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STATE OF WASHINGTON
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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ROBERT ARMBRUSTER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine Stolz

No. 05-1-05891-1

RESPONDENT'S OPENING BRIEF

GERALD A. HORNE
Prosecuting Attorney

By
Patrick J. Hammond
Deputy Prosecuting Attorney
WSB # 23090

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. When a criminal defendant takes advantage of a plea agreement, completes a written plea form, and tells a court that he understands his constitutional rights and is agreeing to waive them by pleading guilty, is the court required to take any further steps to guarantee the defendant understands the rights he is waiving by pleading guilty?

B. STATEMENT OF THE CASE.

1. Procedure

On November 28, 1995, Robert Armbruster was charged with burglary in the first degree, assault in the second degree, and two counts of malicious mischief in the second degree. CP 1-5. The Information included deadly weapon sentencing enhancements for the burglary and assault charges. CP 1-2. Mr. Armbruster pleaded not guilty at his arraignment, and his case was scheduled for a jury trial.

On February 1, 2006, after Mr. Armbruster's case had been assigned to a courtroom, Mr. Armbruster agreed to plead guilty to an Amended Information charging him with one count of assault in the second degree, and one count of malicious mischief in the second degree.

RP 2-3. The Amended Information did not include a deadly weapon sentencing enhancement for either count. CP 6-7. This significantly reduced Mr. Armbruster's potential standard range sentence¹.

2. Facts

Mr. Armbruster filled out a written "Statement of Defendant on Plea of Guilty" consistent with the format required by CrR 4.2(g). CP 8-15. The second page of the written plea statement included a list of the rights he would give up by pleading guilty, including the right to a speedy and public trial, the right to remain silent, the right to testify or refuse to testify, the right to confront witnesses, the right to produce witnesses, the right to appeal, and the presumption of innocence. CP 9.

The trial court engaged in a colloquy with Mr. Armbruster to determine whether he was making a knowing, voluntary & intelligent waiver of his constitutional rights. RP 4-7. The court first verified Mr. Armbruster's name and age, and confirmed that he was a high school graduate. RP 4. The court then reviewed the standard range and maximum sentences for each of the crimes in the Amended Information. RP 4. The court then asked Mr. Armbruster if he had reviewed the constitutional rights set forth on page 2 of the guilty plea form. RP 4. Mr.

¹ If convicted as originally charged, Armbruster's sentence for first degree burglary would have been 36-48 months, plus a 24 month deadly weapon enhancement, resulting in a range 60-72 months in prison. The 12 month deadly weapon enhancement on the second degree assault count would have run consecutive to this term, resulting in total confinement of 72-84 months.

Armbruster replied: “Yes.” RP 4. The court then specifically asked Mr. Armbruster: “And, do you understand those rights?” RP 4. Mr. Armbruster responded: “Yes ma’am.” RP 4. The court then asked Mr. Armbruster: “And, are you waiving all those rights, including the right to trial?” RP 4-5. Mr. Armbruster responded: “Yes.” After further reviewing the consequences of pleading guilty, the trial court found that Mr. Armbruster was entering his plea, “voluntarily, willingly, and intelligently.” RP 7.

C. ARGUMENT.

1. THE APPELLANT’S PLEA WAS KNOWING, VOLUNTARY AND INTELLIGENT BECAUSE HE WAS FULLY ADVISED OF HIS CONSTITUTIONAL RIGHTS AND TOLD THE TRIAL COURT THAT HE UNDERSTOOD THOSE RIGHTS.

A plea of guilty waives a number of constitutional rights. Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969); Joseph v. Butler, 838 F.2d 786, 789 (5th Cir. 1988). Thus, the Fourteenth Amendment Due Process Clause imposes certain requirements to ensure the validity of a guilty plea. Fisher v. Wainwright, 584 F.2d 691, 692 (5th Cir. 1978) (citing Brady v. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L.Ed.2d 747 (1970)). In general, a court shall 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.

