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Supreme Court No. 99304-1
No. 80624-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY WILLIAM BRADFORD,

Appellant.

PETITION FOR REVIEW

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TABLE OF CONTENTS

A. IDENTITY OF PETITIONER AND DECISION BELOW 1

B. ISSUES PRESENTED FOR REVIEW 1

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT 5

This Court should accept review because the Court of Appeals erred in affirming the court’s denial of Mr. Bradford’s motion to withdraw his plea, as he did not enter the plea knowingly, intelligently, and voluntarily..... 5

 a. Because a defendant waives several important rights upon pleading guilty, a defendant can only plead guilty if he understands that his plea waives these rights. He must also understand the direct consequences of his plea..... 5

 b. Both the court and Mr. Bradford’s counsel failed to ensure Mr. Bradford knowingly, intelligently, and voluntarily pleaded guilty because both the court and counsel ignored Mr. Bradford’s obvious confusion regarding the length of his sentence. 8

 i. *Mr. Bradford’s plea colloquy demonstrates he believed his payment of \$50,000 would determine whether he would receive a life sentence.*..... 9

 ii. *Mr. Bradford’s counsel performed deficiently when she failed to intervene and ensure Mr. Bradford accurately understood the potential sentence he faced.* 14

 c. Because the court failed to conduct an adequate inquiry, and because counsel’s deficient performance during the plea colloquy prejudiced Mr. Bradford, this Court should accept review..... 17

E. CONCLUSION 18

TABLE OF AUTHORITIES

Washington Cases

<i>State v. Kisse</i> , 88 Wn. App. 817, 947 P.2d 262 (1997).....	6, 14, 17
<i>State v. Krois</i> , 74 Wn.2d 404, 445 P.2d 24 (1968)	8
<i>State v. Mendoza</i> , 157 Wn.2d 582, 141 P.3d 49 (2006)	6, 7, 14
<i>State v. Ross</i> , 129 Wn.2d 279, 916 P.2d 405 (1996).....	14
<i>State v. S.M.</i> , 100 Wn. App. 401, 996 P.2d 1111 (2000).....	6
<i>State v. Sandoval</i> , 171 Wn.2d 163, 249 P.3d 1015 (2011)	6, 7, 17
<i>Wood v. Morris</i> , 87 Wn.2d 501, 554 P.2d 1032 (1976).....	6, 14, 17

United States Supreme Court Cases

<i>Boykin v. Alabama</i> , 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969);.....	5
<i>Hill v. Lockhart</i> , 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed.2d 203 (1985)	7
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....	6

Constitutional Provisions

U.S. CONST. amend. VI	6
-----------------------------	---

Regulations

Wash. St. Bar Ass'n, <i>Performance Guidelines for Criminal Defense Representation</i> (June 3, 2011)	15
---	----

Rules

CrR 4.2(d)	6, 14
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A. IDENTITY OF PETITIONER AND DECISION BELOW

Timothy Bradford, petitioner here and appellant below, asks this Court to accept review of a Court of Appeals decision, issued on November 9, 2020, affirming the court's denial of his motion to withdraw his guilty plea. Mr. Bradford has attached a copy of this opinion to this petition.

B. ISSUES PRESENTED FOR REVIEW

1. Due process and CrR 4.2(d) both require that a court reject a defendant's guilty plea if the defendant does not enter his plea knowingly, intelligently, and voluntarily. During a plea colloquy, the court must affirmatively determine whether the defendant's plea is voluntary. A defendant's plea is involuntary if he does not accurately understand the consequences of his plea.

During his plea colloquy, Mr. Bradford expressed confusion regarding the length of his sentence, as he seemed to believe he would receive a life sentence if he did not pay some entity \$50,000. However, the court did not correct his misunderstanding or clarify his sentence range and accepted a plea of guilty on his behalf. Should this Court accept review because the court's acceptance of the guilty plea violates due process and CrR 4.2(d) because Mr. Bradford's lack of understanding of

his sentence rendered his plea involuntary? RAP 13.4(b)(1), RAP 13.4(b)(3); RAP 13.4(b)(4).

2. Defendants have the right to the effective assistance of counsel during a plea hearing, and counsel has a duty to ensure her client comprehends the consequences of his plea. Upon hearing Mr. Bradford's confusion regarding his sentencing range during the colloquy, counsel did not intervene. Should this Court accept review because counsel's silence during the plea colloquy deprive Mr. Bradford of his right to the effective assistance of counsel? RAP 13.4(b)(3), RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

On April 12, 2019, Timothy Bradford first attempted to plead guilty to one count of assault in the second degree with sexual motivation. 4/12/19RP 6. While Mr. Bradford's standard range sentence ranged between 39-44 months, this crime subjected him to an indeterminate sentence of up to life in prison. 4/12/19RP 8. Additionally, the maximum monetary penalty for the crime was \$50,000. CP 10. When the court discussed the fact that Mr. Bradford's release after he served his standard range sentence was contingent on a review to see whether he was safe to be released, Mr. Bradford expressed some reluctance. 4/12/19RP 8. The court directed him to consult with counsel. 4/12/19RP 9. After consulting

with counsel, Mr. Bradford refused to enter a plea. 4/12/19RP 9. The court concluded its proceedings.

