

NO. 44496-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

JOSE LUIS CASTANEDA ORTIZ,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

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APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

“Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.” *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006). Jose Castaneda Ortiz was incorrectly informed of the term of community custody that could accompany his statutory maximum sentence. His plea is involuntary and he must be allowed to withdraw it.

B. ASSIGNMENT OF ERROR

The trial court erred in denying Mr. Castaneda Ortiz’s motion to withdraw his guilty plea.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

An involuntary guilty plea constitutes a manifest injustice warranting withdrawal of the plea. Misinformation about a direct consequence of the plea renders it involuntary; coercion also renders it involuntary. Is Mr. Castaneda Ortiz entitled to the remedy of withdrawal of his plea where he was misinformed about the imposition of community custody and his plea was coerced by promises of his son being released from prison?

#### D. STATEMENT OF THE CASE

Mr. Castaneda Ortiz wanted his son released from prison. IX RP 1000. After a search warrant was executed at a home where Mr. Castaneda Ortiz's son was present and the State believed both men lived, the two men were charged under separate cause numbers with drug offenses and firearm enhancements. CP 1-4. Jose Luis Castaneda, Jr. ("Junior") pled guilty to possession with intent to deliver and was sentenced to five years confinement. CP 36, 202; IX RP 998.<sup>1</sup> Mr. Castaneda Ortiz proceeded to trial.<sup>2</sup>

At Mr. Castaneda Ortiz's request during trial, defense counsel sought a resolution that would result in early release of Junior. 1/25/13 RP 3, 5. In open court, the prosecutor proposed reducing Junior's offender score due to trial evidence having demonstrated Junior's sentence was excessive. IX RP 998-99; *see* 1/25/13 RP 7-8. Defense counsel told the court Mr. Castaneda Ortiz would agree to enter a plea if his son would be released. IX RP 1000, 1003, 1005, 1007. Defense counsel stated, the prosecutor "wants to say that, you know, he doesn't

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<sup>1</sup> The consecutively paginated volumes of the verbatim report of proceedings are referred to simply as "RP." The other volumes are referred to by date of the hearing transcribed.

<sup>2</sup> Before trial, these charges were consolidated with charged drug offenses related to a different search and school bus zone enhancements were added. CP 45-47.

have one thing contingent on the other, but they kind of are. And Mr. Castaneda wants to further the situation and enter a plea that furthers the recalculation of his son's offender score." IX RP 1003.

The plea agreement indicates the State would recommend a statutory maximum ten-year sentence plus a term of community custody of 12 months and that "the court will sentence me to community custody for the community custody range established" for the offense, which is listed as the longer of 9 to 12 months or the period of earned release. CP 53-54; *see* 8/26/11 RP 5 (prosecutor recommends 12 months community custody at sentencing). During the plea colloquy the same sentence was discussed. IX RP 1012 ("a total of 120 months confinement on Count 1 with 12 months of community custody to follow"). Apparently, the prosecution, defense counsel, and the court were all unaware that RCW 9.94A.701(9) rendered unlawful a combined term of incarceration and community custody in excess of the statutory maximum and required the trial court to set combined terms of ten years or less, regardless of any good time earned during confinement.

Mr. Castaneda Ortiz pled guilty. IX RP 1017-18. The court sentenced him to ten years confinement plus 12 months community

custody or the earned period of early release, whichever is longer. CP 66-67. Mr. Castaneda Ortiz did not file a direct appeal.

Approximately ten months after sentencing, Mr. Castaneda Ortiz, pro se, filed a motion to withdraw his plea. CP 77-111. He argued the combined terms of confinement and community custody exceeded the statutory maximum and the plea was involuntary because he was coerced into entering a plea by the State's promise to release his son from custody. CP 80-86, 89-90; *see* CP 101-02 (portions of judgment and sentence referenced in motion). Junior's wife filed an affidavit in support, asserting she was informed by Mr. Castaneda Ortiz's defense counsel "that the State offered to release [Junior] in exchange for the plea of guilt [sic] entered by my father-in-law. . . . [Defense counsel] also stated in my presence that if [Junior] was not released as agreed to by [the prosecutor], he would bring my father-in-law back and reopen the case." CP 204; *see* CP 203-06. She notes her husband was not released following Mr. Castaneda Ortiz's plea. CP 205. Junior also submitted an affidavit attesting to his acceptance of responsibility for "all issues" deriving from the search of his home. CP 202.

