

NO. 72536-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

ABDULKADIR ALI,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BILL BOWMAN

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**BRIEF OF RESPONDENT**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

BRIAN J. WYNNE  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

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**A. ISSUES PRESENTED**

1. Appellate counsel should be permitted to withdraw from a case where there is no basis for a good faith argument on review. Ali pleaded guilty to assault in the second degree and was sentenced within the proper standard range. There are no issues that could potentially be raised on review. Should appellate counsel be permitted to withdraw from the case?

2. Due process requires a defendant's plea of guilty to be knowing, intelligent, and voluntary. To be knowing, intelligent, and voluntary, a defendant must be informed of and understand the consequences of the plea. Ali was informed, orally and in writing, with the assistance of an interpreter, of the consequences of his plea of guilty by way of a document entitled Statement of Defendant on Plea of Guilty, which he acknowledged he understood. Was Ali's change of plea to guilty knowing, intelligent, and voluntary?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State charged Ali by information with one count of commercial sexual abuse of a minor. CP 1-5. Pursuant to plea negotiations, the State amended the information, charging Ali with assault in the second degree. CP 82-83. On August 6, 2014, Ali

pleaded guilty to assault in the second degree. RP 407-33; CP 62-81. Ali was subsequently sentenced. RP 434-48; CP 83-89.

## **2. SUBSTANTIVE FACTS**

The statement of facts presented in the Motion to Withdraw accurately summarizes the proceedings, and the State adopts that summary here, with some additions.

Prior to Ali's entrance of a plea of guilty to assault in the second degree, the trial court heard testimony and ruled on the State's motion pursuant to CrR 3.5. RP 87-241. After hearing testimony and argument, the court made findings as required pursuant to CrR 3.5. RP 255-316. The court found that although Ali asked for an interpreter on the day he was arrested, Ali communicated with the arresting sheriff's deputies in English and that he did not express any confusion while communicating with them. RP 306. The court further found that Ali came to the United States in 2005 and obtained a commercial driver's license. RP 307-08. Furthermore, as a part of the CrR 3.5 hearing, the court found that Ali understood his constitutional warnings and that he made a knowing and intelligent waiver of his rights. RP 314. The court admitted Ali's statements to sheriff's deputies on the date of his arrest. RP 314. These statements included his statements,

in English, that "it wasn't a big deal," it was his "first time," and "I fucked up, I fucked up." RP 99, 137.

At the plea hearing, a Somali interpreter interpreted for Ali.<sup>1</sup> During the plea colloquy, Ali orally confirmed with the prosecutor that he possessed a copy of the Statement of Defendant on Plea of Guilty, his attorney read the document to him, and the interpreter interpreted the document for him. RP 413-14. Additionally, Ali confirmed his attorney answered his questions about the document. RP 414. When asked by the prosecutor if he felt that he understood the entirety of the information contained within the document, Ali answered "yes." RP 414. The prosecutor then read through portions of the Statement of Defendant on Plea of Guilty, including the rights Ali was giving up by pleading guilty. RP 414-26. At one point, Ali consulted with his attorney when a question arose for Ali. RP 417. Ali confirmed no one made any threats to him to get him to enter a plea of guilty. RP 424. Ali confirmed no one made any promises to entice him to plead guilty, outside of the State's promise to make the recommendation read into the record. RP 425. Ali then pleaded guilty. RP 426.

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<sup>1</sup> Ali utilized the services of two Somali interpreters during the pre-trial hearings, although at the plea hearing only one, Mr. Abdullahi Jama, interpreted for Ali. RP 412. Mr. Jama was sworn by the court on July 30, 2014. RP 6.

Prior to the court's acceptance of Ali's change of plea, Ali's attorney confirmed that he reviewed the Statement of Defendant on Plea of Guilty and complementary plea forms with Ali. RP 428. Ali's attorney confirmed he answered Ali's questions. RP 428. Ali's attorney said he believed Ali was making a knowing, intelligent, and voluntary change of plea. RP 429.

The court inquired further. The court confirmed with Ali that his attorney read the Statement of Defendant on Plea of Guilty to him. RP 429. Furthermore, the court confirmed the interpreter interpreted the document for Ali. RP 429. Prior to accepting Ali's change of plea, the court told Ali he could take as much time as he needed to talk with his attorney. RP 430. The court accepted Ali's change of plea and noted on the record that the interpreter signed the document as well. RP 431. In accepting Ali's change of plea, the court noted that, based on the court's observations, the court believed Ali understood his rights and that he was making a knowing, voluntary, and intelligent waiver of his rights. RP 431. In the Statement of Defendant on Plea of Guilty, the court found Ali's plea of guilty to be knowingly, intelligently, and voluntarily made. CP 75. Furthermore, the court found that Ali understood the charges and the consequences of the plea. CP 75.

In the Statement of Defendant on Plea of Guilty, in paragraph 12, the pre-printed language reads:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this 'Statement of Defendant on Plea of Guilty.' I have no further questions to ask the judge.

CP 74. Below paragraph 12 on the Statement of Defendant on Plea of Guilty, above the line labeled Defendant, Ali signed his name. Id.

On the following page of the document, the language reads:

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the Somali language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

CP 75. The interpreter signed and dated this paragraph. Id.