The following week, Mr. Bradford had a colloquy before the same court to enter a plea of guilty for assault in the second degree with sexual motivation. Mr. Bradford told the court that counsel answered all of his questions and that he read the plea agreement with her. 4/19/19RP 5-6. When the court again discussed Mr. Bradford's potential life sentence and the \$50,000 fine, Mr. Bradford told the court he "would never have that kind of money [the court was] talking about." 4/19/19RP 7-8. In response, the court asked Mr. Bradford if he understood that at the end of his standard range, an additional hearing would occur to see if he was safe to be released. 4/19/19RP 7-8. Mr. Bradford told the court to "just give [him] life." 4/19/19RP 7-8. The court reiterated that a possibility existed he could serve life, and Mr. Bradford said he understood. 4/19/19RP 8. The court entered the plea. 4/19/19RP 11-12. Neither the court nor Mr. Bradford's attorney informed him he faced a potential life sentence regardless of the imposition of any monetary fine.

At sentencing, Mr. Bradford informed the court he wanted to withdraw his plea. 5/3/19RP 3-4, 6. Mr. Bradford's counsel, Micol Sirkin, withdrew as counsel. 5/3/19RP 4; CP 37.

Peter Peaquin was later appointed as counsel for Mr. Bradford. 6/7/19RP 3. Though counsel originally informed the court at another hearing that Mr. Bradford wished to proceed to sentencing, Mr. Bradford stated, “I really don’t even want to plead guilty, man.” 6/7/19RP 3-4. After some discussion, Mr. Bradford said he wanted to withdraw his plea, explained he was confused when he entered the plea, desired to confront his accuser, and wanted to go to trial. 6/7/19RP 5-6.

The next hearing was a motion to withdraw Mr. Bradford’s guilty plea. 9/27/19RP 4; CP 45-52. Mr. Bradford’s motion explained he had a hearing impairment which affected his understanding of the proceedings, and it highlighted Mr. Bradford’s confused answers during his second plea colloquy. CP 47-51. Mr. Bradford contended the court conducted an inadequate plea colloquy and that his counsel performed deficiently when she did not pause the proceedings to clarify whether he understood the court’s questions. *Id.*¹

The court denied Mr. Bradford’s motion to withdraw his plea, finding that Mr. Bradford’s plea was voluntary and that his counsel did not

¹ Mr. Bradford also contended he felt pressured to plead guilty because his original trial counsel told him she could not represent him at a jury trial. He also said she told him to just say yes to everything the court asked during the colloquy. 9/27/19RP 10. Additionally, Mr. Bradford stated he did not understand he was pleading guilty. 9/27/19RP 12. The court found this testimony not credible. 9/27/19RP 48.

perform deficiently. 9/27/19RP 53; CP 143-45. The Court of Appeals affirmed.

D. ARGUMENT

This Court should accept review because the Court of Appeals erred in affirming the court's denial of Mr. Bradford's motion to withdraw his plea, as he did not enter the plea knowingly, intelligently, and voluntarily.

- a. Because a defendant waives several important rights upon pleading guilty, a defendant can only plead guilty if he understands that his plea waives these rights. He must also understand the direct consequences of his plea.

Both the federal and the Washington constitutions afford defendants facing criminal convictions multiple important rights. *See Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *see generally* U.S. CONST. amends. V, VI, VII, XIV; Const. art. I, §§ 3, 21, 22. But when a defendant pleads guilty, he is necessarily giving up all of these important rights, as “nothing remains but to give judgment and determine punishment.” *Boykin*, 395 U.S. at 242. Consequently, before a person pleads guilty to a crime, a court must ensure the defendant knowingly, intelligently, and voluntarily waived these rights. *Id.* at 242-43. Additionally, the defendant must understand the “permissible range of sentences” he is subject to upon pleading guilty. *Id.* at 244, n.7 (quoting *Commonwealth ex rel. West v. Rundle*, 237 A.2d 196, 197-98 (Pa. 1968)).

The defendant must accurately understand the consequences of his plea. *State v. Kisse*, 88 Wn. App. 817, 821, 947 P.2d 262 (1997).

This requires more from the court than a mere recitation of the rights the defendant is waiving because a court cannot simply presume a waiver of these rights. *Id.* at 243. Instead, a court must carefully “canva[s] the matter with the accused to make sure he has a full understanding of what the plea connotes and its consequences.” *Id.* at 243. Thus, courts have a duty to determine affirmatively whether the defendant knowingly, intelligently, and voluntarily waived his rights; they also have a duty to ensure the defendant understands the sentence he faces upon pleading guilty. *Id.*; *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006); *Wood v. Morris*, 87 Wn.2d 501, 506, 554 P.2d 1032 (1976); CrR 4.2(d). *State v. S.M.*, 100 Wn. App. 401, 413, 996 P.2d 1111 (2000). A court’s failure to do this offends due process. *S.M.*, 100 Wn. App. at 413.