The State responded by moving to amend the judgment and sentence to remove the term of community custody and opposed withdrawal of the plea. CP 189-93. At the initial hearing, the court granted the State's motion and continued Mr. Castaneda Ortiz's motion because his attorney had not had adequate opportunity to consult with him and research the issues raised. CP 194-95; 1/11/13 RP 4-9. The court recollected "that part of [the plea], I believe, was based on Mr. Castaneda Ortiz's intent that his son be – his sentence be reduced and his son get out of prison more quickly." 1/11/13 RP 8. At the continued hearing, the court denied Mr. Castaneda Ortiz's motion to withdraw his plea finding insufficient showing of "manifest injustice." CP 196; 1/25/13 RP 2-8.

E. ARGUMENT

**Mr. Castaneda Ortiz's guilty plea was involuntary.**

1. The plea was involuntary because Mr. Castaneda was misinformed about the term of community custody.

Due process demands that a guilty plea be knowing, intelligent, and voluntary. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re the Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *see* U.S. Const. amend. XIV. A guilty plea based on misinformation of sentencing consequences is not

knowing or voluntary. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). “[T]he length of the sentence is a direct consequence of pleading guilty.” *State v. Mendoza*, 157 Wn.2d 582, 590, 141 P.3d 49 (2006). Community custody is a direct consequence of a plea, and misinformation about community custody renders a resulting plea involuntary. *Isadore*, 151 Wn.2d at 302; *cf. Mendoza*, 157 Wn.2d at 584 (“We hold that where a guilty plea is based on misinformation regarding the direct consequences of the plea . . . the defendant may withdraw the plea based on involuntariness.”).

Mr. Castaneda Ortiz was misinformed about the term of community custody that could be imposed. The prosecutor was clear that Mr. Castaneda Ortiz’s term of confinement would reach the ten-year statutory maximum. CP 52-54; 8/26/11 RP 3-5. The prosecutor was equally clear that he was seeking a full 12-month term of community custody. *Id.* No one told Mr. Castaneda Ortiz that the combined terms of confinement and community custody, as imposed by the trial court, could not exceed the ten-year statutory maximum. But the law required as much. RCW 9.94A.701(9); *State v. Boyd*, 174 Wn.2d 470, 275 P.3d 321 (2012); *State v. Franklin*, 172 Wn.2d 831, 839-41, 263 P.3d 585 (2011). His guilty plea included misinformation

about the term of community custody, and an illegal sentence was imposed after he pled. His guilty plea is involuntary. *See Isadore*, 151 Wn.2d at 302; *Mendoza*, 157 Wn.2d at 584.

2. The remedy for an involuntary plea based on misinformation is withdrawal of the plea.

An involuntary plea is a manifest injustice. *E.g.*, *Isadore*, 151 Wn.2d at 298; *State v. Walsh*, 143 Wn.2d 1, 6, 17 P.3d 591 (2001). Criminal Rule 4.2(f) requires a trial court to allow withdrawal of the plea to correct a “manifest injustice.” CrR 4.2; *Mendoza*, 157 Wn.2d at 587. Accordingly, a trial court must permit withdrawal of a guilty plea where the defendant entered the plea involuntarily. CrR 4.2(f); *State v. Wakefield*, 130 Wn.2d 464, 474-75, 925 P.2d 183 (1996).

As discussed, a defendant’s guilty plea is involuntary when “based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated.” *Mendoza*, 157 Wn.2d at 591. A defendant who seeks to withdraw a guilty plea based on misinformation need not establish a causal link between the misinformation and his decision to plead guilty. *Id.* at 590-91. This was the clear holding of *Isadore*: “We hold that a defendant who is misinformed of a direct consequence of his guilty plea need not make a special showing of materiality in

order to be afforded a remedy for an involuntary plea.” 151 Wn.2d at 296.

In *Isadore*, the defendant signed a plea form that left the community placement and supervision boxes blank. 151 Wn.2d at 297. When the trial court inquired whether community placement was part of the sentence, the prosecutor responded it did not apply. *Id.* One-and-one-half years later, the Department of Corrections informed the prosecutor’s office that the sentence should include one year mandatory community placement and the State moved to amend the sentence, which the trial court granted. *Id.* In a personal restraint petition, the defendant asked to strike the amended sentence and specifically enforce the agreement. *Id.* In reviewing the appeal, our Supreme Court reasoned that community placement is a direct consequence of a guilty plea, and the plea is invalid constitutionally and by court rule if the defendant is misinformed about such a direct consequence. *Id.* at 298 (citing case law and CrR 4.2(f)). Therefore, the plea is invalid and the defendant is entitled to elect between withdrawing his plea and specific performance. *Id.* at 302.

