

NO. 43462-8-II

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

STATE OF WASHINGTON, RESPONDENT

v.

DARRYL SATCHER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 11-1-00908-6

Response Brief

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

1. Did the trial court properly deny defendant's motion to withdraw his guilty plea when defendant entered the plea knowingly, voluntarily, and intelligently?

B. STATEMENT OF THE CASE.

On February 28, 2011, the State charged Darryl Satcher, hereinafter "defendant," with one count of murder in the first degree with a firearm enhancement, one count of robbery in the first degree, two counts of assault in the second degree, and one count of unlawful possession of a firearm in the second degree. CP 1-3.

The Determination for Probable Cause alleges that on February 25, 2011, defendant, along with Jerrell White, Sara Stiefel, Aaron McCrary, and Paul Howe, planned to turn a drug deal into a robbery. CP supp. 79. Stiefel called Marvin Plunkett to arrange for defendant to buy drugs from him. *Id.* Plunkett was with R. Phillips and J. Moura on his way home from a casino and had \$700 cash, small amounts of marijuana, and cocaine. *Id.*

Defendant and Plunkett met at 38th Street and Fawcett Avenue. Defendant got into the rear passenger seat of Phillips' car next to Moura and Plunkett; Phillips was in the driver's seat. *Id.* Defendant shot Plunkett several times before going through his pockets, taking \$700 in cash. *Id.*

Defendant demanded Moura and Phillips to give him all of their money, drugs, and cell phones. *Id.* at 80. Defendant put his gun to Phillips' head and told her to keep driving or he would shoot her. *Id.* Phillips then drove until defendant ordered her to stop and he exited the vehicle. *Id.* Phillips drove to the hospital where Plunkett was pronounced dead shortly after arrival. *Id.*

Cell phone records were used to locate and arrest Stiefel during a traffic stop. *Id.* Defendant, along with White and McCrary who were in the car, were also arrested. *Id.*

On March 5, 2011, defendant pleaded guilty to amended charges of one count of murder in the second degree with a firearm enhancement, and two counts of robbery in the first degree. CP 4-5. The Honorable Bryan Chushcoff conducted the plea proceedings and engaged in a colloquy with defendant to ensure his plea was made knowingly, voluntarily, and intelligently before accepting his plea of guilty. RP 8, 15. At defendant's plea hearing, the court engaged in a thorough colloquy with defendant to dispel any confusion expressed by him and ensure that he understood the consequences of his guilty plea.

On April 20, 2012, the court sentenced defendant to 240 months in custody, plus 60 months for the firearm enhancement, with 419 days of credit for time served on count I, and 68 months custody on counts II and

III, as well as standard legal financial obligations and restitution.¹ CP 65, 67; 2RP 35-36. The court also imposed community custody of 36 months for count I, and 18 months for counts II and III. CP 66, 68, 2RP 35-36.

When the court noticed that the firearm enhancement language had been inadvertently stricken, defense counsel corrected the error, had defendant initial the correction, and stated that his client knew of the firearm and sentencing enhancement because they had discussed it previously. 2RP 5-7. Although defendant expressed some confusion regarding the standard range for the two counts of robbery in the first degree, the court engaged in further discussion to ensure that he understood the correct range before moving forward with the proceeding. 2RP 11-12. Defendant initially answered “no” when asked whether he understood that the court is not bound to follow the sentencing recommendations of either the State or the defense. 2RP 13. The court re-explained the terms to him before accepting defendant’s affirmative response to understanding. 2RP 13-14. Defendant did not express any confusion regarding the community custody term for the count of murder in the second degree, but the court still explained to defendant that the term was no longer a range, but a standard term of 36 months. 2RP 9-10.

¹ Defendant had an offender score of four for the murder charge, with a standard range of 165-265 months, plus 60 months for the firearm enhancement. CP 64 (Paragraph 2.3). Defendant had an offender score of four for the robbery charges with a range of 51-68 months. CP 64 (Paragraph 2.3). The trial court ordered that time for all counts run concurrently, with the firearm enhancement to run consecutively to the murder charge.

Defendant stated that he understood everything the judge discussed and that he had no further questions. 2RP 9. The court accepted defendant's plea of guilty after he was fully informed of the consequences of his plea. 2RP 15.

Defendant timely filed a Notice of Appeal on May 21, 2012. CP 75.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY FOUND DEFENDANT'S PLEA WAS KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY MADE WHERE THE COURT ENSURED THAT DEFENDANT UNDERSTOOD THE DIRECT CONSEQUENCES OF SUCH A PLEA.

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(d). The State bears the burden of proving the validity of a guilty plea. *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976). The record from the plea hearing must establish that the plea was entered voluntarily and intelligently. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996) (citing *Wood*, 87 Wn.2d at 511). When 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. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998) (citing *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982)). Furthermore, when a defendant has

received the information, pleads guilty pursuant to a plea bargain, there is a presumption that the plea is knowing, intelligent and voluntary. In *In re Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993), *review denied*, 123 Wn.2d 1009, 869 P.2d 1085 (1994). “A defendant’s signature on the plea form is strong evidence of a plea’s voluntariness.” *Branch*, 129 Wn.2d at 642. If the trial court orally inquires into a matter that is on this plea statement, the presumption that the defendant understands this matter becomes “well nigh irrefutable.” *Branch*, 129 Wn.2d at 642; *State v. Stephan*, 35 Wn. App. 889, 894, 671 P.2d 780 (1983). After a defendant has orally confirmed statements in this 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).