Both the Federal and the Washington constitutions also afford defendants with the right to the effective assistance counsel, and this right persists at the time the defendant pleads guilty to his offense. U.S. CONST. amend. VI; Const. art. I, § 22; *Strickland v. Washington*, 466 U.S. 668, 685-87, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. A.N.J.*, 168 Wn.2d 91, 97, 225 P.3d 956 (2010); *State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). Consequently, counsel also has a

duty to ensure her client comprehends the rights he is waiving and the consequences of his plea. *Sandoval*, 171 Wn.2d at 169.

This Court assesses whether counsel's performance deprived the defendant of the right to the effective assistance of counsel by first examining whether counsel's performance was deficient. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 88 L. Ed.2d 203 (1985). To evaluate whether counsel's performance was deficient, this Court can examine materials like the Bar Association's standards of representation and the Washington Defender Association's standards for Public Defense. *A.N.J.*, 168 Wn.2d at 109-112. Second, this Court assesses whether counsel's deficient performance "affected the outcome of the plea process." *Lockhart*, 474 U.S. at 58-59. This requires the defendant to demonstrate a reasonable probability exists that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Sandoval*, 171 Wn.2d at 174-75. This Court evaluates a claim of ineffective assistance of counsel de novo. *A.N.J.*, 168 Wn.2d at 109.

CrR 4.2 dictates that a court must allow withdrawal of a plea to correct a "manifest injustice." *Mendoza*, 157 Wn.2d at 587. The denial of effective counsel, the court's failure to conduct an adequate inquiry, and the defendant's lack of knowledge in entering the plea all constitute a manifest injustice. *Id.*; *A.N.J.*, 168 Wn.2d at 117-18. This Court reviews a

trial court's findings on a hearing to withdraw a plea for substantial evidence. *A.N.J.*, 168 Wn.2d at 107. While courts have broad discretion in assessing whether to permit the withdrawal of a guilty plea, this discretion must "be exercised liberally in favor of life and liberty." *State v. Krois*, 74 Wn.2d 404, 407, 445 P.2d 24 (1968) (quoting *State v. Harris*, 57 Wn.2d 383, 385, 357 P.2d 719 (1960)).

- b. Both the court and Mr. Bradford's counsel failed to ensure Mr. Bradford knowingly, intelligently, and voluntarily pleaded guilty because both the court and counsel ignored Mr. Bradford's obvious confusion regarding the length of his sentence.

Mr. Bradford expressed confusion regarding the sentence he faced as a direct consequence of his guilty plea. However, both the court and Mr. Bradford's counsel failed to ensure he understood his potential sentence. The court and counsel's failure in ensuring Mr. Bradford understood this critical consequence of his guilty plea rendered his plea involuntary. Consequently, the court erred when it precluded Mr. Bradford from withdrawing his plea.

- i. *Mr. Bradford's plea colloquy demonstrates he believed his payment of \$50,000 would determine whether he would receive a life sentence.*

At Mr. Bradford's first plea colloquy, he expressed confusion regarding his sentence. While referencing the plea agreement, the court stated,

THE COURT: At the bottom of the same page, paragraph 6 indicates that the charge carries a maximum penalty of life imprisonment and a 50,000-dollar fine with a standard range based on your criminal history of from 15 to 20 months in custody. The sexual motivation adds 24 months consecutive to your standard range. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right.

THE DEFENDANT: So it'd be 44 months?

THE COURT: Well, I'm not sure what the recommendation is, but we'll get to that. But your standard range is 15 to 20. And in addition to whatever you get, you will add 24 months for the sexual motivation.

THE DEFENDANT: Oh.

4/12/19RP 7.

The court renewed its discussion of Mr. Bradford's sentence, stating,

THE COURT: And do you understand that this particular charge falls within what's called the indeterminate sentencing, which means that you have a standard range, but at the conclusion of

that, your case will be reviewed to see if it's safe enough for you to be released; do you understand that?

THE DEFENDANT: Yeah.

THE COURT: All right. Any questions about that?

THE DEFENDANT: Well, I'm thinking I should go –

THE COURT: Do you need just a –Mr. Bradford, do you need just a minute to talk to Ms. Sirkin?

THE DEFENDANT: Well, I'm just –

THE COURT: Well, why don't you step back just a little bit from the bar, and I'll give you a chance to visit with her for just a moment.

4/12/19RP 8-9.

After Mr. Bradford consulted with Ms. Sirkin, she advised the court that Mr. Bradford, “[was not] going to be entering the plea at this time.” 4/12/19RP 9-10.

