IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ADOLPHUS GOODWIN, Appellant.	No. 37965-1-II UNPUBLISHED OPINION

Penoyar, A.C.J. — Adolphus Goodwin appeals from the denial of his motion to withdraw his guilty plea to two counts of first degree assault of a child. He argues that his guilty plea was not voluntary because he was not informed that he could receive consecutive sentences. In his pro se Statement of Additional Grounds (SAG), he argues that he received ineffective assistance of counsel because (1) his trial counsel was prejudiced and colluded with the court and (2) his counsel denied him the right to a jury trial. Finding that Goodwin's plea was voluntary and that he does not demonstrate ineffective assistance of counsel, we affirm.[1]

FACTS

The State charged Goodwin with three counts of first degree rape of a child and five counts of second degree rape of a child. Goodwin agreed to enter an *Alford*[2] plea and the State agreed to file an amended information charging only two counts of first degree assault of a child. The State also agreed to recommend 20 years of confinement.

---

[1] A commissioner of this court initially considered Goodwin's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[2] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). *See also State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

Goodwin's statement of defendant on plea of guilty (Statement) stated that the standard sentencing range was 93-123 months of confinement for each count. The State again indicated that it would recommend 20 years of confinement. Paragraph 5 of the Statement advised Goodwin that he had a "right to a speedy and public trial by an impartial jury," the "right to remain silent before and during trial," and the "right to testify and to have witnesses testify for me." Supplemental Clerk's Papers at 52. Paragraph 6(aa) of the Statement, which stated that the sentencing court would impose consecutive sentences for an offender sentenced for two or more serious violent offenses arising from separate and distinct conduct, had been crossed out.

At Goodwin's plea hearing, he stated that he read the Statement and understood it. Goodwin also stated that he understood his constitutional rights, and was prepared to waive those rights, including the right to trial. The trial court noted that the State was recommending 20 years' total confinement and Goodwin confirmed that that was his understanding of the State's recommendation. Goodwin pleaded guilty to the two counts and the trial court accepted his plea as knowing, voluntary, and intelligent.

At sentencing, Goodwin attempted to withdraw his guilty plea because he felt that the evidence might be favorable to his case and that his attorney had ignored certain facts. The sentencing court denied Goodwin's motion and sentenced him to two consecutive 120-month sentences, for a total of 20 years of confinement.

ANALYSIS

Goodwin argues that his guilty plea was not voluntary because the trial court did not inform him that his sentences would run consecutively. Due process requires that a defendant's

guilty plea be knowing, voluntary, and intelligent. *In re Pers. Restraint of Isadore,* 151 Wn.2d 294, 297, 88 P.3d 390 (2004) (citing *Boykin v. Alabama,* 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)). The constitutional requirements of a voluntary guilty plea are that (1) the defendant is aware that he is waiving his right to remain silent, right to confront his accusers, and right to a jury trial; (2) the defendant is aware of the essential elements of the offense charged; and (3) the defendant is aware of the direct consequences of pleading guilty. *In re Pers. Restraint of Hilyard,* 39 Wn. App. 723, 727, 695 P.2d 596 (1985) (citing *State v. Holsworth,* 93 Wn.2d 148, 153-57, 607 P.2d 845 (1980). The trial court must make direct inquiries of the defendant to determine if he or she understands the nature of the charge and the full consequences of pleading guilty. *In re Pers. Restraint of Keene*, 95 Wn.2d 203, 206, 622 P.2d 360 (1980). Where a defendant completes a written plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary. *Keene*, 95 Wn.2d at 206-07. When a judge verifies the criteria of voluntariness in a colloquy with the defendant, the presumption of voluntariness is "well nigh irrefutable." *State v. Perez*, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982).

Here, Goodwin cannot say he did not know that the sentencing court could sentence him to 20 years of confinement. Goodwin's Statement indicated that the State would recommend 20 years of confinement. The trial court orally confirmed this recommendation, and Goodwin's understanding of it, when accepting Goodwin's guilty plea. While the section of the Statement indicating that the two sentences had to run consecutively had been crossed out, and should not

have been,[3] Goodwin still knew that he faced a 20-year sentence. The only way the court could impose a 20-year sentence was to run the two 10-year standard range sentences consecutively. Goodwin was aware of the direct consequences of pleading guilty—that he could receive a 20-year sentence. Goodwin's guilty plea was therefore voluntary.

In his SAG, Goodwin argues that he received ineffective assistance of counsel because his trial counsel was prejudiced and colluded with the judge to obtain too many continuances. We cannot consider matters outside the record. *State v. Bugai*, 30 Wn. App. 156, 158, 632 P.2d 917 (1981). While the trial court noted Goodwin had been in jail for 685 days at the time of sentencing, the record does not include any information about continuances. We therefore cannot determine whether the continuances constituted ineffective assistance of counsel.

Also in his SAG, Goodwin argues that he received ineffective assistance of counsel because his trial counsel allegedly prevented him from having a trial, prevented him from telling the truth, and did not obtain discovery or conduct an omnibus hearing. However, the record contains motions for discovery and to suppress evidence filed by Goodwin's attorney. Further, the record does not show that Goodwin's attorney denied him the right to a jury trial or to testify on his own behalf. Rather, the record shows that the Statement and the trial court in the plea colloquy informed Goodwin of those rights. He does not demonstrate ineffective assistance of counsel.

[3] RCW 9.94A.589(1)(b) requires the imposition of consecutive sentences for persons convicted of two or more serious violent offenses. First degree assault of a child is a serious violent offense. RCW 9.94A.030(45)(a)(viii).

We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Penoyar, A.C.J.

We concur:

Houghton, J.

Quinn-Brintnall, J.