71127-0 71127-0

No. 71127-0-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

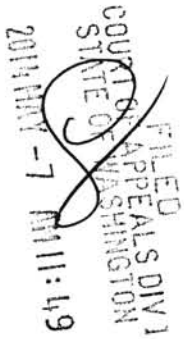
STATE OF WASHINGTON,

Respondent,

v.

FERDI DeGUZMAN,

Appellant.



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

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in denying Ferdi DeGuzman's motion to withdraw his plea of guilty.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Due Process requires a guilty plea be entered knowingly, intelligently and voluntarily. If the defendant has been misadvised about the applicable sentence for the offense, the resulting plea is not entered knowingly, voluntarily and intelligently. Did the trial court abuse its discretion in denying Mr. DeGuzman's motion to withdraw his plea where Mr. DeGuzman testified he believed the applicable sentence was 125 to 158 days, not months?

C. STATEMENT OF THE CASE

On April 24, 2013, Ferdi DeGuzman pled guilty to two counts of second degree rape of a child, in connection with allegations made by his step-daughter, A.Z., related to conduct occurring when she was between 12 and 13 years old. CP 1-8, 27; RP 7-21.[1] During the plea allocution, Mr. DeGuzman answered all of the deputy prosecutor's questions with single-word responses of "yes," "correct," and "no." RP

[1] The verbatim report of proceedings consists of one consecutively-paginated transcript containing hearings from April 23, 2013 through November 1, 2013, which is referred to as "RP." A separate volume from October 29, 2012 is not referred to herein.

7-20. When asked whether he wanted to plead guilty or not guilty to the remaining counts in the Information, Mr. DeGuzman simply replied, "guilty." RP 20.[2] Mr. DeGuzman was told by the deputy prosecutor that he was eligible for the Special Sex Offender Sentencing Alternative (SSOSA), and Mr. DeGuzman verified that he had reviewed the program's requirements with his attorney. RP 15-16.[3] During the plea allocution, the deputy prosecutor twice acknowledged that Mr. DeGuzman was requesting a SSOSA, even though the court might not grant one. RP 12.

The deputy prosecutor informed Mr. DeGuzman on the record that the standard range sentence for the crime to which he was pleading guilty was "120 to 158 months"; she also informed Mr. DeGuzman that if he did not receive the SSOSA, he would "serve a minimum term of confinement in the Department of Corrections." RP 10, 12.

Despite the mixed information given, when asked if he understood the terms of his plea, Mr. DeGuzman replied, "yes." RP 12.

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[2] Mr. DeGuzman pled guilty to two counts of rape of a child in the second degree, in exchange for the dismissal of the first count in the Information – child molestation in the first degree. RP 12, 22.

[3] Mr. DeGuzman acknowledged he understood the State would be opposing his SSOSA request, and that he could be on supervision for life. RP 11-13; CP 16-20.

The deputy prosecutor led Mr. DeGuzman through a factual allocution, written by his own counsel, which he adopted. RP 19. Following this colloquy, the trial court informed Mr. DeGuzman that the deputy prosecutor had "covered everything," so the court simply asked if Mr. DeGuzman had any questions. RP 21. Mr. DeGuzman did not. Id. The court set the case over for sentencing. RP 22.

On June 3, 2013, new counsel was appointed to represent Mr. DeGuzman, due to his request to withdraw his guilty plea, and his belief that he was not effectively represented by prior counsel. RP 26-33. New counsel was appointed on June 6, 2013, and the case was continued for a hearing on Mr. DeGuzman's motion to withdraw his guilty plea. RP 36, 40, 46.

On August 7, 2013, Mr. DeGuzman filed a motion to withdraw his guilty plea, contending that his plea was involuntary, as he did not comprehend the direct consequences of his plea – specifically the term of confinement. CP 122-31.

A contested hearing was held on September 17, 2013, at which Mr. DeGuzman testified to his understanding of the plea conditions, and his miscommunications with his former attorney. RP 57-80. Mr. DeGuzman testified that he only pled guilty because he had believed

that if he were denied the SSOSA, his standard range would be 124 to 158 days, not months. RP 75-76, 123. In addition to Mr. DeGuzman's own testimony, the court heard audio tapes of telephone calls between Mr. DeGuzman and his girlfriend, A.Z.'s mother. On the tapes, the couple could be heard discussing their plans for the following summer – indicating DeGuzman's understanding that the sentence he faced would be only a few months, at most, before he would be eligible for work release. RP 73, 95.

The trial court denied Mr. DeGuzman's motion to withdraw his plea. RP 150.

On November 1, 2013, the court found the SSOSA was not appropriate and sentenced Mr. DeGuzman to 144 months to life. CP 108-19; RP 215

Mr. DeGuzman appeals the denial of his motion to withdraw his guilty plea. CP 120-21.

D. ARGUMENT

IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO DENY MR. DeGUZMAN'S MOTION TO WITHDRAW HIS GUILTY PLEA, AS IT WAS NECESSARY TO CORRECT A MANIFEST INJUSTICE.

Pursuant to CrR 4.2(f), a defendant may withdraw a plea of guilty "whenever it appears that the withdrawal is necessary to correct a manifest injustice." A manifest injustice occurs if the plea was not knowing, voluntary and intelligent. State v. S.M., 100 Wn. App. 401, 409, 996 P.2d 1111 (2000) (finding manifest injustice where defendant's motion to withdraw guilty plea was denied, due to ineffective assistance of counsel and where plea was not voluntary and intelligent). A trial court's decision on a motion to withdraw a guilty plea is reviewed for an abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001), abrogated on other grounds by State v. Sisouvanh, 175 Wn.2d 607, 290 P.3d 942 (2012).

