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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 37031-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

James Stogsdill,

Appellant.

Pierce County Superior Court

Cause No. 04-1-03718-4

The Honorable Judges Lisa Worswick and James R. Orlando

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The trial court erred by summarily denying Mr. Stogsdill's motion to modify his judgment and sentence.
2. The trial court erred by summarily denying Mr. Stogsdill's motion to withdraw his guilty plea.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under CrR 7.8, a trial court may either refer a motion to the Court of Appeals for treatment as a PRP or order a show cause hearing. In this case, the court summarily denied Mr. Stogsdill's CrR 7.8 motions. Did the trial court violate CrR 7.8? Assignments of Error Nos. 1, 2.
2. CrR 7.8 allows an offender to seek relief for mistakes, inadvertence, excusable neglect, or any other reason justifying relief. In this case, Mr. Stogsdill's attorney did not ask the sentencing court to exempt his client's biological children from an order prohibiting contact with minors. Was Mr. Stogsdill's motion properly brought under CrR 7.8? Assignments of Error Nos. 1, 2.
3. A guilty plea is involuntary and violates due process if the accused is not informed of all direct consequences of the plea. Mr. Stogsdill was not informed of the conditions of community custody prior to pleading guilty. Must Mr. Stogsdill be permitted to withdraw his guilty plea? Assignments of Error Nos. 1, 2.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

I. PRIOR PROCEEDINGS

James M. Stogsdill pled guilty to Rape of a Child in the Second Degree on March 2, 2006. CP 4. He was sentenced March 31, 2006, and he filed an appeal. *State v. Stogsdill*, No. 34756-3-II. CP 4-14. That appeal was denied, and a corrected mandate was issued October 17, 2007.

Mr. Stogsdill filed two Motions to Modify or Correct Sentence and Judgment on September 5, 2007. CP 15-17, 18-21. Both motions were denied without hearing on October 16, 2007. CP 22-23, 24-25. Mr. Stogsdill appealed from these orders. CP 26-30.

Without reference to its October 16 orders, the Pierce County Superior Court entered an order transferring the matter to the Court of Appeals under CrR 7.8. CP 31-35. The Court of Appeals, in a letter dated January 3, 2008, pointed out that orders had already been entered denying the motions, and that the case had been opened as an appeal.

II. STATEMENT OF FACTS

James Stogsdill pled guilty to one count of Rape of a Child in the Second Degree. Supp. CP, Statement of Defendant on Plea of Guilty, p. 1-8. Although he was told that he would be on community custody and

informed that he would have “restrictions placed on [his] activities,” he was not advised as to either the mandatory conditions of community custody or the discretionary conditions of community custody. Supp. CP, Statement of Defendant on Plea of Guilty, p. 4.

Mr. Stogsdill was sentenced to life in prison, with an early release date of 136 months. CP 5. The court ordered that Mr. Stogsdill would be on community custody “for the remainder of the Defendant’s life,” and imposed the mandatory conditions of community custody. CP 8-9. The court also prohibited Mr. Stogsdill from using alcohol for life, and prohibited him from having contact with minor children for life. CP 9.

Defense counsel did not ask the court to make an exception for Mr. Stogsdill’s to have contact with his own biological children. RP (3/31/06).

Mr. Stogsdill filed two motions to modify his Judgment and Sentence in September of 2007. CP 15-21. He argued that the court should not have prohibited contact with his own biological child, and that he was not informed of the direct consequences of his plea. CP 15-21. The trial court summarily denied both motions without hearing. CP 22-25. This appeal followed. CP 26-30.

ARGUMENT

I. THE TRIAL COURT SHOULD HAVE ORDERED A SHOW CAUSE HEARING AND DETERMINED WHETHER OR NOT TO PERMIT CONTACT BETWEEN MR. STOGSDILL AND HIS BIOLOGICAL CHILDREN.

Under CrR 7.8(b), “the court may relieve a party from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence...excusable neglect... or (5) Any other reason justifying relief from the operation of the judgment.” The trial court is required to transfer a timely CrR 7.8 motion to the Court of Appeals for consideration as a personal restraint petition unless “(i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.” CrR 7.8(c)(2).

In this case, Mr. Stogsdill asked the trial court to “lift the blanket prohibition of contact with his minor biological children and at a minimum allow supervised contact, phone calls and letter writeing [sic].” CP 15-16. He told the court that his attorney inadvertently neglected to ask the sentencing court to exempt Mr. Stogsdill’s biological children from the prohibition on contact with minors. CP 15-17. Mr. Stogsdill made a substantial showing that he’s entitled to relief, and resolution of his motion will require a factual hearing; accordingly, the trial court should have entered a show cause order scheduling a hearing pursuant to

CrR 7.8(c)(3). Instead, the court summarily denied the motion, claiming that the motion “fails to establish the legal criteria for granting a motion...” CP 24.

The trial court was not authorized to make this ruling under CrR 7.8(c). The court had two choices: transfer the case as a PRP, or enter a show-cause order. It did neither. This Court has a choice of remedies for the trial court’s erroneous decision: it may treat the trial court’s order as a transfer for consideration as a PRP (under CrR 7.8(c)(2)), or it may remand the case for entry of a show cause order (under CrR 7.8(c)(3)).

