Supreme Court No. 97154-4

Court of Appeals No. 77443-3-I

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY ALLEN COOK,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Jeffrey Allen Cook, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision 77443-3-I, issued on April 22, 2019, pursuant to RAP 13.3 and RAP 13.4(b)(3), and (4). The opinion is attached.

B. ISSUES PRESENTED FOR REVIEW

Mr. Cook sought to withdraw the guilty plea he entered while suffering from complex, inadequately treated medical issues in the jail. Despite Mr. Cook's best efforts to inform the trial court about his condition when arguing for pre-trial release and when he plead guilty, the Court of Appeals denied his subsequent request to withdraw his *Alford* plea, citing to a lack of evidence of his medical condition at that time. Should this Court grant review under RAP 13.4(b)(3) and (4) to determine whether Mr. Cook's plea was voluntary?

C. STATEMENT OF THE CASE

1. Mr. Cook's neurological condition made him unable to remember the incident for which he ultimately entered an Alford plea.

Jeffrey Cook suffers from traumatic brain injury. 09/18/17 RP 35. Before being charged with the criminal offense of communication with a minor for immoral purposes, Mr. Cook was suffering a steady

decline in his cognition. CP 1; 5; 09/18/17 RP 28. It was clear to his social worker, Matt Diamond, that something was going on with Mr. Cook, but it was not clear what it was. 09/18/17 RP 28.

Prior to this criminal charge, Mr. Cook had been referred to a neurologist, and he was scheduled to get a formal diagnosis in order to try to get the correct medical treatment. 09/18/17 RP 24-25, 36.

A recent MRI showed significant damage to Mr. Cook's prefrontal cortex, which is the part of the brain that controls social inhibitions. 09/18/17 RP 37. The neurologist thought the damage to his right and left frontal lobes could be stroke damage. 09/18/17 RP 40. The neurologist needed to do updated imaging and MRIs of his brain to assess his cognitive deterioration, which Mr. Cook had arranged for before being arrested and jailed due to this charge. 09/18/17 RP 25.

Mr. Cook's cognitive decline made him unable to fully remember this incident he was charged with. 09/18/17 RP 31. The week of the charged crime, he was in and out of the emergency room for convulsions and seizures. 09/18/17 RP 41. These seizures created what Mr. Cook described as a "neurologic soup," that "messes with" his memory, drives, anger and emotional responses. 09/18/17 RP 41.

2. Mr. Cook pleaded guilty in order to obtain medical treatment.

Mr. Cook emphasized when he entered his plea, he was seeking release to address his medical condition. 12/14/17 RP 64.

At his second bail hearing, Mr. Cook asked to be released to his social worker, Mr. Diamond, who could verify Mr. Cook's cognitive issue and need for medical care. 8/29/17 RP 107. Mr. Cook introduced evidence of his MRI results to document his brain condition. 8/29/17 RP 108.

Mr. Cook was having regular seizures and convulsions in jail. 09/18/17 RP 26, 33. Mr. Cook's attorney emphasized that while in jail, Mr. Cook's complex neurological condition was worsening and that he was given nothing more than pain medicine and anti-seizure medication, which was not adequate. 8/29/17 RP 107.

The prosecutor argued against pre-trial release, claiming that jail staff was adequately "aware" of Mr. Cook's medical condition. 8/29/17 RP 111-112. This did not appear to be the case, as the jail medical staff did not even have Mr. Cook's x-rays until Mr. Cook's counsel provided them. 8/29/17 RP 114-115. The level of care Mr. Cook needed for the neurological condition that he was in the process of being diagnosed

and treated for was more complex than what the jail hospital could treat. 8/29/17 RP 114-115.

The trial court denied Mr. Cook's release, in part because the court did not understand what the x-rays meant and because the court was satisfied with the jail's representations that they were monitoring Mr. Cook. 8/29/17 RP 116. When Mr. Cook was denied release, he immediately indicated he would plead guilty. 8/29/17 RP 117.