While Mr. Bradford informed the court at his second plea colloquy that his counsel answered all of his questions and that he read the plea agreement with her, he *again* expressed confusion regarding his sentence. *See* 4/19/19RP 5-6. But this time, the court did not grant him the opportunity to consult with counsel, and it did not adequately clarify whether Mr. Bradford understood the sentence he potentially faced. And Mr. Bradford's counsel did not intervene when Mr. Bradford expressed confusion.

At the second plea colloquy, the court referred Mr. Bradford to his plea agreement. 4/19/19RP 7. The court stated,

THE COURT: At the bottom of the same page, paragraph 6 indicates that the charge carries a maximum penalty of life imprisonment and a 50,000-dollar fine with a standard range, based on your criminal history, from 15 to 20 months in custody. The enhancement carries an additional 24 months consecutive to your standard sentence. Do you understand the penalties?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that even if you complete the entire sentence, that you would then be subject to a hearing to determine if it was safe for you to be released into the general public?

THE DEFENDANT: I'll never have that kind of money that you're talking about.

THE COURT: Well, do you understand that even if you serve your standard sentencing range and complete it, that at that point there would be an additional hearing to see if you were safe to be released into the general public?

THE DEFENDANT: Oh yeah. Yeah.

THE COURT: And do you --

THE DEFENDANT: Well, I'll just go ahead and do it my life. Yeah. Just give me life.

THE COURT: Well, do you understand that that is a possibility if they find that you are not safe to be released?

THE DEFENDANT: Oh okay.

THE COURT: Do you understand that?

THE DEFENDANT: Yeah, I understand it all.

4/19/19RP 7-8.

Contrary to due process and CrR 4.2(d), this colloquy fails to demonstrate affirmatively that Mr. Bradford knowingly, intelligently, and voluntarily pleaded guilty to his charged offense. Instead, this colloquy demonstrates Mr. Bradford's knowledge of his potential sentence was ambiguous at best and completely absent at worst. Mr. Bradford's first and second plea colloquy collectively demonstrate he was confused about the length of his sentence. During the first plea colloquy, Mr. Bradford expressed confusion and reluctance specifically during the portions of the colloquy where the court referred to sentencing. 4/12/19RP 7.

Although Mr. Bradford consulted with counsel between the first and second plea colloquy, this consultation failed to clarify his understanding of his sentence by the time of the second plea colloquy. Again, when the court mentioned Mr. Bradford's potential sentence during the second plea colloquy, Mr. Bradford was confused. The court mentioned that Mr. Bradford was subject to up to a \$50,000 fine, and shortly afterwards, it stated that even if he finished his standard range sentence, he would be subject to a hearing to determine if he can be released to the public. 4/19/19RP 7-8. In response, Mr. Bradford stated he would "never have that kind of money you're talking about." 4/19/19RP 8.

Mr. Bradford's response indicates he did not understand the sentence he faced. His comments demonstrate he could have believed (1) the court was fining him \$50,000; (2) he was subject to a potential \$50,000 fine; or (3) he believed he would be imprisoned for life unless he paid a \$50,000 fine. The possibility that Mr. Bradford believed option three was a reality is further bolstered by the exchange immediately following the previous exchange. After Mr. Bradford told the court he would "never have that kind of money," the court again asked him if he understood that he would be subject to an additional hearing after the completion of his standard range sentence to see if he could be safely released into the general public. 4/19/19RP8. In response, Mr. Bradford said, "well, I'll just go ahead and do it my [sic] life. Yeah, just give me life." 4/19/19RP 8.

This exchange indicates Mr. Bradford incorrectly believed his ability to pay \$50,000 determined whether he faced a life sentence. Rather than clarify that the \$50,000 bore no relation to his ability to be released from prison and explain he faced a life sentence regardless, the court instead merely asked, "well, do you understand that that is a possibility if they find that you are not safe to be released?" 4/19/19RP 8. Of course, this did nothing to clarify this point, and it instead reaffirmed that Mr. Bradford's release was somehow contingent on this \$50,000.

Consequently, the court's conclusion that Mr. Bradford's reference to money during the second plea colloquy was merely in relation to the potential \$50,000 fine and did not indicate the plea was involuntary was misplaced. *See* 4/19/19RP 50-51. While Mr. Bradford's reference to money likely related back to the \$50,000, the record demonstrates Mr. Bradford believed his release was contingent on this sum of money. This indicates Mr. Bradford misunderstood the parameters of the sentence he faced, which rendered his plea involuntary. *See Kisse*, 88 Wn. App. at 821 ("a plea is not knowing, intelligent, or voluntary unless the defendant *correctly* understands its sentencing consequences") (emphasis added); *see also Mendoza*, 157 Wn.2d at 590-91.

Moreover, the court failed to create a record affirmatively demonstrating Mr. Bradford accurately understood the consequences of his plea, which violates both due process and CrR 4.2(d). *See Wood*, 87 Wn.2d at 505; *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

- ii. *Mr. Bradford's counsel performed deficiently when she failed to intervene and ensure Mr. Bradford accurately understood the potential sentence he faced.*

The court was not alone in failing to ensure Mr. Bradford correctly understood the consequences of his plea, as his counsel also failed to intervene during the colloquy despite Mr. Bradford's express confusion.

