

No. 31311-5-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

**FILED**

Sep 10, 2014

Court of Appeals  
Division III  
State of Washington

STATE OF WASHINGTON,  
Plaintiff/Respondent,

vs.

THOMAS T. ARANDA,  
Defendant/Appellant.

APPEAL FROM THE CHELAN COUNTY SUPERIOR COURT  
Honorable Lesley A. Allan, Superior Court Judge

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RESPONSE TO STATE'S MOTION ON THE MERITS

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I. IDENTITY OF RESPONDING PARTY

Thomas T Aranda responds as follows to the State's motion on the merits (hereafter, "State's MOTM").

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 18.14(c) and (e)(1), appellant seeks denial of the State's motion on the merits.

III. ARGUMENT IN RESPONSE

The State's motion must be denied unless the Court finds the appeal is "clearly without merit". RAP 18.14(e)(1). In making this determination, the commissioner:

will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

Id. When an appeal is shown to have arguable merit under the relevant factors, a motion on the merits to affirm must be denied. *See State v. Bagwell*, 68 Wn. App. 891, 893, 846 P.2d 587 (1993). Here, the issues have arguable merit and the State's MOTM should be denied.

SUPPLEMENTAL ARGUMENT

Appellant relies primarily upon his Brief of Appellant to address all issues raised by the State. He also argues as follows in direct response.

1. 18-year-old Mr. Aranda's plea was not voluntary because he received inadequate information and misinformation about the direct sentencing consequences that his offense of first degree rape required an indeterminate sentence consisting of a maximum term of life and a minimum term of confinement.

A guilty plea is voluntary if the defendant is advised of all direct consequences of that plea. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 300, 88 P.3d 390 (2004); *see also* CrR 4.2(d). A defendant need not be informed of all possible consequences of a plea, but he must be informed of the direct consequences. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A defendant's guilty plea is involuntary when "based on misinformation regarding a direct consequence on the plea." *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006). A "direct consequence" is one with a "definite, immediate and automatic effect on a defendant's range of punishment." *Ross*, 129 Wn.2d at 284. The possibility of a life sentence is a direct consequence. *State v. McDermond*, 112 Wn. App. 239, 244–45, 47 P.3d 600 (2002), *overruled on other grounds by Mendoza*, 157 Wn.2d at 590–91. A mandatory minimum sentence is also a direct consequence. *Wood v. Morris*, 87 Wn.2d 501, 513, 554 P.2d 1032 (1974).

The State responds that because boilerplate language in the statement of defendant on plea of guilty stated both the possibility that Mr. Aranda faced a life sentence and a mandatory minimum sentence, his signature thereon and one-syllable responses to the trial court's general inquiries establish a knowing, intelligent and voluntary plea. State's MOTM, pp. 2–9. The State disregards the inadequacy of the document and the court's colloquy and overlooks misinformation given by the court.

At the time of the plea the court's explanation of the sentencing consequences was deficient because the court never informed Mr. Aranda that under former RCW 9.94A.712<sup>1</sup> he had the possibility of serving a life sentence in prison. The language describing the effect of RCW 9.94A.712 in Mr. Aranda's guilty plea statement did not state explicitly that he faced a mandatory minimum sentence and could remain in prison for life. Nor did the trial court make this clear during the plea hearing. For that matter, the court and counsel appear to have misunderstood the sentencing consequences themselves as suggested by the need to enter an order *two months after sentencing* to reflect an indeterminate rather than determinate sentence. At the time of the plea hearing Mr. Aranda was barely eighteen years old and had only a 9<sup>th</sup> grade education, and had made an unsuccessful suicide attempt earlier that morning. CP 29, 114. He wasn't a seasoned criminal and apparently had no criminal history. CP 31. Surely his circumstances required a colloquy that ensured his understanding of these direct and sobering consequences of his intended plea. From all information in the record, Mr. Aranda was instead misinformed as to his potential life sentence from all directions—the court, the prosecutor and his own attorney<sup>2</sup>. *See* Brief of Appellant, pp. 2–5, 10–13. There is arguable merit to this issue and the State's MOTM should be denied.

2. The court lacked statutory authority to impose an additional non-restitution legal financial obligation upon Mr. Aranda after he has been sentenced.

The State summarily dismisses the issue without substantively responding to Mr. Aranda's legal argument and authorities. State's MOTM, pp. 10–11; *see* Brief of Appellant, pp. 13–18. There is arguable merit to this issue and the State's MOTM should be denied.

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<sup>1</sup> RCW 9.94A.712 was recodified as RCW 9.94A.507 by Laws 2008, ch. 231, § 56, effective August 1, 2009.

<sup>2</sup> According to the WSBA web-site, Mr. Aranda's attorney, Michael Joseph Platts, is deceased. [www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr\\_ID=6903](http://www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr_ID=6903) (last accessed April 15, 2014).

IV. CONCLUSION

For the reasons stated above and in the initial brief of appellant, appellant asks this Court to deny the motion on the merits.

DATED: September 10, 2014.

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s/Susan Marie Gasch, WSBA #16485

PROOF OF SERVICE

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on September 10, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of appellant's response to state's motion on the merits:

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