IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

In re Personal Restraint Petition of Anthony Bradley, Petitioner.	81045-1 No 60520-8-1 Petitioners Reply To The States Response

A AUTHORITY FOR REPLY OF PETITION FROM STATE

Anthony Bradley recieved the States response to Petition NO. 60520-8-1 filed by Anthony Bradley in the State of Washington. On 11-28-2007.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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B. REPLY.

1: The State properly stated in their dispute of Bradley's plea withdrawals that CrR4.2(F) provides that Court's should allow a defendant to withdraw a guilty plea when withdrawl is neccessary to correct a "manifest injustice". However, the State has come to a false conclusion of the Proper interpertation of CrR 4.2(F) and what a manifest injustice truely is. CrR4.2(F) further states, if the defendant Pleas guilty pursuant to a plea agreement and the court later determines under RCW 9.94A.090 that the agreement is not binding. The court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. A guilty plea based on misinformation is unlawful. Misinformation of the Standard sentence range doese not bind the defendant.

RCW 9.94A.090 States (in relevant part) "The Court at the time of the plea, Shall determine if the agreement is consistant with interests of justice and with the prosecuting standards." The State conceded a miscalculation Sentence range has occured. This inconsistant with the best intrests of justice, and the pleas cannot stand. The State has improperly formulated an erroneos interpretation of CrR4.2(F) creating an erroneous conclusion. Although the State correctly stated that withdrawl of a guilty plea or pleas is neccessary,

necessary to correct a manifest injustice. The State has taken the proper interpretation out of proper context resulting in an improper conclusion. It has been decided by The WASHINGTON SUPREME COURT, as well as the APPELANT COURTS specifically DIVISION 1 that misinformation such as standard sentencing ranges constitutes a plea being made involuntary. which violates "due process" rights resulting in a manifest injustice. manifest injustice is proved by a showing that the plea is involuntary. State v. Saas, 118 wash 2d 37, 42, 820 P.2d 505 (1991); State v. Taylor, 83 Wash 2d 594, 597, 521, P.2d 699 (1974). Therefore the proper interpretation of CrR 4.2(F) in the proper light is as follows. Bradley (the defendant) has the burden of proving that a manifest has occured. The moment that a manifest is established, courts should allow the defendant (Bradley) to withdraw his plea because at that point (when the manifest is established) withdrawl is neccessary to correct the manifest injustice. A plea made involuntary by being made under misinformation is a manifest in which withdrawl is very neccessary. if requested by Bradley which is the case. The WASHIGTON SUPEME COURT and COURT OF APPEALS DIVISION 1 also agree and hold that where a guilty plea is based on misinformation including miscalculated offender scores resulting in a lower standard sentencing range than anticipated by both parties when negotiating the plea. The defendant may move to withdraw the plea based on involuntariness. DIVISION 1 further holds that a plea based on a mutual mistake about the standard sentence range may be challenged as involuntary regaurdless of wether the correct sentence range is less onerous. State v. Murphy, 119 wash. App. 805, 806, 81 P.3d 122 (2002). Misinformation pertaining to standard sentencing range regaurdless if the anticipated range is higher or lower than expected produces an involuntary plea. Due process requires that a guilty plea

