

NO. 38040-4-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

COURT OF APPEALS
STATE OF WASHINGTON
OCT 19 11:40 AM
BY [Signature] DEPUTY

STATE OF WASHINGTON, Respondent

v.

DEMETRIUS RAY WOOD, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-02023-3

BRIEF OF RESPONDENT

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I. STATEMENT OF THE FACTS

On July 1, 2008, the defendant, Demetrius R. Wood, pled guilty in Clark County Superior Court to a third amended information charging him with assault in the first degree, assault in the fourth degree domestic violence, and unlawful possession of a firearm in the first degree. CP 1-2, 3-13. The court went through an oral colloquy with the defendant confirming that he had had sufficient time to discuss this with his attorney, that he understood he was waiving his right to silence, his right to trial and rights at trial, and that he understood the maximum penalty for each charge. RP 66, 68. The court also confirmed the defendant understood the sentencing range, and that the range was based on his prior criminal history, which may change if additional criminal history is discovered. RP 70. Also, the defendant acknowledged that he understood he would be under supervision of the Department of Corrections for 24 to 48 months after release. RP 70.

Sentencing was set for July 10, 2008. At that time, the Court addressed the defendant's motion to withdraw a guilty plea. RP 85-87. At that time, defense moved to withdraw the guilty plea based on his argument that he was overcome with emotion when entering his plea. RP 85. The court noted that at the time of the plea, the defendant indicated

that he did desire to take the plea offer, recognizing that it would be his last opportunity to have the advantage being offered him and that he faced a substantially greater sentence if convicted of all the charges the State intended to proceed on at trial. RP 86. The court also noted that the defendant filled out the necessary paperwork and had 30 minutes or so before the court took the guilty plea. RP 86. The court noted that the defendant was informed of all the consequences and now he was feeling the sentence was very large. RP 87. The Court found nothing that would in any way be a basis for withdrawing the guilty plea. RP 87.

The court denied the motion to withdraw a guilty plea and proceeded to sentencing. RP 87.

II. RESPONSE TO ASSIGNMENT OF ERROR

Mr. Wood appeals the Clark County Superior Court's denial of his motion to withdraw his guilty plea citing a manifest injustice based on being improperly informed of the range of community custody that applied to his case. The defendant's guilty plea was knowingly, voluntarily and intelligently made, knowing all the consequences of his plea, including the proper term of community custody. The defendant does not have a basis to withdraw his plea.

The court reviews a denial of a motion to withdraw a guilty plea for abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997).

A motion to withdraw a guilty plea is governed by CrR 4.2(f). CrR 4.2(f) places upon the defendant a demanding and stringent burden to show a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, and not obscure. State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984); State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). The reason this heavy and demanding burden is placed upon the defendant is that CrR 4.2(d) prevents the court from accepting a guilty plea until it is absolutely satisfied that there is a factual basis for the plea, that the plea has been made voluntarily and competently, and that the defendant understands the nature of the charges to which he is pleading and the consequences of his plea. Taylor, 83 Wn.2d at 596.

CrR 4.2(g) requires the defendant to file a written statement upon his plea of guilty which details not only his basic constitutional rights but sets forth the requirements of CrR 4.2(d) and (e). CrR 4.2(g) requires that the statement be read by or read to the defendant and that the statement be signed by the defendant in the presence of his attorney, the prosecuting

attorney and the Judge. Basically, CrR 4.2(d), (e), and (g) are carefully designed to make absolutely certain that a defendant's rights have been fully protected before the guilty plea is accepted. Taylor, 83 Wn.2d at 596. It is because these great safeguards have been incorporated into the plea process that the demanding "manifest injustice" standard is applied. State v. Hystad, 36 Wn. App. 42, 45, 671 P.2d 793 (1983). A defendant may withdraw his guilty plea only if he establishes that "withdrawal is necessary to correct a manifest injustice." CrR 4.2(f); *See State v. Taylor*, 83 Wn.2d 594, 596-97, 521 P.2d 699 (1974). A manifest injustice is "an injustice that is obvious, directly observable, overt, not obscure." *Id.* at 596. The Washington State Supreme Court has found that the denial of effective counsel, the defendant's failure to ratify the plea, an involuntary plea and the prosecution's breach of the plea agreement all constitute manifest injustice. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

Case law has held that a defendant who is misinformed about sentencing consequences resulting in a more onerous sentence than anticipated may challenge the voluntariness of the guilty plea. *See State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988). Also, the Court has held that a defendant may withdraw his guilty plea when he is not informed of a mandatory community placement because that sentencing term

constitutes a “direct consequence” of a guilty plea. State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). In Ross, because the defendant was not explicitly informed of the mandatory community placement and his plea was therefore involuntary, the Court held he was entitled to withdraw it. *Id.* at 288.