The Washington State Bar Association’s guidelines note that counsel should “make certain” that the defendant’s decision to waive his rights is “knowing, voluntary[,] and intelligent.” Wash. St. Bar Ass’n, *Performance Guidelines for Criminal Defense Representation* 18 (June 3, 2011).² They also state that counsel should “make certain” that the client “fully and completely understands....the maximum punishment, sanctions, and other consequences...the accused will be exposed to by entering a plea.” *Id.* Nevertheless, counsel did nothing upon hearing Mr. Bradford’s confusion. This constituted deficient performance. *See A.N.J.*, 168 Wn.2d at 109-12 (finding counsel performed deficiently in part because failed to adhere to professional standards outlined by the Washington State Bar Association and the Washington Defender Association).

Contrary to the court’s reasoning, the mere fact that counsel went over the guilty plea with Mr. Bradford did not prove Mr. Bradford correctly understood the sentence he faced upon pleading guilty. 9/26/19RP 51-52. The record demonstrates that despite counsel’s explanation of Mr. Bradford’s potential life sentence, Mr. Bradford believed that payment of \$50,000 controlled his ability to secure release. Counsel’s explanation failed to obviate this confusion.

² https://defensenet.org/wp-content/uploads/2019/11/WSBA_Performance_Guidelines_06_2011.pdf.

Similarly, the mere fact that Mr. Bradford received some documents that accurately reflected his potential sentence does not prove that Mr. Bradford correctly understood his potential sentence. *See* 9/26/19RP 52. The documents Mr. Bradford received in relation to his sentence were inconsistent, which contributed to his confusion. Mr. Bradford's Statement of Defendant on Plea of Guilty accurately states his maximum term is life in prison and a \$50,000 fine. CP 10. However, the State also submitted a Presentence Statement to Mr. Bradford. Supp CP_, sub no. 27. The statement notes on one page that Mr. Bradford's maximum sentence is life and that he could face a \$50,000 fine. *Id.* at 7.

However, another portion of the statement contradicts this and notes Mr. Bradford's sentencing range was only between 39 to 44 months, and yet another portion of the statement describes Mr. Bradford's minimum term as 44 months, but leaves blank Mr. Bradford's maximum term, which was life and a fine of \$50,000. *Id.* at 8, 11. The inconsistency in these documents undermines the court's conclusion that the documents Mr. Bradford received should have correctly apprised him of the sentence he faced.

Regardless of the documents Mr. Bradford received and his communication with counsel, the plea colloquy demonstrates that Mr. Bradford did not accurately understand the consequences of his plea.

However, his counsel did nothing to remedy his confusion, which constitutes deficient performance. The court's findings suggesting that these documents and prior conversations somehow retroactively remedied this confusion are untenable.

- c. Because the court failed to conduct an adequate inquiry, and because counsel's deficient performance during the plea colloquy prejudiced Mr. Bradford, this Court should accept review.

Separate, but interrelated, bases exist for this Court to reverse: the court's failure to ensure affirmatively that Mr. Bradford correctly understood the sentence he faced upon conviction and counsel's deficient performance in neglecting to intervene when Mr. Bradford expressed confusion regarding his sentence. Where, as here, the court fails to ensure that a defendant entered his plea knowingly, intelligently, and voluntarily, the remedy is for this Court to vacate the guilty plea. *Kissee*, 88 Wn. App. 822; *see also Wood*, 87 Wn.2d at 511 ("failure to comply fully with CrR 4.2 requires that the defendant's guilty plea be set aside and his case remanded so that he may plead anew.").

Additionally, when counsel's deficient performance during the plea colloquy prejudices the defendant, the remedy is also for this Court to vacate the guilty plea. *Sandoval*, 171 Wn.2d at 176. Counsel's deficient performance prejudices the defendant if he demonstrates that, "but for

counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 174. At his motion to withdraw hearing, Mr. Bradford emphatically stated, "[I did not] want to plead guilty, period. I want[ed] to go to trial and face my accuser because that's what I was told I could do." 9/27/19RP 13. And at sentencing, Mr. Bradford vehemently maintained he did not want to plead guilty and that he believed his counsel's performance caused him to waive his right to a trial. 10/18/19RP 10-12. Had counsel intervened when Mr. Bradford expressed confusion, it is likely he would have refused to waive his right to a jury trial.

This Court should accept review.

E. CONCLUSION

For the reasons stated in this petition, Mr. Bradford respectfully requests that this Court accept review.

DATED this 9th day of December, 2020.

Respectfully submitted,

/s Sara S. Taboada

Sara S. Taboada – WSBA #51225
Washington Appellate Project
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY WILLIAM BRADFORD,

Appellant.

No. 80624-6-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Bradford appeals the trial court’s denial of his motion to withdraw his guilty plea. He argues the plea was not knowing, intelligent, or voluntary, and that he received ineffective assistance of counsel. We affirm.