be Knowing and voluntary. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.ct. 1709, 23 L.Ed.2d 274(1969) An involuntary plea produces a manifest injustice. In re Pers Restraint of Isadore, 151 wn.2d at 298 (2004) upon the finding of a manifest a plea withdrawl is neccassary to correct it. CrR 4.2(F) CrR 4.2(D) mandates that the trial court shall not enter or accept a plea of guilty without first determining that it is made voluntarily. CrR 4.2(D) a plea based on misinformation of the standard sentence range is an involuntary plea resulting in a manifest and a due process violation. Under this rule, once a guilty plea is accepted the court must allow withdrawl of the plea "to correct a manifest injustice" CrR 4.2(F) An involuntary plea is recognized as a circumstance amounting to a manifest injustice. State v. Wakefield, 130 Wash.2d 464, 472, 925 P.2d 183(1996) The State has properly conceeded that a manifest injustice has occured therefore satisfying a requirement for plea withdrawl. The defendant ordinarily has the choice of specific enforcement or withdrawl of the guilty plea, State v. Walsh 143 wn.2d 1, 8-9 17 P.3d 591 (2001). The state bears the burden of showing defendants choice of remedy is unjust. The state made no claim that plea withdrawls would be ujust or that they would be prejudiced by the withdrawls. The state merely incorrectly stated that "Bradley has failed to establish that withdrawal of his pleas is necessary to correct a manifest injustice". That statement contradicts written laws, rules, precedents, and statutes such as CrR 4.2(F). "If the prosecutions only showing is that of disappointed expectations, the defendants motion to withdraw plea should be granted". 3 American Bar Ass'n Standards for Criminal Justice, std. 14-2.1(a), at 14.54 (2d ed. 1982)

The WASHINGTON SUPREME COURT affims The COURT OF APPEALS and holds that the defendant has the option to withdraw the plea. State v. Miller, 110 Wn 2d 528, 534, 756 P.2d 122 (1988)

2. THE STATE CLAIMED BRADLEY WAS NOT PREJUDICED BY THE MISCALCULATED OFFENDER SCORE, THEREFORE SHOULD'NT BE ALLOWED TO WITHDRAW HIS PLEAS.

Being Sentenced under a miscalculated offender Score, and mis-information of Standard Sentencing ranges constitutes an involuntary Plea. Once a plea is deemed involuntary Constitutional rights are violated, and a manifest has occured. At that point prejudice is automatically established. "MANIFEST" in RAP 2.5(a)(3) means that a Showing of actual prejudice is made. State v. McFarland, 127 Wash.2d 322, 333-34, 899 P.2d 1251 (1995). It is improper for the State to conceede that a manifest injustice has occured, and also Suggest Bradley was not in anyway prejudiced by the manifest. By definition, manifest establishes prejudice.

3. A defective, invalid version of criminal history tainted and Prejudiced the whole plea bargain process.

Aside from Bradley's requested releif to have pleas withdrawn under cause numbers 02-C-04718-8 and 02-1-07413-4 for relavent Statutes, laws and Court rules. The State claimed that Bradley's cause number 02-1-07413-4 was not affected by cause number 02-C-04718-8 because the Sentence did not have a direct consequence that had a definite, immediate or automatic effect on the range of Bradley's total punishment. Bradley would first State that a very important aspect the State has over looked was wether the defendant

(Bradley) voluntarily plead guilty or not. Since its apparent Bradley's pleas are infact involuntary, imposition of those pleas cannot stand. Secound, the State failed to elaborate what a direct consequence includes in regaurds to what impact would constitute immediate or automatic effect on Bradley's punishment. A direct consequence includes the standard sentencing range. In order to plead knowingly, voluntarily, and intelligently, a defendant must be informed of each "direct consequence". Bradley was not properly informed of a "direct consequence" (standard sentencing range) because Bradleys standard sentencing range was mis-calculated due to misinformation. Therefore Bradley was not correctly informed of a "direct consequence" of his pleas. That, had a definite, immediate and automatic effect on Bradley's punishment. Further more Bradleys pleas were a result of amended information in which the original charges, sentencing circumstances such as concurant sentences, Drug Sentencing alternatives ect. were not automatic or promised by any laws or rules and the judge had the right to follow his own discretion. A plea bargain is the result of factors taken into considerations by the prosecution such as criminal history, standard sentencing ranges, and history in relation to the current offense.

