

63741-0

63741-0

NO. 63741-0-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JAMES WILLIAMS,

Appellant.

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

BRIEF OF APPELLANT

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A. INTRODUCTION.

Following a nine-month period during which he was incompetent to stand trial for first degree murder, James Williams returned to court and at every turn, complained of routine and systematic abuse by King County Jail guards. Because of that abuse, Mr. Williams took every step he could to expedite his departure from the jail and the abuse he suffered. Mr. Williams directed his attorneys not to challenge his competency for fear of delaying his trial. Mr. Williams first sought a trial within a matter of weeks. He then sought to plead guilty, and insisted upon doing so immediately. Next he demanded an immediate sentencing. Each step of the way he detailed at length the abuse he was suffering, and made clear his singular goal was to escape that abuse.

The trial court accepted his plea.

As soon as Mr. Williams had been transferred to the Department of Corrections, he stated his desire to withdraw his plea claiming it was coerced by the abuse he suffered. The court denied the motion concluding, despite the record to the contrary, that there was never an indication that Mr. William's plea was motivated by anything other than his belief in his guilt.

At no point did the trial court ever determine that Mr. Williams's claim of abuse were imagined. At no point, did the trial court determine that if those claims were imagined, but nonetheless motivated Mr. Williams to plead guilty, was he truly competent to enter that plea? Whether it is the first option or the second, Mr. Williams's plea violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

B. ASSIGNMENTS OF ERROR

1. Because the record does not establish Mr. Williams's guilty plea was made free of coercion, his plea violates the Due Process Clause of the Fourteenth Amendment.

2. Because Mr. Williams was incompetent his guilty plea violates the Due Process Clause of the Fourteenth Amendment.

3. Because Mr. Williams was misadvised of the consequences of his guilty plea his plea violates the Due Process Clause of the Fourteenth Amendment..

4. In the absence of substantial evidence in the record to support it, the trial court erred in entering Finding of Fact IV.

5. In the absence of substantial evidence in the record to support it, the trial court erred in entering Finding of Fact V.

6. In the absence of substantial evidence in the record to support it, the trial court erred in entering Finding of Fact X.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. The Fourteenth Amendment Due Process Clause requires a guilty plea be entered knowingly, intelligently and voluntarily. Where a plea is the product of coercion, regardless of whether the State is aware of it, the plea is not voluntary. Where the record establishes Mr. Williams pleaded guilty to avoid abuse in the King County Jail was his plea voluntary?

2. The Fourteenth Amendment Due Process Clause prohibits the conviction of an incompetent individual. A person is incompetent where they cannot rationally assist in their defense. If Mr. Williams's claims which motivated his desire to plead guilty were imagined, was he capable of rationally assisting in his defense?

3. If the defendant is misadvised about the direct sentencing consequences, including the applicable maximum sentence for the offense and term of community custody, the resulting plea is not entered knowingly, voluntarily and intelligently. Where Mr. Williams was misadvised about the term of community

custody he would serve and the maximum sentence that could be imposed was his guilty plea invalid?

D. STATEMENT OF THE CASE.

Mr. Williams stabbed Shannon Harps on News Year Eve 2007. CP 57-59. Mr. Williams attack on Ms. Harps was completely unprovoked and without explanation. CP 59. Witnesses who heard the attack, relayed that Ms. Harps called Mr. Williams a maniac. CP 57. Witnesses who observed Mr. Williams that evening described him as “creepy.” CP 58.

Mr. Williams was charged with one count of first degree murder. CP 1-6.

On July 10, 2008, the trial court found Mr. Williams incompetent. 1RP 2.¹ The court subsequently conducted a lengthy hearing, following which it allowed Western State Hospital (Western) to forcibly medicate Mr. Williams 2RP-4RP.

Mr. Williams was returned to the King County Jail in September 2008. 1RP 7-8. However, by the time he returned to court, both parties agreed he had decompensated to the point of

¹ The Verbatim Report of Proceedings consists of five Volumes. The volume containing eight hearing dates beginning with July 10, 2008, will be cited as 1RP. The remaining four volumes will be cited chronologically as 2RP, 3RP, 4RP and 5RP.

needing to return to Western. Id. Defense counsel indicated that even when medicated Mr. Williams was completely unable to rationally assist counsel. 1RP 11. Mr. Williams was returned to Western for a 90-day competency restoration. 1RP 19.