FACTS

The State charged Bradford with one count of indecent liberties by forcible compulsion. The parties struck a plea deal whereby Bradford would plead guilty to the lesser charge of second degree assault with sexual motivation.

The initial plea hearing occurred on April 12, 2019. Prior to the hearing, Bradford signed a statement of the defendant on plea of guilty.¹ At the initial plea hearing, Bradford disclosed to the court that he was hard of hearing. The court ensured that Bradford could hear, then said, “If at any point during the hearing today you cannot hear anybody at any given time, you raise your hand or stop us

¹ That statement correctly indicated that the maximum term for the new charge was life in prison and a \$50,000 fine. The State’s sentencing recommendation did not include a maximum term or otherwise indicate that a life sentence was the maximum term.

right away.” The court periodically asked Bradford if he was able to hear during the hearing.

The court proceeded to review the statement of the defendant on plea of guilty with Bradford. Before proceeding, the court said, “If at any point you can’t hear or understand what I’ve said, you stop me right away.” Bradford responded, “Okay.” The two had the following exchange:

THE COURT: All right. So the first thing, did you and [defense counsel] go through this document completely together?

[Bradford]: Yes.

THE COURT: And if you had any questions, did she answer them for you? If you had a question, I don’t understand this part, did she clarify that for you?

[Bradford]: Yes.

After confirming Bradford’s biographical information, the court proceeded:

THE COURT: At the bottom of that same page, paragraph 6 indicates that the charge carries a maximum penalty of life imprisonment and 50,000-dollar fine with a standard range based on your criminal history of from 15 to 20 months in custody. The sexual motivation adds 24 months consecutive to your standard range. Do you understand that?

[Bradford]: Yes.

THE COURT: All right.

[Bradford]: So it’d be 44 months.

THE COURT: Well, I’m not sure what the recommendation is, but we’ll get to that. But your standard range is 15 to 20. And in addition to whatever you get, you will add 24 months for sexual motivation.

[Bradford]: Oh.

THE COURT: You understand?

[Bradford]: Yes.

. . . .

THE COURT: And do you understand that this particular charge falls within what's called the indeterminate sentencing, which means that you have a standard range, but at the conclusion of that, your case will be reviewed to see if it's safe enough for you to be released; do you understand that?

[Bradford]: Yes.

THE COURT: And do you understand that that could include potentially holding you in custody for the rest of your life?

[Bradford]: Yeah.

THE COURT: All right. Any questions about that?

[Bradford]: Well, I'm thinking I should go --

THE COURT: Do you need just a -- Mr. Bradford, do you need just a minute to talk to [defense counsel]?

[Bradford]: Well, I'm just --

THE COURT: Well why don't you step back just a little bit from the bar, and I'll give you a chance to visit with her for just a moment.

After consulting with counsel, Bradford declined to enter a plea. A follow up hearing was scheduled for the following Tuesday.

The next plea hearing was held on April 19, 2019. The court began by ensuring Bradford could hear the proceedings. Bradford responded that he had his hearing aids in and was able to hear the proceedings. The court again advised Bradford that if he could not hear anything that was said, he could stop the hearing.

The court had the following exchange with Bradford:

THE COURT: All right. So Mr. Bradford, you and I were -- and everybody were here last week or so, and you had some additional questions for your counsel. Did you get all of your questions answered?

[Bradford]: Every one of them.

THE COURT: Okay. So I have been handed this form called the statement of Defendant on plea of guilty. You have a copy in front of you. I'm going to ask you a number of questions about the document, and I'd like you and your lawyer to follow along on your copy. Do you understand, sir? Do you understand what we're going to do today?

[Bradford]: Yes. I understand, sir.

THE COURT: All right. So the first thing, did you and your counsel go through the statement form completely together? Did you read through that with your lawyer?

[Bradford]: I understand. Right.

THE COURT: Mr. Bradford, listen to my questions. And if you can't hear them, you let me know. My first question is did you and your lawyer read through your statement form together?

[Bradford]: Yes, we did.

The court proceeded to verify Bradford's biographical information and ensure he was aware the rights he was giving up by pleading guilty. The exchange continued:

THE COURT: At the bottom of the same page, paragraph 6 indicates that the charge carries a maximum penalty of life imprisonment and a 50,000-dollar fine with a standard range, based on your criminal history, from 15 to 20 months in custody. The enhancement carries an additional 24 months consecutive to your standard sentence. Do you understand the penalties?

[Bradford]: Yes, sir.

THE COURT: And do you understand that even if you complete the entire sentence, that you would then be subject to a hearing to determine if it was safe for you to be released into the general public?

[Bradford]: I'll never have the kind of money you're talking about.

THE COURT: Well do you understand that even if you serve your standard sentencing range and complete it, that at that point there would be an additional hearing to see if you were safe to be released into the general public?

[Bradford]: Oh yeah. Yeah.