In so holding, *Isadore* specifically rejected the State’s argument that the defendant needs to show the misinformation was material to his

decision to plead: “We decline to adopt an analysis that requires the appellate court to inquire into the materiality of mandatory community custody placement in defendant’s subjective decision to plead guilty. This hindsight is one that appellate courts should not undertake.” 151 Wn.2d at 302. This holding is not an outlier. *E.g.*, *Mendoza*, 157 Wn.2d at 590 (discussing this holding of *Isadore* and applying where standard range is actually lower than information provided during plea); *State v. Barber*, 170 Wn.2d 854, 855, 858, 248 P.3d 494 (2011) (affirming holding and considering reach of right to alternative specific performance relief); *In re Pers. Restraint of Bradley*, 165 Wn.2d 934, 939-41, 205 P.3d 123 (2009) (relying on *Isadore* for proposition that defendant need not show materiality or practical effects of misinformation).

*Isadore* controls here. Like Mr. Isadore, Mr. Castaneda Ortiz was misinformed about the term of community custody that could accompany his sentence. The community custody term is a direct consequence of the plea. Mr. Castaneda Ortiz, like Mr. Isadore and Mr. Mendoza, is entitled to elect the remedy of withdrawing the plea. *Isadore*, 151 Wn.2d at 302; *Mendoza*, 157 Wn.2d at 591 (“Absent a showing that the defendant was correctly informed of all of the direct

consequences of his guilty plea, the defendant may move to withdraw the plea.”).

3. This rule has not been overruled by recent case law, which is inapplicable here.

In two recent cases, our Supreme Court required a showing of prejudice before allowing withdrawal of a guilty plea. *In re Pers. Restraint of Yates*, No. 87518-9, \_\_\_ Wn2d \_\_\_, 2014 WL 1097989, \*3-4 (Mar. 20, 2014); *In re Pers. Restraint of Stockwell*, \_\_\_ Wn.2d \_\_\_, 316 P.3d 1007 (2014). But these cases are limited to their particular circumstances and do not overrule any prior cases, such as those relied on above. *See generally id.*; *accord Yates*, 2014 WL 1097989, at \*5 (Stephens, J. concurring) (noting “*Stockwell* did not purport to overrule any cases”).<sup>3</sup> The circumstances at bar do not resemble *Stockwell* or *Yates*.

*Stockwell* and *Yates* are distinguishable because both involved errors in the statutory maximum. *Stockwell*, 316 P.3d at 1009, 1012, 1015; *Yates*, 2014 WL 1097989, at \*3. *Stockwell* held that a “PRP petitioner seeking to withdraw a plea based on a misstatement of the

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<sup>3</sup> Our Supreme Court knows how to articulate when it is overruling precedent. *Compare Barber*, 170 Wn.2d at 855, 872-74 (making explicit the overruling of a prior case), 863 (discussing importance of stare decisis and reluctance to depart from former decisions) *with generally Stockwell*, 316 P.3d 1007 (overruling no cases).

statutory maximum is required to satisfy the actual and substantial prejudice standard on collateral attack.” 316 P.3d at 1015. The error here is in the term of community custody and the imposition of a sentence in excess of the statutory maximum. *Yates* and *Stockwell* do not control.

Moreover, Mr. Stockwell and Mr. Yates raised errors long after their first opportunity for review. Mr. Stockwell pled guilty in 1986, completed the terms of sentence and was discharged in 1989, was convicted in 2004 of a subsequent offense as persistent offender, then filed a PRP raising issues regarding the 1986 plea for first time. *Stockwell*, 316 P.3d at 1009-10. Similarly, Mr. Yates pled guilty in 2000, was subsequently convicted of other crimes, appealed those convictions and collaterally attacked those convictions, all before challenging the 2000 plea. *Yates*, 2014 WL 1097989, at \*1. In neither case had the law changed immediately before the defendant filed the attack on his guilty plea.