Because of difficulties at Western, Mr. Williams was returned to the King County Jail in November 2008. 1RP 33. Western staff performed their evaluations, and presumably their restoration efforts, while Mr. Williams remained confined in the Jail. Id.

Mr. Williams returned to court in April 2009. 1RP 39. Based upon an evaluation by the staff at Western, the trial court found him competent. CP 43-44. Defense counsel complied with Mr. Williams's directive not to challenge his competency. 1RP 44.

At each of the four hearings held after his return to court in April 2009, Mr. Williams adamantly and repeatedly insisted he had suffered and continued to suffer routine abuse at the hands of King County Jail staff. 1RP 39, 43, 52-55, 62-65, 73, 103. At no point in any of those four hearings did the trial court inquire into or determine the reality of such abuse.

Approximately four weeks after he was found competent, weeks later, Mr. Williams pleaded guilty to first degree murder. CP 45-66.

Promptly after sentencing and his transfer from the King County Jail to the Department of Corrections, Mr. Williams moved to withdraw his plea. CP 91-92. The trial court denied that motion. CP 134-44.

E. ARGUMENT.

1. THE RECORD DOES NOT ESTABLISH MR. WILLIAMS'S PLEA WAS VOLUNTARY AND FREE OF COERCION.

a. To satisfy the Due Process Clause of the Fourteenth Amendment, a guilty plea must be voluntary. The Fourteenth Amendment's Due Process Clause requires that a defendant's guilty plea be knowing, voluntary, and intelligent. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). When a person pleads guilty:

He . . . stands witness against himself and he is shielded by the Fifth Amendment from being compelled to do so – hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial – a waiver of his constitutional right to trial before a jury or a judge. Waivers of constitutional rights not

only must be voluntary but must be knowing,
intelligent acts done with sufficient awareness of the
relevant circumstances and likely consequences.

Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 25
L.Ed.2d 747 (1970).

Because of the constitutional rights waived by a guilty plea,
the State bears the burden of ensuring the record of a guilty plea
demonstrates the plea was knowingly and voluntarily entered.
Boykin, 395 U.S. at 242. “The record of a plea hearing or clear and
convincing extrinsic evidence must affirmatively disclose a guilty
plea was made intelligently and voluntarily, with an understanding
of the full consequences of such a plea.” Wood v. Morris, 87
Wn.2d 501, 502-03, 554 P.2d 1032 (1976).

“[T]he agents of the State may not produce a plea by actual
or threatened physical harm or by mental coercion overbearing the
will of the defendant.” Brady, 397 U.S. at 750. “[C]oercion . . .
render[s] a guilty plea involuntary, irrespective of the State’s
involvement.” State v. Frederick, 100 Wn.2d 550, 556, 674 P.2d
136 (1983); overruled on other grounds, Thompson v. Dep’t of Lic.,

138 Wn.2d 783, 794, 982 P.2d 601 (1999).² “To hold one in prison who, through no real choice of his or her own, has been denied a fair trial, indeed denied *any trial at all*, strikes us as the ultimate injustice.” (Emphasis in original). Frederick, 100 Wn.2d at 556.

The record of Mr. Williams’s plea establishes his plea was in no circumstances the product of his free will. Either the plea was the product of the actual coercion of the State, the claimed beatings at the hands of jailers, or was the product of the same mind that adamantly believed that abuse was occurring even if it was not. But in neither circumstance can the plea be deemed voluntary.

b. Mr. Williams’s guilty plea was the product of coercion. Mr. Williams returned to court on April 8, 2009, after a several-month absence necessitated by efforts to restore him to competency. At that first hearing, he stated

They’re playing games with my life They’re beating the hell out of me here in jail. I been beat up ten times since I’ve been here. . . . I’ve got to get out of this jail before the CO’s here kill me or before I kill myself I got to get to prison so I - - I don’t get

² Thompson overruled Frederick on a procedural questions, specifically the implication in Frederick that a court’s erroneous legal conclusion in all circumstances constitutes an “injustice.” Thompson addressed that point in the context of a claim of collateral estoppel, a claim which was not at issue Frederick.

killed by these CO's here. Do you know what I'm saying? I - - I got to get out of here.

