

NO. 29252-5-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

JOSE LUIS RODRIGUEZ GUZMAN,

Appellant.

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

The Honorable Ruth E. Reukauf

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant's Alford plea is constitutionally invalid because it was not knowing, voluntary, and intelligent.

2. The trial court erred in denying appellant's motion to withdraw his plea because his plea was involuntary.

Issue Pertaining to Assignments of Error

Must appellant's guilty plea be vacated where the trial court erred in denying appellant's motion to withdraw his Alford plea because the plea was involuntary and consequently withdrawal was necessary to correct a manifest injustice?

B. STATEMENT OF THE CASE¹

1. Procedural Facts

On March 10, 2010 the State charged appellant, Jose Luis Rodriguez Guzman, with one count of first degree murder while armed with a deadly weapon other than a firearm and armed with a firearm. CP 1. The State amended the information on April 9, 2010, charging Guzman with one count of first degree murder while armed with a deadly weapon and a firearm acting as a principal or an accomplice. CP 5-6. On June 25, 2010, Guzman entered an Alford plea to a second amended information,

¹ There are two volumes of verbatim report of proceedings: 1RP - 06/25/10, 07/02/10; 2RP - 07/09/10.

which charged him with second degree murder while armed with a deadly weapon other than a firearm. CP 12, 13-24. The court sentenced Guzman to 208 months in confinement with 24 months of community custody on July 9, 2010 and he filed a timely notice of appeal. CP 29-35, 42.

2. Substantive Facts

At Guzman's plea hearing, he appeared before Judge Reukauf, with the assistance of a certified court interpreter. 1RP 2. The court informed Guzman that his attorney indicated that he discussed the second amended information with him and that the court did not need to read the information out loud or re-advise him of his constitutional rights. The court asked Guzman if that was correct and he replied, "A little." 1RP 3. The court rephrased its question and Guzman responded, "That's fine." 1RP 3. The court then asked Guzman if he intended to plead guilty to the charge and he replied, "Well, it also depends on the time that they're going to want to give me." 1RP 3-4. In light of Guzman's response, the court explained what constitutes an Alford plea, the terms of the plea agreement, the State's recommendation, and that the judge would determine the actual sentence. 1RP 4-5. The court asked Guzman if he still wanted to take advantage of the State's offer, he replied, "But they're not sure how much it's going to be." 1RP 5. Unsatisfied with Guzman's response, the court continued its colloquy with Guzman and he

acknowledged that he was freely and voluntarily pleading guilty by way of an Alford plea. 1RP 5-8. The court reviewed the Statement of Defendant on Plea of Guilty and asked Guzman if he had “[a]ny questions about what you’re doing today”? 1RP 12. Guzman replied, “I’ll think about it later.” 1RP 12. The court told Guzman to think about it now because if he was not sure about his decision, it would not take his plea. 1RP 12. Guzman responded, “Well, I don’t have any questions right now.” 1RP 12. Upon receiving Guzman’s reassurance that he wanted to proceed, the court accepted his plea and found him guilty of second degree murder. 1RP 12-13. The court asked Guzman if he had any questions and Guzman replied, “Well, I was supposed to be sentenced today also. That’s the reason I was pleading guilty.” 1RP 13. The court told Guzman that he would be sentenced on July 2nd and receive credit for time served. 1RP 13.

On July 2, 2010, Guzman appeared before Judge Lust, with the assistance of a court interpreter. 1RP 16-17. The State informed the court that Guzman wanted to withdraw his guilty plea and argued that the court should deny his motion. The State introduced a tape of the plea hearing which it attempted to play for the court. However, because the interpreter could not understand the recording, the court determined that a transcript of the plea hearing was necessary to rule on the motion and concluded the hearing. 1RP 18-22.

On July 9, 2010, Guzman appeared before Judge Reukauf, with the assistance of a court interpreter, on a motion to withdraw his guilty plea. 2RP 2. The court read Guzman's declaration which stated the basis for moving to withdraw his plea. Guzman's declaration explained that because the judge was "very forceful," he "got scared" that she would impose a longer sentence. He "felt cornered" so he answered "yes" to her questions. The interpreter was talking too fast and too quietly so he did not understand the proceedings. He believed the State's offer was for 158 months and that he would be sentenced the same day as the plea. 2RP 6.

The court asked Guzman if there was anything else he wanted the court to consider and Guzman responded that he misunderstood the discussions he had with his attorney and he did not feel his attorney was properly representing him. 2RP 7-8. The court discussed the colloquy that it conducted with Guzman at the plea hearing, noting that Guzman never expressed any concerns about his attorney or the proceedings or that he could not understand the interpreter. 2RP 8-15. The State argued that Guzman's motion should be denied because he "has failed at his heavy burden of trying to withdraw his plea." 2RP 15-16. Stating that it reviewed the transcript of the plea hearing, the court concluded that Guzman entered a knowing, intelligent, and voluntary plea and denied his motion to withdraw his plea. 2RP 16-17. Thereafter, the court imposed a

sentence of 208 months with 24 months of community custody. 2RP 26-29.