Mr. Cook then entered an *Alford* plea to an amended gross misdemeanor charge of Communication with a Minor for Immoral Purposes. CP 5, 7. The prosecutor recommended a six month jail sentence, but the court sentenced Mr. Cook to serve 364 days in jail, despite Mr. Cook's request for leniency in order to obtain much needed medical care. 09/18/17 RP 43; CP 24.

3. *Mr. Cook finally received medical care in the jail, but not before waiving his constitutional rights and entering a plea.*

After entering his plea, Mr. Cook alleged the lack of medical care provided to him while in jail amounted to a form of coercion that rendered his plea involuntary. 12/14/17 RP 63-64. Mr. Cook also filed a writ of habeas corpus and asked the court to overturn his conviction because of the medical duress he was under when he entered his plea. RP 12/14/17; 59, 64.

The medical director of the jail, Dr. Sanders, provided a declaration in response to Mr. Cook's post-trial motions alleging he was not receiving adequate medical care. 12/14/17 RP 68-69. Dr. Sanders stated that Mr. Cook was receiving adequate care at the jail, and was even transported for specialist care. 12/14/17 RP 70-71.

Mr. Cook highlighted that his claim of not receiving medical care was especially true prior to entry of his plea. 12/14/17 RP 74. He said that only 129 days later, after he raised a "complete stink about it" did he receive any health care in the jail, which was well after entry of his plea. 12/14/17 RP 76.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court should grant review under RAP 13.4(b)(3) and (4) to review whether Mr. Cook's plea was voluntary, and to ensure that defendants do not enter guilty pleas based on a lack of medical care in the jail.

a. Due process requires a guilty plea be made knowingly, intelligently and voluntarily.

The Due Process Clause of the Fourteenth Amendment requires that a defendant's guilty plea be knowing, voluntary, and intelligent. U.S. Const. amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *State v. A.N.J.*, 168 Wn.2d 91, 117, 225 P.3d 956 (2010). When a person pleads guilty, he waives his

protection from self-incrimination and the right to a trial by jury. *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). Such "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Id*.

It is the State's burden to ensure the record of a guilty plea affirmatively demonstrates the plea was knowingly and voluntarily entered. *Boykin*, 395 U.S. at 242. "The record of a plea hearing or clear and convincing extrinsic evidence 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, 502-03, 554 P.2d 1032 (1976). "When a defendant makes an *Alford* plea, the trial court must exercise extreme care to ensure that the plea satisfies constitutional requirements." *In re Pers. Restraint of Montoya*, 109 Wn.2d 270, 277–78, 744 P.2d 340 (1987).

A court shall allow withdrawal of a guilty plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 4.2(f); *see also State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996); *State v. Taylor*, 83 Wn.2d 594, 598, 521 P.2d 699 (1974). This manifest injustice must be obvious, directly observable,

and overt, not obscure. *State v. Osborne,* 102 Wn.2d 87, 97, 684 P.2d 683 (1984)(citing *Taylor,* 83 Wn.2d at 596).

b. Mr. Cook's need for medical care overrode his ability to voluntarily, intelligently, and knowingly enter a guilty plea.

A guilty plea is involuntary and invalid if it is obtained by mental coercion overbearing the will of the defendant. *State v. Williams*, 117 Wn. App. 390, 398, 71 P.3d 686 (2003). Coercion may render a guilty plea involuntary, irrespective of the State's involvement. *Osborne,* 102 Wn.2d at 97(citing *State v. Frederick,* 100 Wn.2d 550, 556, 674 P.2d 136 (1983)). Evidence of involuntariness must be based on more than bare allegations. *Osborne,* 102 Wn.2d at 97.

When a person seeks to withdraw his or plea due to mental incompetency, the court must determine "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Osborne,* 102 Wn. App. at 98 (citing *North Carolina v. Alford,* 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

A person's mental condition must be assessed at the time he or she enters the guilty plea. *Osborne,* 102 Wn. App. at 98 (citing *State v. Ashley*, 16 Wn. App. 413, 416, 558 P.2d 302 (1976)). Factors that may be assessed in judging the mental competency of the defendant to plead

guilty may include his or her appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports, and the statements of counsel. *Osborne*, 102 Wn. App. at 98 (citing *State v. Loux*, 24 Wn. App. 545, 604 P.2d 177 (1979)).