1RP 39. Mr. Williams repeated "I've got no choice but to get out of this jail before I get killed" 1RP 40. After allowing Mr. Williams to speak of the abuse he was suffering the court ended the hearing. 1RP 41.

Mr. Williams returned to court on April 22, 2009. 1RP 44. At that hearing defense counsel informed the court Mr. Williams had directed them not to challenge his competency. 1RP 44-45. After finding him competent, the court allowed Mr. Williams to address the court. Mr. Williams immediately repeated his claims of long-standing abuse in the King County Jail. 1RP 52. Mr. Williams explained the abuse was why he was insisting "this trial begin within eight weeks." 1RP 52-53. "What I'm saying is, I just don't want to languish here in jail to give them another chance to beat me up or kill me." 1RP 54. Mr. Williams offered:

If I wasn't in such a hurry to get out of here for my own safety reasons, I'd ask for another lawyer. But, the thing is, uh - - uh - - uh, my life is more important than winning this trial. And - - and - - and I want to get out of here before they kill me or make me kill myself.

1RP 55. Mr. Williams continued on that theme for the remainder of the brief hearing. RP 56-58.

Three weeks later, on May 14, 2009, Mr. Williams returned to court and stated his desire to plead guilty, and insisted that he be permitted to do so immediately, asking “there’s no way I can, uh, plead today?” 1RP 60. When the court stated it would schedule a hearing for the following week, Mr. Williams turned to his attorney asking “what about. . . asking the Judge for protection so they don’t break anymore of my fingers?” 1RP 62. Mr. Williams carefully stated his desire to plead guilty was based on his guilt but quickly added he wanted to get out of the King County Jail specifically he said: “I’m going to plead guilty because I am guilty. But, uh, also, I got problems where I been beat up 13 times here in the jail.” 1RP 63. With that, Mr. Williams again provided detailed and emphatic recitation of the abuse he had suffered and was continuing to suffer in jail. 1RP 62-65. Mr. Williams spoke of the devious manner of the abuse explaining guards broke his finger joints knowing it would be less noticeable in subsequent medical examinations. 1RP 63. Mr. Williams made clear his desire not only to plead guilty but to do so as soon as possible in order to leave the King County Jail; “I’ll take the maximum if - - if it’s sentencing is just imposed as soon as possible. 1RP 83.

As the hearing neared its end, Mr. Williams, speaking to his attorneys said,

you said you was going to say something about getting me some protection while I'm here. So you ain't said nothing yet. . . . I mean, I did what you want, going to prison and stuff.

1RP 84-85. At that point, defense counsel indicated he would file a motion to have Mr. Williams transferred. 1RP 85-85.

Mr. Williams returned to court one week later, on May 21, 2009, to enter his plea, and as soon as the court turned to him, his comments returned to the beatings he was suffering. 1RP 99. Again he explained the systematic manner in which guards broke the joints rather than the finger to evade subsequent detection by medical personnel. 1RP 103. In response to the State's suggestion that the plea could be delayed briefly to permit defense counsel to resolve his lingering doubts regarding Mr. Williams's competency, Mr. Williams emphatically stated "No." 1 RP 102. He explained

They're killing me in this fucking jail. They're breaking my bones systematically one at a time, breaking my fingers. And same fucking goon squad comes up here every day - - week and does and I can't get no help. But by the time we go to trial, I'm liable to have every fucking bone in my hands broke.

1RP 103.

The deputy prosecutor conducted a colloquy with Mr. Williams regarding the plea. 1RP 122-28. The trial court concluded his plea was made knowingly, intelligently, and voluntarily. 1RP 128

In response to Mr. Williams subsequent motion to withdraw his guilty plea and despite the above record, the court found “at no time during the May 14 hearing did [Mr. Williams] state that he was pleading guilty as a result of any perceived mistreatment.” CP 136-37 (Finding of Fact IV.) The Court found that at the May 21, hearing at which he pleaded “[a]t no time did the defendant state or suggest that his reason for pleading guilty was other than the fact that he was, in his words, “guilty.” CP 137-38 (Finding of Fact V). The court concluded Mr. Williams’s claim that his plea was coerced was factually unsupported. CP 140 (Finding of Fact X). Each of these findings is contradicted by the record.