This Court should reverse the trial court’s decision and remand the case for entry of a show cause order under CrR 7.8(c)(3). First, the motion raises an issue that will require an evidentiary hearing (to establish whether or not Mr. Stogsdill should be permitted contact with his biological children). Second, the relief sought (modification of the blanket prohibition on contact with minors) is of a type that should be settled initially in the trial court.

II. MR. STOGSDILL MUST BE PERMITTED TO WITHDRAW HIS GUILTY PLEA BECAUSE HE WAS NOT INFORMED OF THE DIRECT CONSEQUENCES OF THAT PLEA.

- A. Mr. Stogsdill was never informed of the lifetime conditions of community custody to be imposed.

Due process requires an affirmative showing that a guilty plea is knowing, intelligent, and voluntary. U.S. Const. Amend. XIV; *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). A plea is involuntary unless the accused is informed of the direct consequences of plea. *Isadore*, at 298. Direct consequences are those which are definite, immediate, and largely automatic. *State v. Ross*, 129 Wn.2d 279 at 284 at 287, 916 P.2d 405 (1996). A guilty plea based on incomplete information may be withdrawn whether or not a particular direct consequence was material to the decision to plead guilty. *Isadore*, at 302.

RCW 9.94A.712 requires the court to impose community custody “for any period of time the person is released from total confinement before the expiration of the maximum sentence.” RCW 9.94A.712(5) (2004). Conditions of community custody are set forth in 9.94A.700(4) and (5) (*see* RCW 9.94A.712(6) (2004)), which provide as follows:

(4) Unless a condition is waived by the court, the terms of any community [custody] imposed under this section shall include the following conditions:

- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

- (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- (d) The offender shall pay supervision fees as determined by the department; and
- (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community [custody] imposed under this section, the court may also order one or more of the following special conditions:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) The offender shall participate in crime-related treatment or counseling services;
- (d) The offender shall not consume alcohol; or
- (e) The offender shall comply with any crime-related prohibitions.

RCW 9.94A.700 (2004).

In this case, the trial judge imposed community custody “for the remainder of the Defendant’s life.” CP 8, 10. The court ordered all the conditions listed in RCW 9.94A.700(4), and also prohibited Mr. Stogsdill from consuming alcohol or having any contact with minor children, pursuant to RCW 9.94A.700(5). CP 9. These conditions of community custody are direct consequences of Mr. Stogsdill’s plea, and will remain with him for life.

Although Mr. Stogsdill was told he'd be on community custody, he was not told all the direct consequences of his plea because no one reviewed with him the specific conditions of community custody. *See* Statement of Defendant on Plea of Guilty, pp. 1-8, with attachments, Supp. CP. Because he was not informed of the direct consequences of his guilty plea, the plea was involuntary. *Isadore, supra*. Mr. Stogsdill must be permitted to withdraw his plea.

Under CrR 7.8(c), the trial court is authorized to transfer a motion to the Court of Appeals (for treatment as a Personal Restraint Petition) or to order a show cause hearing. The court did neither in this case, but instead summarily denied the motion. CP 27. This was error. This Court should reverse the trial court's erroneous order and remand the case to the trial court, with instructions that Mr. Stogsdill be permitted to withdraw his guilty plea.

B. This Court should not follow Division III's departure from the Supreme Court's holding in *Ross* and its progeny.

According to Division III, the requirement that an offender be informed of the direct consequences of a plea does not extend to the conditions of community placement. *In re Waggy v. Waggy*, 111 Wn. App. 511 at 516, 45 P.3d 1103 (2002). Although Division III conceded

that the *Ross* court did not address the issue, it relied on language in *Ross* approving the standard plea form then in use:

While *Ross* did not address this question specifically, it quoted with approval the standard guilty plea form provided in CrR 4.2(g)... *Ross*, 129 Wn.2d at 282-83 (characterizing standard form as “appropriate”). Therefore, *Ross* impliedly held that a guilty plea is valid if the defendant is informed that he will be required to serve a term of community placement but is not informed of the specific restrictions to be associated with that placement. *Waggy*, at 516-517.

But *Ross* and its progeny make no exceptions to the rule that an accused be informed of the direct consequences of a plea. A consequence is either direct or collateral; if it is direct, failure to inform the accused renders the plea involuntary. *Isadore*, at 298. This Court should not follow Division III’s departure from the Supreme Court’s clear holdings in *Ross*, *supra*, *Isadore*, *supra*, and other similar cases.

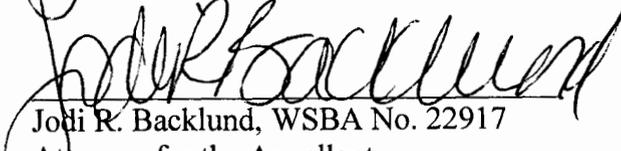
CONCLUSION

This Court should reverse the trial court’s order denying Mr. Stogsdill’s motion to withdraw his plea and remand the case with instructions to allow him to do so. This Court should also reverse the court’s order denying his motion to modify his judgment and sentence, and remand the case for entry of a show cause order pursuant to CrR 7.8(c)(3).

Respectfully submitted on July 2, 2008.

BACKLUND AND MISTRY


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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

James Stogsdill, DOC# 713484
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

and to:

Pierce County Prosecuting Atty Ofc
930 Tacoma Ave. S Rm. 946
Tacoma, WA 98402

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on July 2, 2008.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 2, 2008.


Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

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