In *Osborne*, the defendant sought to withdraw her plea because she was very depressed and even suicidal when she pleaded guilty. *Osborne,* 102 Wn.2d at 92, 98. She suffered identifiable and readily treatable conditions of depression, post-traumatic stress, and suicidal ideation. *Id.* at 98. She was also held in an arm restraint at the jail. *Id.* at 92. She argued that she was not competent to enter her plea because of how King County jail had treated her, in addition to her unstable mental state. *Id.* at 98. But when she entered her guilty plea, she indicated that she was in full possession of her judgment. *Osborne,* 102 Wn. App. at 98-99.

By contrast, Mr. Cook was in the midst of a medical crisis, with active seizures of unknown origin that required specialized neurological treatment. 8/29/17; RP 107-109, 114-115. The court declined to release Mr. Cook to receive the proper treatment for his rapidly declining medical condition prior to entry of his plea. 8/29/17;

RP 116. Mr. Cook entered an *Alford* plea based on his need for release to seek specialized medical care. CP 5; 9/18/17 RP 20.

During his plea hearing, Mr. Cook introduced the testimony of his social worker, Mr. Diamond, who confirmed Mr. Cook required specialized diagnosis and treatment through the University of Washington specialists. 9/18/17 RP 24-25. And though Mr. Cook was able to engage with the court in a plea colloquy, he did so in order to gain release to treat his medical condition, the complexity of which required specialized care he was not receiving while in custody.

The State has the burden of establishing voluntariness, which here the State argued based on medical care Mr. Cook received in the jail months after he entered his plea, after he raised a "complete stink about it." 12/14/16 RP 70-71. The Court of Appeals faulted Mr. Cook for failing to present "medical testimony." Slip op. at 8.

Mr. Cook produced the testimony and witnesses that he could muster from the jail, and only agreed to enter a plea after the court continually denied his release for the medical care he needed. Slip op. at 2. The Court of Appeals referenced medical testimony that Mr. Cook was finally being treated in the jail months after he entered his plea, which simply does not establish that at the time Mr. Cook entered his

plea he made a "a voluntary and intelligent choice among the alternative courses of action." *Osborne,* 102 Wn. App. at 98.

Mr. Cook respectfully asks this Court grant review to determine whether he voluntarily entered his plea when this decision was based on a need to be released from jail to obtain medical care. RAP 13.4(b)(3) and (4).

E. CONCLUSION

Based on the foregoing, Mr. Cook respectfully requests review by this Court.

Respectfully submitted this the 2nd day of May 2019.

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JEFFREY ALLEN COOK, Appellant.	No. 77443-3-I DIVISION ONE UNPUBLISHED OPINION FILED: April 22, 2019

LEACH, J. — Jeffrey Allen Cook appeals his conviction for communication with a minor for immoral purposes. He challenges the constitutionality of his Alford[1] plea, claiming that the inadequate medical care he received in jail to treat his neurological condition amounted to coercion making his plea involuntary. But Cook does not show that the jail provided inadequate care. We affirm.

BACKGROUND

In May 2017, Cook followed a 12-year-old girl into the employee-only section of a store. There he told her that he would take off her pants and grab

[1] North Carolina v. Alford, 400 U.S. 25, 37-38, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

her "pussy."[2] The State charged him with felony communication with a minor for immoral purposes. The court held him on $50,000 bail.

Cook has a traumatic brain injury and experiences related symptoms. While in jail, he experienced ongoing seizures. Cook twice asked the trial court to release him from pretrial confinement. He claimed that the jail could not adequately address his medical issues. He submitted X-rays as evidence of his brain injury. His trial counsel stated that Cook had received only pain and seizure medications in jail and his condition was worsening. And his counsel stated that he had an appointment with a physician at the University of Washington (UW) that was delayed because he was in jail.

