION

Ibarra-Valencia pled guilty based upon misinformation about direct sentencing consequences. His plea was involuntary in violation of due process. This Court should affirm the trial court’s order granting his motion to withdraw the plea.

Respectfully submitted this 2nd day of August, 2019.

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