THE COURT: And do you --

[Bradford]: Well I'll just go ahead and do it my life. Yeah. Just give me life.

THE COURT: Well, do you understand that that is a possibility if they find that you are not safe to be released?

[Bradford]: Oh okay.

THE COURT: Do you understand that?

[Bradford]: Yeah, I understand it all.

Bradford went on to plead guilty to second degree assault with sexual motivation at the hearing. Prior to accepting the plea, the court again asked Bradford if he had any trouble hearing at the proceeding. Bradford replied, "Not at all."

At sentencing, Bradford sought to withdraw his plea. In light of this, his attorney withdrew from representation. Bradford informed the court that his hearing impairment made him unable to understand his attorney, that he did not understand his rights. He indicated he wanted a new attorney and to go back to his original charge.

Bradford was provided another attorney and advised that attorney that he wished to plead guilty to assault in the second degree with sexual motivation. Another sentencing hearing was held. At that hearing, Bradford again indicated that he wished to withdraw his guilty plea. He said that he could not understand his previous attorney and that she had told him prior to his plea hearing to just say yes to everything that was said. He indicated that he was confused and wished to exercise his right to face his accuser. The court set another hearing to investigate

the withdrawal of his plea. His substitute counsel subsequently withdrew from representation. Bradford then filed a formal motion to withdraw his guilty plea.

The court held a hearing to consider Bradford's motion. Bradford testified in support of his own motion. He testified that he was born with a hearing impairment that made it difficult for him to comprehend vowel sounds. He said that this might make him comprehend only 60 percent of the words said to him. He claimed to have developed a tendency to agree with things he did not understand.

Bradford further testified that prior to his first plea hearing, his previous attorney told him she could not represent him at a jury trial. He said that she insisted on a plea deal even though he told her he did not want one and instead wanted to go to trial. He testified that she did not go over written documentation with him and told him to just say yes to everything the court asked him. He said that he again told her that he did not want to plead guilty. He said she conveyed these messages again prior to his second plea hearing. He later indicated that he was unaware he was at a plea hearing due to issues with his thyroid medication. He did not express that he was confused about his sentence specifically or express that he thought his release was contingent on his ability to pay fines.

Bradford's original plea counsel testified next. She testified that she conducted discovery, went over the evidence with Bradford, and asked for his input. She said they discussed the possibility of trial and plea negotiations. She testified that she discussed the plea agreement with Bradford, including the sentence. She perceived that Bradford was comfortable asking questions and that they had adequate communication and an uncontentious relationship. She

testified that Bradford told her that he wanted to accept the plea deal. She further testified that she told him that he had the option to go to trial and that she would represent him at trial if he chose to do that.

Bradford's original plea counsel further testified that she went over paperwork related to the plea deal with Bradford. She said she perceived him to be comfortable asking questions and that she was able to answer his questions. She denied telling him to just say yes to the questions asked at the hearing.

The trial court denied Bradford's motion to withdraw his plea. It specifically found that Bradford's original plea counsel's testimony was credible, and that Bradford's testimony was not. The trial court sentenced Bradford to 44 months with an indeterminate life sentence.

Bradford appeals.

DISCUSSION

Bradford argues that his plea was not knowing, intelligent, and voluntary. He argues that he was confused about whether his release from prison was contingent on his ability to pay a \$50,000 fine. He argues the trial court failed to ensure he understood the consequences of his plea and erred in denying his motion to withdraw the plea. He further argues that he received ineffective assistance of counsel because his attorney did not ensure his plea was knowing, intelligent, and voluntary.

I. The Court

A guilty plea constitutes a waiver by the defendant of several important constitutional rights. Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L.

Ed. 2d 274 (1969). Prior to accepting a defendant's guilty plea, a court must affirmatively ensure the defendant knowingly, intelligently and voluntarily waived those rights. Id. at 242-43. The court must ensure that the defendant understands the permissible range of sentences. Id. at 244 n.7.

That a defendant signs a plea contract is strong evidence that a plea is voluntary. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). When the trial court inquires into the voluntariness of the plea on the record, we presume a plea is voluntary. State v. Pugh, 153 Wn. App. 569, 577, 222 P.3d 821 (2009).

CrR 4.2(f) requires a trial court to allow a defendant to withdraw their guilty plea if it is necessary to correct a manifest injustice. A manifest injustice is shown by (1) ineffective assistance of counsel, (2) the defendant not ratifying the plea, (3) the plea being involuntary, or (4) the prosecutor not honoring the plea agreement. Pugh, 153 Wn. App. at 577. The manifest injustice standard is demanding. Id. The defendant has the burden of showing a manifest injustice that is "obvious, directly observable, overt, [and] not obscure" has occurred. State v. Turley, 149 Wn.2d 395, 398, 69 P.3d 338 (2003).

The trial court's factual findings are reviewed for substantial evidence. State v. A.N.J., 168 Wn.2d 91, 107, 225 P.3d 956 (2010). We review the trial court's order on a motion to withdraw a guilty plea for abuse of discretion. State v. Lamb, 175 Wn.2d 121, 127, 285 P.3d 27 (2012). A trial court abuses its discretion if its decision is manifestly unreasonable or base on untenable grounds or reasons. Id.