The court heard from Pascal Herzer, a representative of the King County jail. Herzer told the court that he gave Cook's X-rays to Dr. Benjamin Sanders, the medical director of the Jail Health Services (JHS) division of the King County jail. Sanders told Herzer that JHS was aware of Cook's medical issues, was able to treat Cook as needed, and could refer and transport him to a specialized physician if necessary. Herzer stated, "[T]here is certainly no evidence that has been provided to us that Jail Health is not able to appropriately treat whatever medical condition is being alleged."

The court denied both of Cook's release requests. After the second denial, Cook stated, "I'll take [the prosecutor's] deal. Let me get out of here." In

[2] These facts are from the certification for determination of probable cause, which Cook stipulated the trial court could use as the factual basis for his guilty plea.

September 2017, Cook entered an Alford plea. He denied guilt but agreed that the State had substantial evidence upon which a trier of fact could find him guilty of an amended charge of misdemeanor communication with a minor for immoral purposes. The State recommended a suspended sentence of 364 days on the condition that Cook serve 6 months in jail. Cook affirmed on the record that he had consulted with his attorney, understood the charge against him and the rights he was giving up, understood that the court could impose any sentence up to the statutory maximum, and was pleading guilty freely and voluntarily. Cook's trial counsel stated that he and Cook had spent "an immense amount of time" having "infinite discussions" about the plea agreement. His counsel stated that Cook was aware of the rights he was giving up and was "confident" that his plea was knowing, intelligent, and voluntary. The trial court then engaged in a colloquy with Cook and found that he was "knowingly, willingly, and voluntarily entering th[e] guilty plea."

Cook requested a lenient sentence because of his medical issues. His trial counsel stated that Cook's childhood trauma, his use of the wrong medication, and his being "in and out of hospitals," made his medical care "probably greater than what . . . the jail can [handle]." Cook told the court that the week of the incident, he was in the UW's emergency room for seizures. He stated that an MRI (magnetic resonance imaging) he had received a year earlier showed damage to his prefrontal cortex. And he stated that a neurologist at UW believed that a stroke may have damaged his frontal lobes. Cook also presented

testimony from social worker Matthew Diamond who worked with Cook at the Downtown Emergency Service Center. Diamond testified that before Cook's incarceration, Cook had an appointment "to get the proper diagnosis and start seeking the correct medical attention that he needs for his issues." Diamond stated that Cook needed to see a neurologist.

The trial court declined to follow either party's recommendation. It sentenced Cook to 364 days in jail. Cook appealed. He also asked the court to reconsider the length of his sentence, asserting that his complex medical history and the jail's inability to provide him the necessary medical care meant "further incarceration can create long range medical issues for when he is finally released." The court denied this request.

Three months after sentencing, Cook made a pro se oral request to overturn his conviction because he felt the jail's inadequate medical care coerced him into pleading guilty. He labeled his request a "writ of habeas corpus" and a "motion to seal." He stated that he received no medical care besides his antiseizure medication until he had been in jail 55 or 56 days. He claimed that he was not able to see his neurologist until he had been in jail for 129 days. He also stated that he had "not received the health care that [he] feel[s] is necessary to protect [his] health" because the doctors he had seen while incarcerated were not seeing "the blood flow issues" in his brain that one of his previous doctors had observed.

The trial court framed Cook's request as a motion for a new trial and evaluated it under CrR 7.5(a)(5). This rule permits a new trial when "a substantial right of the defendant was materially affected" by an "[i]rregularity in the proceedings of the court . . . or abuse of discretion, by which the defendant was prevented from having a fair trial."[3] The court defined the issue as whether Cook made his plea knowingly, intelligently, and voluntarily. Cook agreed that he was asking for a new trial and agreed with the court's characterization of the issue.

The prosecutor stated that Cook did not submit medical testimony supporting his claims at the bail hearings and is an intelligent individual who pleaded guilty voluntarily. Herzer summarized Sanders's declaration, which described the medical care Cook had received in jail. Before Cook pleaded guilty, he saw a registered nurse and received a prescription that the jail filled. After Cook pleaded guilty, he had multiple follow-up appointments with the jail's medical clinic and saw a UW neurologist. Sanders reiterated,

> JHS is actively monitoring and treating Mr. Cook's existing medical concerns. If JHS is unable to address Mr. Cook's concerns within the King County Correctional Facility or the Maleng Regional Justice Center, JHS is able to refer Mr. Cook to an outside provider/specialist as needed. . . . JHS is unaware of any medical concern pertaining to Mr. Cook that it cannot either treat itself or refer to an outside provider.