However, the facts in Ross differ significantly from the facts in the case at hand. In Ross, it was undisputed that the defendant was never informed that the court would be required to sentence him to a mandatory one-year community placement. Ross, 129 Wn.2d at 282-83. The defendant, Mr. Ross, was presented with an outdated form omitting the community placement information, and the court did not address this implication during colloquy. *Id.* at 283. In the case at hand, the trial court explicitly told Mr. Wood that he would have 24 to 48 months of community custody. *See* RP 70. The following was said during colloquy:

THE COURT: And this being a serious violent, 24 to 48 months or early release, whichever may occur first. During that time you're under supervision of the Department of Corrections. They'll have rules and regulations. You violate those rules and regulations, you can be placed back in more restrictive confinement status. You understand that?

MR. WOOD: Yes.

-(RP 70)

Though there was initially some confusion in the paperwork and the colloquy as to whether the Assault in the First Degree conviction carried 18 to 36 months or 24 to 48 months, it was resolved properly and the Court indicated, in no uncertain terms, to the defendant that he would be facing 24 to 48 months of supervision by the Department of Corrections. In this situation, where there was initially confusion, the best and only way to resolve the situation is to explain it clearly and explicitly to the defendant. This is what the Court did. The defendant fully understood what he was doing at the time of his entry of the guilty plea.

In State v. Branch, 129 Wn.2d 635, 919 P.2d 1228 (1996) the court held that the lack of a defendant's signature on the guilty plea statement did not constitute a manifest injustice so as to allow for a withdrawal of a guilty plea. State v. Branch, 129 Wn.2d 635, 644, 919 P.2d 1228 (1996). The court held that as long as the totality of the circumstances demonstrates the defendant's plea and its waiver of rights was intelligently and voluntarily made, with full knowledge of its consequences, then a withdrawal of the guilty plea is not necessary to correct a manifest injustice. *See Id.* The court can draw from this, that the oral colloquy and statements the defendant acknowledges and makes must be considered. Though in Mr. Wood's case, the documentation had amendments to it, and may have appeared, to an outsider, to be confusing as to the term of

community custody, based on the record, it is clear that Mr. Wood was informed the term would be 24 to 48 months and he was asked if he understood that, which he did.

In State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006) the court held that a defendant has the right to withdraw a guilty plea based on a miscalculated offender score resulting in a lower standard range than anticipated. However, a defendant waives the right to challenge his plea if he was informed of the miscalculation before sentencing and did not object or move to withdraw his plea on that basis. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). Mr. Wood did not challenge his plea on the basis that the community custody was initially improperly calculated. Because he did not object or move to withdraw his plea on that basis, under Mendoza, the defendant is not entitled to withdraw his plea. *See Id.*

The defendant did not properly raise the issue of withdrawing his guilty plea due to confusing and conflicting language regarding the community custody. The defendant has an onerous burden to show that withdrawing his guilty plea will correct a manifest injustice. Mr. Wood's guilty plea, as shown by the record, was knowingly, intelligently and voluntarily entered in to, after knowledge of and consideration of all the consequences. Mr. Wood has not shown the trial court abused its

discretion by denying his motion to withdraw his guilty plea, and he has failed to show that the withdrawal would cure any manifest injustice.

III. CONCLUSION

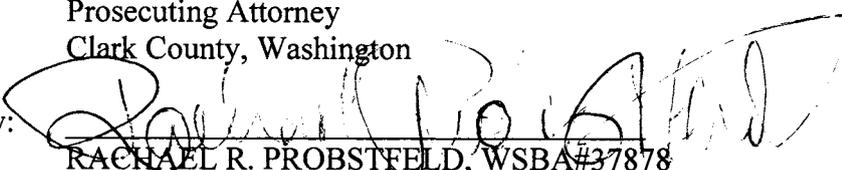
The defendant cannot show the withdrawal of his guilty plea would correct a manifest injustice. The trial court should be affirmed in all respects.

DATED this 14 day of May, 2009.

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