At the sentencing hearing, the prosecutor made the agreed sentencing recommendation. RP 434-35. Ali's attorney made the same recommendation. RP 435-39. As a part of his presentation, Ali's attorney said that, because the victim was unlikely to appear at trial, he believed the State would only have been able to proceed under a theory of attempted rape of a child in the third degree.

RP 436-37. Ali's attorney suggested that a conviction of attempted rape of a child in the third degree would have had immigration consequences for Ali, which Ali sought to avoid. RP 437.

After Ali's attorney made his recommendation, Ali exercised his right of allocution. RP 439. Ali requested the court reduce the charge to a misdemeanor. Id.

Without making a finding as to whether Ali breached the plea agreement, the court sentenced Ali to a standard range sentence. RP 444.

**C. ARGUMENT**

**1. THIS COURT SHOULD PERMIT COUNSEL TO WITHDRAW BECAUSE THERE ARE NO NON-FRIVOLOUS ISSUES TO BE RAISED.**

RAP 18.3(a)(2) provides, in relevant part:

If counsel appointed to represent an indigent defendant [in a criminal case] can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent. The motion shall identify the issues that could be argued if they had merit and, without argument, include references to the record and citations of authority relevant to the issues.

That procedure has been invoked in this case.

Counsel for the State has reviewed the prosecutor's file, the appellant's brief, the court file, and the transcripts in this case. The potential issue set forth in the appellant's brief, as discussed below,

lacks merit under the facts of the case. Accordingly, the State concurs in appellate counsel's motion to withdraw and requests dismissal of the appeal.

**2. ALI'S CHANGE OF PLEA TO GUILTY WAS KNOWING, VOLUNTARY, AND INTELLIGENT BECAUSE HE WAS PROPERLY ADVISED OF THE CONSEQUENCES OF THE PLEA AND NO THREATS OR PROMISES WERE MADE TO INDUCE HIM TO PLEAD GUILTY.**

Ali could argue that his guilty plea was involuntary and made without knowledge of its consequences. However, this argument would be meritless, as the evidence shows Ali knew of the consequences of the plea and changed his plea voluntarily.

In order to satisfy the due process requirements of the federal and state constitutions, a guilty plea must be knowing, intelligent, and voluntary. Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Personal Restraint of Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987); U.S. Const. amends. V, XIV; Wash. Const. art. I, sec. 3. The criminal rules reflect this principle by dictating that a court must not accept a plea of guilty without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. CrR 4.2(d). The

defendant must enter the plea competently and with an understanding of the nature of the charge and the consequences of the plea, including the understanding that he or she necessarily waives important constitutional rights. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Whether a plea is knowingly, intelligently, and voluntarily made is determined from the totality of the circumstances. Branch, 129 Wn.2d at 642. A plea is presumed to have been properly entered where the defendant admits to reading, understanding, and signing a proper plea statement. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable. Branch, 129 Wn.2d at 642 n.2 (quoting State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982)).

Prior to the plea hearing, the court made findings pursuant to CrR 3.5 that the defendant had made a knowing, voluntary, and intelligent waiver of his constitutional rights on the date of his arrest and admitted statements the defendant made in English to the arresting sheriff's deputies.

At the plea hearing, a Somali interpreter assisted Ali. Ali had in his possession a copy of the Statement of Defendant on Plea of Guilty. Ali confirmed with the prosecutor and the court that the document had been read to him by his attorney with the assistance of the interpreter. Ali stated that his attorney answered his questions. Ali stated that he understood that he was giving up constitutional rights. Additionally, he stated that no one had made any threats or promises to induce his change of plea. Furthermore, Ali signed the Statement of Defendant on Plea of Guilty, which contains pre-printed language, which was interpreted for him, attesting that the document was read to him by his lawyer; that he understood the document; that he had been provided with a copy of the document; and that he had no further questions about the document to ask the judge. Only after a thorough colloquy by the prosecutor and additional questioning by the court did the court finally accept Ali's change in plea.

Although the defendant asked the court to reduce the charge to a misdemeanor, prior to that point in the hearing, Ali's attorney spoke at length about the potential immigration consequences of proceeding to trial. Ali's attorney stated that the resolution reached protected Ali from potentially lasting immigration consequences.

Considering the totality of the circumstances, including the collateral immigration consequences of a conviction of attempted rape of a child in the third degree, Ali's plea was knowing, intelligent, and voluntary. Therefore, any argument by Ali that his plea was not knowing, intelligent and voluntary would be without merit.

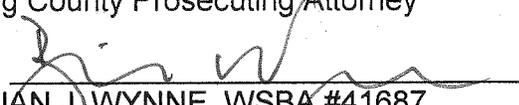
**D. CONCLUSION**

For the foregoing reasons, the potential issue raised by Ali's counsel in the Motion to Withdraw are without merit and would not support any arguable claims on appeal. After an independent review of the record in this case, the State could not identify any meritorious issues for review. Thus, the State agrees that there are no non-frivolous issues presented. The State respectfully requests that counsel's motion to withdraw be granted and that this appeal be dismissed.

DATED this 24<sup>TH</sup> day of April, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
BRIAN J. WYNNE, WSBA #41687  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, Dana Nelson, Nielsen, Broman & Koch, PLLC, containing a copy of the Brief of Respondent, in STATE V. ABDULKADIR ALI, Cause No. 72536-0-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

CC Brame

Name

Done in Seattle, Washington

9/24/15

Date