

**FILED**

JUL 06 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

No. 292525

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

JOSE LUIS RODRIGUEZ GUZMAN,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE RUTH REUKAUF, JUDGE

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BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether the *Alford* plea of Appellant Jose Luis Rodriguez Guzman, was knowing, voluntary, and intelligent?
2. Whether the trial court abused its discretion in denying Guzman's motion to withdraw his *Alford* plea?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. Guzman's *Alford* plea was knowing, voluntary and intelligent, as the court engaged in a lengthy colloquy with Guzman, in which he demonstrated his understanding of the consequences of his plea, and reiterated his intent to have the court accept the plea.
2. As the *Alford* plea was constitutionally valid, the court did not abuse its discretion in denying Guzman's motion to withdraw it.

II. STATEMENT OF THE CASE

For purposes of this Motion, the Respondent does not dispute the Appellant's Statement of the Case, but will supplement that narrative herein. RAP 10.3(b)

### III. ARGUMENT

**1. The trial court did not abuse its discretion in denying the motion to withdraw the *Alford* plea, as Guzman has not demonstrated that a manifest injustice occurred, or that the plea was not knowing and voluntary.**

A trial court's decision on a motion to withdraw a guilty plea is reviewed 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 adopts a position which is manifestly unreasonable or based on untenable grounds or reasons. State v. Valdobinos, 122 Wn.2d 270, 279, 858 P.2d 199 (1993), (*citing* State ex rel. Carroll v. Junker 79 Wn.2d 12, 482 P.2d 775 (1971)).

Due process requires that a guilty plea be “knowing, voluntary, and intelligent.” In re Personal Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004), *citing* Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969) Accordingly, before accepting a plea of guilty, a court must first determine “that it is made voluntarily, competently and with an understanding of the nature of the charges and the consequences of the plea.” CrR 4.2(d). The reviewing court looks to the totality of the circumstances to determine whether a defendant knowingly, intelligently, and voluntarily entered a plea. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996), State v. Mendoza, 157 Wn.2d

582, 587, 141 P.3d 49 (2006). There is a strong public interest in the enforcement of plea agreements when they are voluntarily and intelligently made. State v. Walsh, 143 Wn.2d 1, 6, 17 P.3d 591 (2001), *cited in* State v. Codiga, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008).

A trial court will allow withdrawal of a guilty plea only to correct a manifest injustice. CrR 4.2(f); State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). The defendant bears the heavy burden of demonstrating a manifest injustice, which must be obvious and overt. State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). An involuntary plea constitutes such a manifest injustice. Taylor, 83 Wn.2d at 597.

When a defendant completes a plea statement and admits to reading, understanding, and signing it, it creates a strong presumption that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Further, when a trial court verifies the criteria of voluntariness in a colloquy with the defendant, the presumption of voluntariness is “well nigh irrefutable.” State v. Perez, 33 Wn. App. 258, 262, 654 P.2d 708 (1982).

The fact that an *Alford*<sup>1</sup> plea is equivocal does not render an otherwise voluntary and intelligent plea invalid. The issue is whether the defendant understood the plea proceedings and made an intelligent and

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<sup>1</sup> North Carolina v. Alford, 499 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

voluntary choice between his or her alternative courses of action. State v. Hubbard, 106 Wn. App. 149, 155, 22 P.3d 296, *review denied*, 145 Wn.2d 1004, 35 P.3d 380 (2001), In re Montoya, 109 Wn.2d 270, 280, 744 P.2d 340 (1987).

On appeal, Guzman asserts that the court erred in denying his motion to withdraw his *Alford* plea, since the plea itself was not knowing, voluntary and intelligent. In his motion before the trial court, he maintained that he was afraid of the judge, he felt pressured, and the court interpreter spoke too fast and too quietly for him to fully understand the proceeding. **(2 RP 6)**

What the record reveals, however, is an exhaustive colloquy between the court and Mr. Guzman, during which he was given multiple opportunities to halt the proceedings and place his case back on a trial track. Indeed, the court expressly stated that it would not accept the plea if Mr. Guzman felt unsure or hesitant about it: “We’re going to go back one more time because a charge this serious, Mr. Rodriguez, I’m not taking a plea that is put into question in any way, shape or form because if you don’t want to do this today, I’m great with that.” **(1 RP 5)** Mr. Guzman stated that he was entering his plea freely and voluntarily, that he was not doing so as a result of threats or promises, and that he had enough time to discuss his decision with his attorney. He was thoroughly advised of all

consequences of his plea, that his standard range was 158 to 258 months with the sentencing enhancement, and he acknowledged that regardless of what his and the State's recommendations would be, the court would ultimately decide the actual sentence. **(1 RP 3-11)**

Ultimately, when asked if he had any questions, the following exchange occurred:

THE COURT: Any questions about what you're doing today?

MR. GUZMAN: I'll think about it later.

THE COURT: No, you think about it now because I'm not going to take your plea because once I sign this document, Mr. Rodriguez, this is a done deal. So if you're having hesitations don't continue to sit up here and tell me you're okay with this. You need to be sure about this decision. If you're not sure about it, I'm not taking your plea today. Your call.

MR. GUZMAN: Well, I don't have any questions right now.

THE COURT: Okay. So this is what you still want to do?

MR. GUZMAN: Yes.

THE COURT: He's answered any questions you have?

MR. GUZMAN: Yes.

THE COURT: And you still want to proceed forward today?

MR. GUZMAN: Yes.

**(1 RP 12)**

In considering Guzman's subsequent motion to withdraw his plea, the court correctly pointed out that the defendant had a heavy burden in demonstrating a manifest injustice. Further, the court made the following observations:

THE COURT: All right. Let me ask you a couple questions. The declaration didn't really address any concerns about your attorney. So this is new information.

What I recall, Mr. Rodriguez Guzman, is it was a very thorough plea hearing. I gave you three separate opportunities to stop the proceedings and go have further discussions with your attorney because I stated to you more than once that I had to make a finding that the plea was going to be entered knowingly, intelligently and voluntarily.

At every point that you hesitated, I, again, emphasized to you that you did not need to proceed forward with the plea, that I would be happy to set the matter for trial, at which point the codefendant was going out to trial the following week and certainly could have been addressed accordingly. You repeatedly assured me that you wanted to go forward.

**(2 RP 8-9)**

The court further observed that Mr. Guzman gave no indication that he was not understanding the interpreter during the plea hearing, and in fact, he answered all the questions posed to him. He never indicated any concerns about his attorney, who negotiated a significant reduction in

the seriousness of the charge, or his interaction with the court. (2 RP 10-13)

That the plea hearing was thorough is an understatement. Mr. Guzman did not meet his burden of demonstrating a manifest injustice, and the court did not abuse its discretion in denying the motion to withdraw.

#### IV. CONCLUSION

Based upon the foregoing argument, this Court should affirm the conviction.

Respectfully submitted this 5~~th~~ day of July, 2011.



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