Because of the procedural safeguards designed to ensure that pleas are knowing, voluntary and intelligent, a court should exercise great caution before setting aside a guilty plea. State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974). Whether a plea is knowingly, intelligently and voluntarily made is determined from a totality of the circumstances. State v. Branch, 129 Wn. 2d 635, 642, 919 P.2d 1228 (1996) (citing Wood v. Morris, 87 Wn.2d 501, 505-06, 554 P.2d 1032 (1976)); CrR 4.2. When a defendant completes a written plea statement, and admits to reading, understanding, and signing it, there is a strong presumption that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998), citing State v. Perez, 33 Wn. App 258, 654 P.2d 708 (1982). The language of the Perez opinion seems particularly applicable to Mr. Armbruster’s plea:

“When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g), and acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea’s voluntariness. . . . 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.”

Perez, supra, at 261 [citations omitted]. In the case at bar, not only did Mr. Armbruster fill out a written plea statement, he further told the court that he had read that statement. He specifically confirmed that he had reviewed the constitutional rights he was waiving, and that he understood those rights. Under these circumstances, there was no reason for the trial court to probe further into Mr. Armbruster’s appreciation of the rights he waived by entering into a plea.

Withdrawal of a guilty plea is governed by CrR 4.2(f), which permits withdrawal where it is "necessary to correct a manifest injustice." A manifest injustice is one that is obvious, directly observable, overt, not obscure.” State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). Examples of a "manifest injustice" include, but are not limited to, instances where the plea was involuntary, or the defendant was denied effective assistance of counsel. State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991); State v. Watson, 63 Wn. App. 854, 822 P.2d 327 (1992). The "manifest injustice" standard is a demanding one; the injustice must be "obvious, directly observable, overt, not obscure." Saas, 118 Wn. 2d at 42.

Appellant’s brief contends that “if signing a plea agreement was conclusive evidence that a plea was voluntary, then a defendant would

never be entitled to withdraw his plea.” Brief of Appellant, at 8. It is true that a defendant’s signature, or the lack thereof, is not dispositive of whether a plea is voluntary. See, e.g., Branch, supra. Nonetheless, “[a] defendant’s signature on the plea form is strong evidence of a plea’s voluntariness.” Branch, supra, at 642. After a defendant has orally confirmed statements in the written plea form, that defendant “will not now be heard to deny these facts.” In re Keene, 95 Wn.2d 203, 207, 622 P.2d 13 (1981). As a consequence, the defendant’s signature, along with his own assurances to the court that he understood what he was doing, are valid factors to consider in determining the validity of his plea.

In the instant case, Mr. Armbruster entered a plea agreement that substantially reduced the amount of prison time he was facing. Indeed, under the plea agreement, his attorney was able to argue for only six months in jail, at a time when Mr. Armbruster already had credit for 79 days served². RP 5, CP 25. Mr. Armbruster, a high school graduate, had an opportunity to review his written plea form, which included a list of the rights he would give up by pleading guilty. Mr. Armbruster signed the plea form, immediately under paragraph 12, which reads:

² The trial court followed the State’s recommendation and sentenced Mr. Armbruster to 12 months of confinement. CP 24.

“My lawyer has explained to me, and we have 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 14. When asked by the court if he had, in fact, reviewed the constitutional rights he was giving up, Mr. Armbruster answered yes. RP 4. When asked by the court if he understood those rights, he again answered yes. RP 4. In the absence of some evidence that Mr. Armbruster did not understand those rights, there is no manifest injustice requiring his plea to be set aside. Because Mr. Armbruster has failed to demonstrate any other defect in the proceedings below, he has not overcome the presumption that his plea was voluntary, knowing and intelligent. As a consequence, he is not entitled to withdraw his plea.

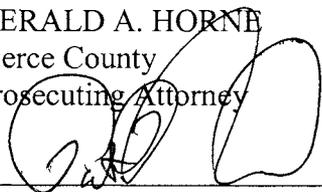
D. CONCLUSION.

Robert Armbruster entered into a plea agreement that substantially reduced his potential sentence. After completing a written plea form that advised him of the constitutional rights he was giving up by pleading guilty, he told the trial court that he understood those rights and wished to plead guilty. There is nothing in the record that suggests Mr. Armbruster failed to make a knowing, voluntary and intelligent plea. Indeed, the totality of the record, including the written plea form signed by Mr.

Armbruster, indicates that the plea in this case was knowing, voluntary and intelligent. As a consequence, this Court should deny the appellant's request for remand.

DATED: November 3, 2006.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



PATRICK J. HAMMOND
Deputy Prosecuting Attorney
WSB # 23090

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

Ellner

11/6/06 *Theresa K*
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