The record of the hearings leading to Mr. Williams’s guilty plea indicate Mr. Williams’s desire to plead guilty to the charge and to do so immediately were prompted entirely by his desire to leave the King County Jail. His desire to leave the King County Jail was in turn based entirely upon the abuse he was either actually suffering or that he perceived he was suffering. If it was the former

his plea is plainly coerced. If it is the later there were serious and substantial concerns regarding his competency to enter a plea. Yet the trial court accepted the plea.

The court's subsequent findings in response to Mr. Williams's motion to withdraw that plea are focused on Mr. Williams's statements that he was guilty. Unquestionably, Mr. Williams did express his guilt for the offense. However, that is not determinative of whether a plea is voluntary and free of coercion is made from all the surrounding circumstances. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Thus, whether his plea was truly voluntary requires an examination of the circumstances surrounding the plea.

From the moment he was returned to court and found competent, Mr. Williams remained focused on a single goal: escaping the abuse he was suffering in the King County Jail. His plea, and his demand to expedite the plea and sentencing process, were wholly attributable to that goal. Mr. Williams's plea was coerced.

In its findings, the court's refers to Mr. Williams's "perceived mistreatment." See, CP 136-37 (Finding of Fact IV). The court never heard any evidence countering Mr. Williams's allegations at

the time they were made, and had no basis from which to conclude the abuse was not real. Certainly, the court never conducted any inquiry into Mr. Williams's claim. But even assuming, Mr. Williams claims were the product of delusions rather than reality, that raises a second and equally important issue regarding the validity of his plea, i.e., his competency. In either circumstance, Mr. Williams's guilty plea was not truly the product of a competent and voluntary choice.

The trial erred in refusing to allow Mr. Williams to withdraw his plea.

2. IF MR. WILLIAMS'S GUILTY PLEA WAS NOT
COERCED HE WAS INCOMPETENT TO
ENTER A GUILTY PLEA.

a. The Due Process Clause of the Fourteenth

Amendment requires a person be competent at the time they enter

a guilty plea. The Due Process Clause of the Fourteenth

Amendment prohibits the conviction of a person who is not

competent to stand trial. Drope v. Missouri, 420 U.S. 162, 171, 95

S.Ct. 896, 43 L. Ed. 2d 103 (1975); Pate v. Robinson, 383 U.S.

375, 378, 86 S.Ct. 836, 15 L. Ed. 2d 815 (1966). A person is

competent to stand trial only when he has "sufficient present ability

to consult with his lawyer with a reasonable degree of rational

understanding" and to assist in his defense with "a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed. 2d 824 (1960) (internal quotations omitted).

The competency standard for standing trial is the same as the standard required for pleading guilty. Godinez v. Moran, 509 U.S. 389, 399-400, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993); State v. Marshall, 144 Wn.2d 266, 281, 27 P.3d 192 (2010). The determination that a person is competent to enter a plea is separate from the determination that the plea is voluntary. Godinez, 509 U.S. at 400-01; but see, Marshall, 144 Wn.2d at 281 ("defendant's claim that he was not competent to enter his plea is equivalent to claiming the plea was not voluntary) (quoting State v. Osborne, 102 Wn.2d 87, 98, 684 P.2d 683 (1984)).

b. If Mr. Williams's claims of abuse were the product of delusions, he was not competent to plead guilty. A person is competent to stand trial if he understands the nature of the proceeding and is capable of rationally assisting in his own defense. The record plainly indicates Mr. Williams desire to plead guilty was motivated by his claims, whether real or imagined, of ongoing abuse in jail. If these claims were imagined, or "perceived"

as the court's findings state, they cast substantial doubt on the rationality of Mr. Williams's choice. If Mr. Williams insistence upon pleading guilty to first degree murder was based upon his imagined albeit adamant belief that he was being beaten by jail guards that decision is not rational. A "rational" choice is one that is base on reason. Webster's Third New International Dictionary, p.1885 (1993). Based upon the record, the irrationality of Mr. Williams choice was clear before, during and after the plea.