Once a plea of guilty is accepted, “[t]he court shall allow a defendant to withdraw the defendant’s plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.” CrR 4.2(f); *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). The defense must demonstrate that withdrawal of the plea is necessary to correct a manifest injustice. *State v. Branch*, 129 Wn.2d 635, 641, 919 P.2d 1228 (1996). Withdrawal of guilty plea is a demanding standard that requires an injustice that is “obvious, directly observable, overt, [and] not obscure.” *Id.* (quoting *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974)). Manifest injustice does not exist unless the defendant can prove (1) the denial of effective assistance of counsel, (2) defendant’s failure to

ratify the plea, (3) the plea was involuntary, or (4) the prosecution's breach of the plea agreement. *Mendoza*, 157 Wn.2d at 587.

A defendant may challenge the voluntariness of a guilty plea when the defendant is misinformed about a direct consequence of the plea. *See Id.* at 589. A consequence is direct when it has "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." *Id.* at 588.

In the instant case, defendant claims that his guilty plea was constitutionally invalid because it was not knowingly, voluntarily, and intelligently made. Brief of Appellant at 7-8. Specifically, defendant claims that due to confusion and miscommunication between him and defense counsel, as well as errors in the Statement of Defendant on Plea of Guilty, his guilty plea was involuntary. Brief of Appellant at 7-8. Defendant's claim fails as the record supports that he made a knowing, voluntary, and intelligent plea because he was informed of all the consequences of his plea and stated on the record that he understood them.

Defendant asserts that he expressed confusion about the standard range and what the sentencing court could impose. Brief of Appellant at 7. However, defendant was thoroughly informed of and understood the consequences of his plea. Defendant was informed of the standard range and length of custody for each of his crimes. CP 7; 2RP 10, 12. The court expressly clarified to defendant the length of community custody for each crime. In regard to Count I, the court told defendant that it "...is not a

range. It is 36 months,” and when asked if he understood, replied “I do.” 2RP 10. In regard to Counts II and III, the court told defendant, “If you signed this under the belief that it would be 41 to 54, this is your opportunity to not go forward with this if you don’t want to. If you want to go forward with this, then understand it’s 51 to 68 months.” to which defendant replied, “We can still move forward.” 2RP 12.

The trial court also ensured that defendant understood that he did not have to follow the sentencing recommendations of the State or the defense. The court told defendant that “[judges] have to follow the ranges and what-have-you, but they don’t have to follow the recommendations. Do you understand that?” and defendant replied “right.” 2RP 14.

Defendant also claims that the Statement of Defendant on Plea of Guilty contains material errors that were overlooked. Brief of Appellant at 7. However, the record shows defendant did not express any confusion regarding the firearm enhancement. The inadvertently stricken language regarding the firearm enhancement was corrected and initialed by defendant. CP 12-13; 2RP 6-7. Defense counsel even stated, “It’s not a surprise. He knows that there was a firearm enhancement in Count I...” 2RP 7.

Moreover, the record supports the validity of defendant’s plea because he admitted to reading, understanding, and signing his plea statement. At defendant’s plea hearing, defendant answered in the affirmative when the court asked defendant if he had read his plea form,

understood the terms of his plea, defendant replied that he did, and he signed on the Statement of Defendant on Plea of Guilty. 2RP 9, 13.

Defendant's signature on the plea form acknowledged that his lawyer had explained the plea form to him and that he understood the agreement in its entirety. CP 14 (paragraph 12). By signing the statement, defendant confirmed that he entered the plea freely and voluntarily, and that nobody had threatened him to sign the plea. CP 13 (paragraphs 8–9). Defense counsel also signed the plea statement, stating that he had read and discussed the form with defendant, and that he believed defendant was “competent and fully underst[ood]” the plea form. CP 14 (paragraph 12).

Defense counsel vouched for defendant's understanding of the plea, telling the court:

I have reviewed the Amended Information with [defendant]. We waive any further reading of the information. He is prepared to enter a plea of guilty today. The Court should have before it the Statement of Defendant on Plea of Guilty. *I went through all of the numbered paragraphs with [defendant] and had him initial those paragraphs that did not apply to him. The State has approved the Statement of Defendant on Plea of Guilty. I also indicated to the State that I had no objections to the Court reviewing the affidavit of probable cause if it needs additional information apart from my client's statements. I believe my client is making a knowing, intelligent, and voluntary plea, and we are ready to proceed at this time.*

2RP 5-6 (emphasis added).

It is nigh irrefutable that defendant entered his plea voluntarily. The trial court thoroughly questioned defendant about the circumstances surrounding the plea and properly confirmed that he understood the elements of his charged offenses and any direct consequences of pleading guilty. 2RP 9–12. Defendant acknowledged to the court that he understood his right to remain silent, to confront his accusers, and to have a jury trial. 2RP 9; CP 12 (paragraph 5). Defendant made no claims that he was entering the plea involuntarily or object to terms of his plea. Defendant has failed to show that the presumption of voluntariness has been refuted and that manifest injustice has occurred such that he is entitled to withdraw his plea of guilty. As such, this Court should dismiss defendant's claim and affirm his conviction.

D. CONCLUSION.

The record shows that defendant's plea was made knowingly, voluntarily, and intelligently. The trial court properly reviewed the direct consequences of his plea and defendant acknowledged that he understood them. Defendant fails to demonstrate that any error occurred which constituted a manifest injustice and cannot identify how it had any effect

on defendant's punishment or otherwise had any impact on the direct consequences of his plea. The State respectfully requests that the Court uphold defendant's conviction.

DATED: January 29, 2013.

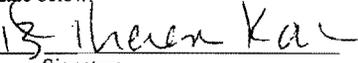
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Certificate of Service:

The undersigned certifies that on this day she delivered ² 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.

1-29-13 
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PIERCE COUNTY PROSECUTOR

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