In *Isadore*, the Court held that the threshold personal restraint petition requirements need not be satisfied where the petition is the defendant’s first opportunity to raise the claim. 151 Wn.2d at 298-300; *see Yates*, 2014 WL 1097989, at \*3 (“circumstances of [*Isadore*]

compelled court to apply direct appeal standard rather than personal restraint petition standard). Unlike *Stockwell* and *Yates* but like *Isadore*, Mr. Castaneda Ortiz moved to withdraw his plea as soon as he realized the misinformation he had received and the erroneous sentence. At the time of the plea, apparently neither the State nor defense counsel was aware of 2009 amendments to RCW 9.94A.701(9). See Laws of 2009, ch. 375, § 5. The parties indicated the same misunderstanding at sentencing in August 2011, with the court concurring in and entering the illegal sentence. Where neither the parties nor the court were aware of the error, Mr. Castaneda Ortiz himself can hardly be held to a higher standard. See *State v. Codiga*, 162 Wn.2d 912, 928-29, 175 P.3d 1082 (2008) (defendant should not be charged with knowing legal effects of sentencing scheme). Moreover, Division Two affirmed the practice utilized by Castaneda Ortiz's trial court well after the 2009 amendments took effect. *State v. Boyd*, 164 Wn. App. 1014, 2011 WL 4790964, \*4-5 (2011), reversed by 174 Wn.2d 470, 275 P.3d 321 (2012).<sup>4</sup>

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<sup>4</sup> Appellant does not cite to the Court of Appeals decision in *Boyd* as authority, but merely to show the state of the law in this Court at the time. See General Rule 14.1(a); *State v. Evans*, 177 Wn.2d 186, 196 n.1, 298 P.3d 724 (2013) (citing to unpublished case, not as authority, but to show effect in actual practice).

The time for direct appeal passed without any uncovering of the error. In May 2012, our Supreme Court conclusively held, in *State v. Boyd*, that a trial court may not impose a term of confinement that together with the term of community custody exceeds the statutory maximum and it may not make the term of community custody contingent on the length of confinement actually served. 174 Wn.2d 470. Two months later, Mr. Castaneda Ortiz filed the instant motion noting the illegality in the sentence. CP 77-85. Unlike *Yates* and *Stockwell*, Mr. Castaneda Ortiz promptly contested the error.

Further unlike *Stockwell*, Mr. Castaneda Ortiz received an unlawful sentence. Mr. Stockwell received and completed a statutorily authorized sentence well before he filed a motion to withdraw the guilty plea. 316 P.3d at 1009-10. Mr. Castaneda Ortiz, on the other hand, was sentenced to an illegal sentence, and he remains in confinement.

*Isadore* is indistinguishable and controls the outcome here.

*Yates* and *Stockwell*, on the other hand, are inapplicable.

4. Even if the practical effects rule of *Stockwell* applies, Mr. Castaneda Ortiz is entitled to withdraw his plea.

The State is nonetheless likely to argue Mr. Castaneda Ortiz must show prejudice prior to being allowed to withdraw his plea. Even

under that standard, the remedy must be accorded. In *Stockwell*, our Supreme Court explained that the “consideration of actual and substantial prejudice . . . looks to the practical effects of a sentence. . . . the practical effects that resulted from error.” 316 P.3d at 1015.

Mr. Castaneda Ortiz was told that he would be sentenced to a statutory maximum term of incarceration plus a term of community custody. CP 53-54; IX RP 1012. Community custody appears to have been important to the prosecutor, who requested 12 months to include participating in a drug treatment program, and the trial court, which imposed the full 12 months. CP 54, 67; 8/26/11 RP 5. If Mr. Castaneda Ortiz had been properly informed that any term of community custody, let alone 12 months, could only be imposed if he received a corollary reduction in the term of confinement, he would have been in a position to negotiate a better sentence.

Moreover, Mr. Castaneda Ortiz was never apprised of what a legal sentence would be. In *Hews*, our Supreme Court found no prejudice because, although the defendant expressed confusion as to an element of the offense, the element was in the amended information that had been reviewed with the defendant, the trial court specifically informed him of the element, and his attorney verified that he

understood the elements of the charge and his plea was otherwise voluntary. *In re Pers. Restraint of Hews*, 108 Wn.2d 579, 581-83, 594-96, 741 P.2d 983 (1987). Here, on the other hand, Mr. Castaneda Ortiz's plea was based solely on misinformation—neither the prosecutor nor defense counsel appeared aware of the proper sentence or relayed it to Mr. Castaneda Ortiz; the trial court provided the same misinformation during the plea colloquy; and the trial court sentenced Mr. Castaneda Ortiz to an illegal sentence. His plea was undoubtedly based on the misinformation.