Beyond the irrationality of pleading guilty to murder based upon delusions, the parties and court expressed their own doubts of Mr. Williams's competency even after the court found him competent. And, Mr. Williams provided ample reason for such doubts.

At one point in the proceedings Mr. Williams spontaneously offered:

I - - I - - I'm trying to kill myself every time I eat food with peoples' feces and what because I'm trying to catch hepatitis or - - or - - or AIDS and stuff. And, you know, as a matter of fact I ate some shit today, had some black dude's feces in it because I thought he might have hepatitis or something.

1RP 86. Defense counsel in turn responded by stating

I'm speaking over my client at the moment. . . . I'm very aware of his mental health issues . . . and that

we have to work through that with regard to understanding what he says is knowingly and intelligently done, and what he says is an expression of his unfortunate mental issues.

1RP 87.

Expressing his ongoing doubts of Mr. William's competency prior to entry of the guilty plea defense counsel allowed "we are very close to being able to go forward with this guilty plea." Id. At the subsequent hearing, defense counsel again expressed his "reservations" and said "I'm not as comfortable as I'd like. 1RP 100-0. In fact, defense counsel asked the court to qualify the plea to permit it to be withdrawn "should information come to [the] Court . . . that there is concern for the mental conditions that brought on this . 1RP 101. The court, too, recognized the lingering doubts regarding Mr. Williams's competency, saying " there's nothing in the report that makes me think that it was an easy question for them. 1RP 57.

Because it was the product of an irrational choice, Mr. Williams was not competent to enter his guilty plea. The trial court erred in denying his motion to withdraw the plea.

3. MR. WILLIAMS WAS MISINFORMED OF THE CONSEQUENCES OF HIS GUILTY PLEA.

a. Due Process requires a defendant be properly advised of the consequences of his plea. A guilty plea is involuntary if the defendant is not properly advised of a direct consequence of his plea. State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003); State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); see also, In re the Personal Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004) (“A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences.”)

A defendant may challenge his plea even if the resulting sentence is less onerous than represented in the plea. State v. Mendoza, 157 Wn.2d 582, 591, 141 P.3d 49 (2006). Moreover, a defendant is not required to show the misinformation was material to his decision to plead guilty:

We have . . . declined to adopt an analysis that focuses on the materiality of the sentencing consequence to the defendant's subjective decision to plead guilty. . . . Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed 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. 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.

(Internal citations omitted) 157 Wn.2d at 590-91.

b. Mr. Williams was misinformed in his guilty plea of the proper term of community custody. Community placement is a direct consequence of conviction. Ross, 129 Wn.2d at 284.

Mr. Williams's Statement on Plea of Guilty provides:

For crimes committed on or after July 1, 2000, the judge will sentence me to the community custody range which is from 24 month to 48 months or up the period of earned release awarded pursuant to 9.94A.728, whichever is longer

CP 48. Pursuant to RCW 9.94A.701(1) Mr. Williams correct term of community custody is three years.

It is true, that at the time Mr. Williams pleaded guilty RCW 9.94A.701 provide for the range of community custody expressed in the plea statement. See former RCW 9.94A.701; and former RCW 9.94A.850(5). However, 16 days prior to Mr. Williams guilty plea the Governor signed Engrossed Substitute Senate Bill 5288 on May 6, 2009,. Laws 2009, ch. 375. That bill plainly stated it would take effect on August 1, 2009, and would apply retroactively to all inmates who had not yet served their term of community custody.

This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after the effective date of this section.

Id. §20; In re the Personal Restraint Petition of Brooks. 166 Wn.2d 664, 672 n.4, 211 P.3d 1023 (2009).