1. Due process requires a defendant be properly advised of the direct consequences of his guilty plea.

Due Process requires that a defendant's plea of guilty be knowing, voluntary, and intelligent. U.S. Const. amend. 14; Const. art. I, sec. 3; Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23

L.Ed.2d 274 (1969); see also In re the Personal Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004) ("A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences."). A guilty plea is involuntary if the defendant is not properly advised of a direct consequence of his plea. State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003); State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

"Where a plea agreement is based on misinformation . . . generally the defendant may choose . . . withdrawal of the guilty plea." State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001). Under Walsh, a guilty plea is not voluntary and cannot be valid if it is made without an accurate understanding of the consequences. 143 Wn.2d at 8.

Because of the constitutional rights waived by a guilty plea, the State bears the burden of ensuring the record of a guilty plea demonstrates the plea was knowingly and voluntarily entered. Boykin, 395 U.S. at 242. "The record of the plea hearing must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea." Wood v. Morris, 87 Wn.2d 501, 503, 554 P.2d 1032 (1976).

2. Because Mr. DeGuzman was not properly advised of the direct consequences of his guilty plea, the plea was not knowingly or voluntarily entered.

When a defendant enters a plea agreement where he has been misadvised concerning the penalty he faces, he is entitled to withdraw the plea because it was invalidly entered. State v. Mendoza, 157 Wn.2d 582, 590, 141 P.3d 49 (2006). "Absent 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. In Mendoza, the Supreme Court found that a defendant's understanding of the direct consequences of his plea is so essential, that even where the ultimate sentence resulted in less time than the defendant believed he would receive, the defendant is entitled to withdraw his plea. Id. at 584.

Here, Mr. DeGuzman, in an even stronger example than the defendant in Mendoza, timely moved to withdraw his plea immediately upon discovering his misunderstanding of the plea agreement – well before sentencing. RP 25. Although as in Mendoza, Mr. DeGuzman ultimately was sentenced within the standard range, his plea was involuntary, and his motion to withdraw should have been granted.

The relevant maximum sentence is a direct consequence of a guilty plea. Walsh, 143 Wn.2d at 8-9; State v. Morley, 134 Wn.2d 588, 621, 952 P.2d 167 (1998). A "defendant must be advised of the maximum sentence which could be imposed prior to entry of the guilty plea." State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

Due to the inconsistent and confusing statements regarding sentencing made by the deputy prosecutor and by his own counsel at the time of his guilty plea, Mr. DeGuzman's guilty plea was involuntarily entered. For example, he was told both that his standard range was 120 to 158 months, and that he would "serve a minimum term of confinement." RP 10, 12. As Mr. DeGuzman later argued during his plea withdrawal hearing, there was no incentive for him to plead guilty for a sentence of 144 months to life – a lengthy sentence that he could have received after trial. RP 70, 76, 136.[4]

Due to the confusing statements made to Mr. DeGuzman, both inside and outside of the courtroom, as reflected during the hearing on the motion to withdraw his guilty plea, Mr. DeGuzman did not clearly understand the terms and consequences of the plea agreement. Because

[4] The record supports Mr. DeGuzman's contention that he was only a passive participant in the plea process. RP 88. "I just kept saying "yes." He also said that after quickly speaking to his attorney in the hallway, she instructed him to return to the courtroom and simply "plea all the yes [sic]." RP 122.

he was not properly informed of the direct consequences of his guilty plea, Mr. DeGuzman's plea was not knowingly and voluntarily made. Isadore, 151 Wn.2d at 298.[5]

3. Mr. DeGuzman's motion to withdraw his guilty plea should have been granted.

Where a defendant is misadvised of the direct consequences of his guilty plea, the plea is involuntary and he is entitled to withdraw the plea. Isadore, 151 Wn.2d at 303; Walsh, 143 Wn.2d at 8.[6] Because the State failed to meet its burden to demonstrate that Mr. DeGuzman's guilty plea was knowing, voluntary and intelligent, his motion to withdraw should have been granted.

This Court should reverse and remand, to permit Mr. DeGuzman to withdraw his plea.

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[5] Mr. DeGuzman need not demonstrate that the misinformation regarding his sentence was material to his decision to plead guilty. The Supreme Court has rejected such a requirement, stating that a materiality test:

> ...conflicts with this court's jurisprudence. This court has repeatedly stated that a defendant must be informed of all direct consequences of a guilty plea, and that failure to inform the defendant of a direct consequence renders the plea invalid. State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

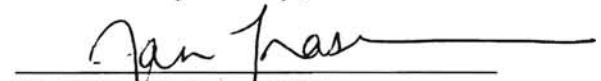
Isadore, 151 Wn.2d at 301.

[6] Unlike the defendants in State v. Knotek, 136 Wn. App. 412, 426, 149 P.3d 67 (2006), rev. denied, 161 Wn.2d 1013, 166 P.3d 1218 (2007), and Mendoza, 157 Wn.2d at 582, Mr. DeGuzman moved immediately to withdraw his guilty plea, once he realized the error.

E. CONCLUSION

For the above reasons, this Court should reverse the denial of Mr. DeGuzman's motion to withdraw his plea of guilty.[7]

Respectfully submitted this 6th day of May, 2014.



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[7] The trial court's oral findings of fact and conclusions of law, based upon the court's assessment of credibility, were incorporated by reference into a one-page order. CP 107; RP 150-55.

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 71127-0-I
v.	)	
	)	
FERDI DEGUZMAN,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 6TH DAY OF MAY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] FERDI DEGUZMAN 836718 AIRWAY HEIGHTS CORRECTIONS CENTER PO BOX 2049 AIRWAY HEIGHTS, WA 99001	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 6TH DAY OF MAY, 2014.

X_____

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