The trial court denied Cook's request for a new trial, stating that Cook did not show a "manifest injustice" had occurred. It noted that the previous trial

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[3] CrR 7.5(a)(5).

judge had found that Cook's decision to enter his guilty plea was knowing, intelligent, and voluntary. The court's written order states, "JHS has listened to the concerns of the defendant and provided appropriate access to care."

ANALYSIS

Cook contends that his guilty plea was involuntary because he pleaded guilty only to gain access to medical care outside of the jail, which was not providing him adequate care. We disagree.

We review a trial court's denial of a motion for a new trial or to withdraw a guilty plea for an abuse of discretion.[4]

The Fourteenth Amendment's due process clause requires that a defendant's guilty plea be knowing, voluntary, and intelligent.[5] CrR 4.2 protects criminal defendants by mandating that a defendant enter into a guilty plea voluntarily and by requiring the trial court to ensure that the facts support a plea. "[T]he 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."[6] A defendant's written statement on a plea of guilty in compliance with CrR 4.2(g) provides prima facie verification of its constitutionality.[7] "[W]hen the written plea is supported by a court's oral inquiry

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[4] State v. Williams, 96 Wn.2d 215, 221, 634 P.2d 868 (1981); State v. Wilson, 162 Wn. App. 409, 414, 253 P.3d 1143 (2011).

[5] 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).

[6] Wood v. Morris, 87 Wn.2d 501, 502-03, 554 P.2d 1032 (1976).

[7] State v. Davis, 125 Wn. App. 59, 68, 104 P.3d 11 (2004).

on the record, 'the presumption of voluntariness is well nigh irrefutable.'"[8] "[A] defendant who seeks to later retract his admission of voluntariness will bear a heavy burden in trying to convince a court or jury that his admission in open court was coerced."[9]

CrR 4.2(f) governs motions to withdraw guilty pleas before judgment. It requires the court to allow a defendant to withdraw a plea to correct a "manifest injustice."[10] CrR 7.8 provides for motions to withdraw guilty pleas after judgment, such as when an excusable irregularity exists.[11] "While correction of a manifest injustice is a sufficient basis to permit withdrawal of a guilty plea under CrR 4.2(f), withdrawal of [a] guilty plea [after the judgment was entered] must also meet the requirements set forth in CrR 7.8."[12]

Here, the trial court improperly cited CrR 7.5, which governs when a court may grant a defendant a new trial. And although Cook asked to withdraw his plea after the court entered the judgment, the court held that Cook's guilty plea was not a "manifest injustice," the standard used when a defendant asks to withdraw his guilty plea before the court has entered the judgment. Regardless, Cook does not show that his guilty plea was not knowing, intelligent, and voluntary.

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[8] Davis, 125 Wn. App. at 68 (quoting State v. Perez, 33 Wn. App. 258, 262, 654 P.2d 708 (1982)).

[9] State v. Frederick, 100 Wn.2d 550, 558, 674 P.2d 136 (1983).

[10] CrR 4.2(f).

[11] CrR 7.8(b)(i).

[12] State v. Lamb, 175 Wn.2d 121, 128, 285 P.3d 27 (2012).

Cook signed a written statement on a plea of guilty in compliance with CrR 4.2(g). Both the prosecutor's and the trial court's inquiries on the record support this plea. Although Cook stated that he did not receive the care that he felt he needed to protect his health, he did not present any evidence showing that the jail did not or was unable to provide adequate care. Nor did he present any medical testimony to support his own testimony, his trial counsel's statements, or Diamond's testimony about his medical issues. He does not show that the trial court abused its discretion by upholding his plea.

CONCLUSION

We affirm.

Leach, J.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 77443-3-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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