Here, Bradford argues that his plea was not voluntary because he did not understand his sentence. Specifically, he says he believed that he would not be

released from prison if he was unable to pay a \$50,000 fine. He points to the following exchange:

THE COURT: At the bottom of the same page, paragraph 6 indicates that the charge carries a maximum penalty of life imprisonment and a 50,000-dollar fine with a standard range, based on your criminal history, from 15 to 20 months in custody. The enhancement carries an additional 24 months consecutive to your standard sentence. Do you understand the penalties?

[Bradford]: Yes, sir.

THE COURT: And do you understand that even if you complete the entire sentence, that you would then be subject to a hearing to determine if it was safe for you to be released into the general public?

[Bradford]: I'll never have the kind of money you're talking about.

THE COURT: Well do you understand that even if you serve your standard sentencing range and complete it, that at that point there would be an additional hearing to see if you were safe to be released into the general public?

[Bradford]: Oh yeah. Yeah.

THE COURT: And do you --

[Bradford]: Well I'll just go ahead and do it my life. Yeah. Just give me life.

THE COURT: Well, do you understand that that is a possibility if they find that you are not safe to be released?

[Bradford]: Oh okay.

THE COURT: Do you understand that?

[Bradford]: Yeah, I understand it all.

Bradford argues this exchange shows that he was confused about how his ability pay the fine would affect his ability to secure release at the end of his minimum term. We disagree.

At best, the exchange shows Bradford expressing his inability to pay the maximum fine. Bradford never expressed that he believes this will affect his release. When the trial court reaffirms that his release is contingent on a hearing to determine whether he is safe to be released, Bradford acknowledges he understands that and does not express a concern about an inability to pay keeping him incarcerated even if he was deemed safe for release. During his testimony on his motion to withdraw his guilty plea, Bradford never says that he was confused about how his ability to pay the fine would affect his sentence.

At the plea hearing, the trial court affirmatively inquired as to Bradford's understanding of his plea and its voluntariness. It specifically inquired as to Bradford's understanding that he was giving up rights by pleading guilty. It ensured that Bradford had an opportunity to review forms with his attorney before signing, and that he was not threatened or coerced. It ensured that Bradford could properly hear the proceedings and encouraged him to halt the proceedings if he could not. It again confirmed Bradford's ability to hear before accepting his plea.

At the hearing on the motion to withdraw the plea, the trial court specifically inquired with the State as to Bradford's understanding of his sentence. It specifically considered whether Bradford's statements, combined with the inconsistency concerning the maximum sentence as noted in the statement of defendant on plea of guilty and the sentencing recommendation, could mean that

he did not understand his sentence. But, it found any potential confusion was overcome by the fact that counsel went over the statement of the defendant on plea of guilty with him before he signed it.² It therefore found that the plea was voluntary and declined the motion. This decision was not manifestly unreasonable and was not an abuse of discretion.

II. Ineffective Assistance of Counsel

Bradford argues he received ineffective assistance of counsel because his plea counsel did not ensure that he understood his sentence. Specifically, he argues counsel should have intervened at the plea hearing when he expressed confusion about his sentence.

The Sixth Amendment to the United States Constitution guarantees a defendant receives effective assistance of counsel at critical stages in the proceeding, including when he enters a guilty plea. Lee v. U.S., ___ U.S. ___, 137 S. Ct. 1958, 1964, 198 L. Ed. 2d 476 (2017). To establish ineffective assistance of counsel, Bradford must show that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by the performance. Id. Prejudice can be demonstrated by showing a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Id. Where the defendant alleges that counsel's deficient performance led him to accept a guilty plea, a defendant can show prejudice by

² That finding is supported by substantial evidence. See A.N.J., 168 Wn.2d at 107. Bradford testified this did not occur. His counsel testified that it did. The trial court found counsel's testimony was credible and Bradford's was not. The trial court had previously confirmed that the two had gone over the forms before accepting Bradford's plea.

showing a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. Id. We review ineffective assistance of counsel claims de novo. State v. Wafford, 199 Wn. App. 32, 41, 397 P.3d 926 (2017).

Bradford argues that counsel was deficient for not intervening at the prehearing despite his confusion over his sentence. Bradford's counsel went over the plea agreement with him prior to the plea hearing. As noted above, the exchange between Bradford and the court regarding his sentence did not evidence confusion regarding the sentence. Any confusion that may have been present was cleared up by the trial court asking twice if Bradford understood the sentence. Bradford twice confirmed his understanding. It was therefore objectively reasonable not to intervene because there was no confusion sufficient to justify an intervention. Counsel's performance was not deficient.

We affirm.

Lippelwick, J.

WE CONCUR:

H. S. J.

Andrus, A.C.J.

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. 80624-6-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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Date: December 9, 2020

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