C. ARGUMENT

THE TRIAL COURT ERRED IN DENYING GUZMAN'S MOTION TO WITHDRAW HIS ALFORD PLEA BECAUSE IT WAS INVOLUNTARY AND CONSEQUENTLY A WITHDRAWAL WAS NECESSARY TO CORRECT A MANIFEST INJUSTICE.

Guzman's guilty plea must be vacated where the trial court erred in denying his motion to withdraw his Alford plea because his plea was involuntary and consequently a withdrawal was necessary to correct a manifest injustice.

Due process requires an affirmative showing that a guilty plea is knowing, voluntary, and intelligent. U.S. Const. amend. 14; Wash. Const. art. I, section 3; Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); In re Personal Restraint of Isadora, 151 Wn.2d 294, 297, 88 P.3d (2004). The State bears the burden of proving the validity of a guilty plea. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

Under North Carolina v. Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), a defendant may voluntarily, knowingly, and intelligently plead guilty even if he is unable or unwilling to admit that he participated in the acts constituting the crime. "When a defendant makes an *Alford* plea, the trial court must exercise extreme care to ensure that the

plea satisfies constitutional requirements.” In re Personal Restraint of Montoya, 109 Wn.2d 270, 277-78, 744 P.2d 340 (1987)(citing State v. Newton, 87 Wn.2d 363, 373, 552 P.2d 682 (1976)). “An *Alford* plea is inherently equivocal in the sense that the defendant pleads guilty without admitting guilt.” Montoya, 109 Wn.2d at 280.

CrR 4.2(d) mandates that a trial 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.” One purpose of this rule is to fulfill the constitutional requirement that a guilty plea be made voluntarily. In re Personal Restraint of Keene, 95 Wn.2d 203, 206, 622 P.2d 360 (1980)(citing McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); Wood v. Morris, 87 Wn.2d 501, 554 P.2d 1032 (1976)). Failure to comply fully with CrR4.2 requires that the defendant’s guilty plea be set aside and his case remanded so that he may plead anew. Wood, 87 Wn.2d at 511.

The trial court can allow a defendant to withdraw his guilty plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” CrR 4.2(f); State v. Codiga, 162 Wn.2d 912, 922-23, 175 P.3d 1082 (2008). The Washington Supreme Court has recognized four circumstances as amounting to manifest injustice: the denial of effective

assistance of counsel, the defendant's failure to ratify the plea, an involuntary plea, and the prosecution's breach of the plea agreement. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006)(citing State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996)).

The record here substantiates that the trial court erred in denying Guzman's motion to withdraw his Alford plea because it was involuntary. "An involuntary plea produces a manifest injustice to permit withdrawal." Ross, 129 Wn.2d at 284. It was evident throughout the plea hearing that Guzman was apprehensive and uncertain about pleading guilty. When the court asked him if his attorney was correct in advising the court that he discussed the second amended information with him, Guzman responded, "A little." 1RP 3. He was concerned about the sentence that he would receive, stating that his decision to plead guilty "depends on the time that they're going to give me" and "they're not sure how much time it's going to be." 1RP 3-5. He told the court that the reason why he was pleading guilty was because he "was supposed to be sentenced today also." 1RP 13. When the court asked Guzman if he had any questions about what he was doing, he replied, "I'll think about it later." 1RP 12. Given Guzman's indecisiveness and inconsistent responses, his plea clearly failed to meet the due process requirement of an affirmative showing that a guilty plea is knowing, voluntary, and intelligent. Boykin v. Alabama, 395 U.S. at 242.

Furthermore, as the Washington Supreme Court warned in Newton, “[w]hen a defendant seeks to plead guilty while protesting his innocence, the trial judge is confronted with a danger signal. It puts him on guard to be extremely careful.” 87 Wn.2d at 373. In light of the danger signals triggered by Guzman’s equivocal responses during the court’s entire colloquy, the court erred in proceeding to accept his plea thereby disregarding its duty to exercise extreme caution when accepting an Alford plea.

In moving to withdraw his plea, Guzman explained that he was afraid of the judge, he felt pressured, and that the interpreter was talking too fast and too quietly for him to fully understand the proceedings. 2RP 6. Under the totality of the circumstances, especially where Guzman entered an Alford plea which is inherently equivocal and the critical fact that he needed to rely on the interpreter, it is evident that his plea is constitutionally invalid because it was not knowing, voluntary, and intelligent.

Consequently, the trial court erred in denying Guzman’s motion to withdraw his plea because withdrawal was necessary to correct a manifest injustice and therefore his plea must be vacated.

D. CONCLUSION

For the reasons stated, this Court should vacate Mr. Guzman's plea and remand his case to the trial court.

DATED this 22nd day of October, 2010.

Respectfully admitted,


VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, Jose Luis Rodriguez Guzman

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kevin Eilmes, Yakima County Prosecutor's Office, 128 North Second Street, Room 211, Yakima, Washington 98901 and Jose Luis Rodriguez Guzman, DOC # 316379, Washington Corrections Center, P.O. Box 900, Shelton, Washington 98584.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of October, 2010 in Kent, Washington.



VALERIE MARUSHIGE

WSBA No. 25851

Attorney at Law