5. Mr. Castaneda Ortiz is entitled to withdraw the plea on the independent ground that promises of early release of his son coerced him to plead.

A plea may also be rendered involuntary through coercion. *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984); *Brady v. United States*, 397 U.S. 742, 749, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). The coercion does not need to derive from the State itself. *Osborne*, 102 Wn.2d at 97. Plea deals that involve relief to a third party are particularly susceptible to coercion. *State v. Cameron*, 30 Wn. App. 229, 231, 633 P.2d 901 (1981). Here, Mr. Castaneda Ortiz was coerced to plead guilty because he believed it would secure the

release of his son, who had earlier pled guilty and was sentenced to five years incarceration. 1/25/13 RP 2-6; CP 80-86, 89-90, 204.

Admittedly, during the plea colloquy and in the agreement, Mr. Castaneda Ortiz indicated he entered the plea freely and voluntarily and without promises external to the agreement. CP 58; IX RP 1011-12. However, Mr. Castaneda Ortiz's denial of improper influence at the time of the plea does not preclude a subsequent argument of coercion. *Osborne*, 102 Wn.2d at 97. Such denial is highly persuasive, but is not conclusive evidence that the plea was voluntary. *Id.* A defendant's bare, post-plea assertions of coercion may not alone be enough to overcome a plea colloquy denial of improper influence. *Id.* at 96-97. But Mr. Castaneda Ortiz comes to this Court with much more. First, the record from the time period surrounding the plea makes clear that Mr. Castaneda Ortiz's son was the primary motivator for entry of a plea. IX RP 998-1007.

Further, when the parties were back before the court on Mr. Castaneda Ortiz's motion to withdraw, over a year later, the trial judge recalled Mr. Castaneda Ortiz's son's situation as the driving influence. 1/11/13 RP 8; 1/25/13 RP 4.

In addition to this compelling evidence, third-party declarations support the conclusion that the plea was coerced by Mr. Castaneda Ortiz's concern for the State's treatment of his son's case. CP 202-06.

Further, Mr. Castaneda Ortiz confirmed by affidavit that he was coerced. CP 80-81 (attesting that motion has merit and daughter-in-law was witness to events forming basis for withdrawal). And he argued in his pro se motion to withdraw that his plea was coerced by the prosecutor's promise to release his son from custody. CP 83.

Likewise, although the trial judge knew that Mr. Castaneda Ortiz's concern for his son influenced his decision to plead, the court never inquired into the degree of influence or otherwise examined its impact on the plea. *See generally* IX RP 1008-21; *State v. Williams*, 117 Wn. App. 390, 399-400, 71 P.3d 686 (2003) (discussing need for trial court to probe deeply into possible coercion where plea involves third party).

Where, to prove coercion, a defendant must present some evidence of involuntariness beyond his own self-serving statement, Mr. Castaneda Ortiz has substantially overcome that bar. *See Osborne*, 102 Wn.2d at 97. The contemporaneous record and post-sentencing motion evidence cast substantial doubt on the voluntariness of Mr. Castaneda Ortiz's plea, and he should be allowed to withdraw. *See Wakefield*, 130

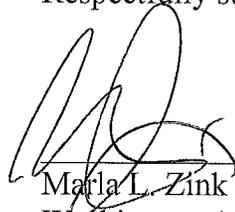
Wn.2d at 474-76 (defendant must be allowed to withdraw plea where broken promise by trial court to impose standard range sentence cast significant doubt on its voluntariness).

F. CONCLUSION

Mr. Castaneda Ortiz's plea was involuntary because he was misinformed about a direct consequence, the term of community custody. Independently or in the cumulative, the plea was involuntary because it was coerced by Mr. Castaneda Ortiz's concern for the early release of his son. The trial court violated CrR 4.2(f) and allowed an unconstitutional plea to stand when it denied Mr. Castaneda Ortiz's motion to withdraw. This Court should reverse and remand for Mr. Castaneda Ortiz to withdraw his plea.

DATED this 8th day of April, 2014.

Respectfully submitted,



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Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 44496-8-II
	)	
JOSE CASTANEDA ORTIZ,	)	
	)	
Appellant.	)	

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# WASHINGTON APPELLATE PROJECT

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