Recommended Prosecuting Standards For Charging and Plea Dispositions (B)(VI) States, that "the respondents history with respect to criminal activity" (refering to plea bargains) is a factor in determining plea bargain negotiations. Using misinformation to arrive at incorrect criminal history resulting in the use of barred criminal activities prejudiced Bradley in this stage and taints the plea bargain process. The State claimed that it was certain Bradley would have to serve 87 months total confinement or a D.O.S.A. Sentence of 50.75 months total confinement and 50.75 months of

Community Custody ran concurrent therefore the lower standard range on the Possesion charge was not a consequence with a definite immediate and automatic effect on Bradley's total punishment. Bradley again answers that his plea was involuntary. Bradley further states that if given the opportunity to have the proper criminal history and sentence range considered in the plea bargain process. It would be impossible to suggest with certainty that Bradley would have been offered the same sentence range, or the same crime with extra criminal history not present for the prosecution to consider to arrive at an 87-116 month sentence range in light of less criminal history. Thus cause number 02-C-04718-8 having a direct affect on cause number 02-1-07413-4 total punishment. It is not only the standard sentence range one must consider but also the fact that juvenile felonies in Bradley's cases counted as ½ points. Therefore the state would not have the option of considering and weighing several drug convictions in relation to the current drug charges for plea bargain purposess. It is fore-seeable that the state could have been inclined to ammend cause number 02-1-07413-4 (deleivery of cocain) to a conspiricy to deleiver cocain due to less criminal history to consider which could also served the ends of justice. Lastly, Bradley contends that the misinformation of his standard sentencing range effected his decision to plead guilty, and that his pleas had not been voluntarily made. The erroneous information of the higher standard sentence range materially effected Bradley's decision to even consider a guilty plea, and the inaccurate advice of the consequences tainted Bradley's decisions. Bradley claims that under the correct sentencing range Bradley would have infact not plead guilty at all. The inaccurate "direct consequences" (standard sentence range) led Bradley to make a risk

management decision he shouldn't have had to make. That made both of Bradley's pleas involuntary and Bradleys pleas should be set aside. Bradley contends that he is infact not guilty of any of the charges but the pressure of the wrong sentencing range was the deciding factor in his pleas.

4. THE STATES INABILITY TO REFUTE BRADLEY'S CONSTITUTIONAL DUE PROCESS RIGHTS BY NOT GRANTING BRADLEY THE RIGHT TO CHALLENGE ANY OR ALL PARTS OF THE STATES VERSION OF HIS CRIMINAL HISTORY CONSTITUTES THE STATE HAS CONCEDED.

The state has failed to address Bradleys constitutional claims presented in his Personal Restraint Peteition Ground 1. By the state addmitting that his offender score has been miscalculated has proved that Bradley should have been allowed to challenge the states version of his criminal history. The state never counter argued therefore conceded to the error. (NOTE) In the states response. There is no proof of criminal history on any judgement or plea agreements. Bradley was not afforded his constitutional right. That, plus absence a response on the ground submited by Bradley should automatically be decided in favor of Bradley. The releif Bradley seeks should be respectfully granted.

C CONCLUSION

Under rule of lenity, a criminal statute is construed in favor of the accussed. In re Pers Hopkins, 137 wn.2d 897 (1999) The state has properly agreed a manifest injustice has occured which has prejudiced Bradley and violated constitutional rights. Bradley must be allowed to

use his judgement to decide wether or not he wishes to enter into Pleas using the correct sentencing standard range, and allow Bradley the right to have the prosecution not consider criminal history that should not be used when considering plea bargain agreements. The state made no argument that withdrawal of Bradley's pleas would be unjust. The remedy is to grant Bradley the choice to withdraw ~~p~~ both pleas as the law says is Bradleys right.

DATED this 11 day of December 2007

Respectfully Submitted,

by Anthony Bradley 707050

CERTIFICATE OF SERVICE BY MAIL

This is to certify and state under the penalty of perjury under the laws of the State of Washington that I have mailed a true and correct copy of the following documents(s):

Anthony Bradley's Reply to the States response to petition number 60520-8-1

By depositing in the United States mail, marked *Legal Mail,* postage prepaid, on this 11th day of December, 2007 to the following: The court of Appeals Division 1 One Union Square 600 University way Seattle wa. 98101-176

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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Respectfully Submitted,

Signature

Anthony Bradley
Printed/Typed Name

D.O.C.# 707050 Unit # R-5 Cell # H-1