That bill eliminated the provision of former RCW 9.94A.701(1) which provided the term of community custody was for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer

Laws 2009, ch. 375, § 5. The statute now requires that for a serious violent offense, the term of community custody is three years. Id.; RCW 9.94A.701(1). Thus, at the time Mr. Williams entered his plea it was known that he would serve a set term of community custody of three years and not the 24 to 48 months range provided in the plea statement. Laws 2009 ch. 375, §20; Brooks. 166 Wn.2d at 672 n.4.

Mr. Williams will not serve a term of community custody of 24 to 48 months.

c. Mr. Williams was misinformed in his guilty plea of the maximum sentence. The relevant maximum sentence is a

direct consequence of a guilty plea. State v. Walsh, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001); State v. Morley, 134 Wn.2d 588, 621, 952 P.2d 167 (1998). A “defendant must be advised of the maximum sentence which could be imposed prior to entry of the guilty plea.” State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

Mr. Williams’s guilty plea states:

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I	201-374 MONTHS	48 MONTHS	LIFE years \$ 50,000
			_____ years \$ _____
			_____ years \$ _____

CP 46.

RCW 9A.20.021(a) provides the maximum terms for various degrees of felony convictions. Class A felony offenses, such as second degree assault, may be punished up to ten years in prison. Class C felony offenses have five year maximum terms.

However, as the Supreme Court ruled in Blakely v. Washington, 542 U.S. 296, 301-02, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004), while a certain imprisonment term may be permitted under RCW 9A.20.021, it is not the statutory maximum sentence

for the charged offense. Instead, the Court noted the maximum sentence was “the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.*” (Emphasis in the original.) Id.

The maximum sentence is the maximum permissible sentence the court could impose as a consequence of the guilty plea. Id. Here, the standard range is the maximum possible sentence the court may impose for the offense of which Mr. Williams was convicted. The court has authority to impose a sentence above the standard range only under the strict parameters of RCW 9.94A.535 and RCW 9.94A.537, in addition to the requirements of the state and federal constitutional guarantees of trial by jury and due process of law.

Under RCW 9.94A.537(1), the State is required to give notice it will seek a possible exceptional sentence before the entry of a guilty plea. When not sought by the prosecution, the court is only permitted to impose an exceptional sentence if the increased sentence is based on the enumerated factors in RCW 9.94A.535(2). These factors essentially require egregious criminal history that enables an offender commit “free crimes” that go unpunished and renders the standard range to be unduly trivial.

RCW 9.94A.535(2). Mr. Williams's standard range fully accounted for his criminal history of this nature and an exceptional sentence based on unscored criminal convictions would be unreasonable and unauthorized.

Because the maximum sentence that could be imposed as a consequence of the guilty plea was a standard range term, and not life or an exceptional sentence, the prosecution and court misadvised Mr. Williams of the maximum punishment he faced as a consequence of his guilty plea. State v. Knotek, 136 Wn.App. 412, 149 P.3d 676 (2006), review denied, 161 W.2d 1013(2007).

Knotek is directly on point. There the Court acknowledged that before pleading guilty, a defendant needs to understand the "direct consequences of her guilty plea, not the maximum potential sentence if she went to trial. . . ." Id. at 424 n.8. The Knotek Court further agreed that Blakely "reduced the maximum terms of confinement to which the court could sentence Knotek post-Blakely as a result of her pre-Blakely plea—[to] the top end of the standard ranges" Id. at 425. Thus, where a defendant is told the maximum sentence is life when in fact it is the top of the standard

range the defendant is misadvised of the consequences of the plea.³

In State v. Kennar, 135 Wn.App. 68, 75, 146 P.3d 125 (2006), review denied, 161 P.3d 1031 (2007), the Court ruled that the drafters of CrR 4.2 intended that a court should advise a person pleading guilty of the standard range and the statutory maximum under RCW 9A.20.021.⁴ Although CrR 4.2 does not expressly require such advice, Kennar inferred that CrR 4.2 intended such advice because the standard plea form includes such information.

³ Knotek, concluded the appellant waived the right to challenge here guilty plea because the defendant was subsequently advised that no exceptional sentence was available and at the time of sentencing she “clearly understood that Blakely had eliminated the possibility of exceptional life sentences and, thus, had substantially lowered the maximum sentences that the trial court could impose.” Id. at 426. In the case at bar, no discussion of Blakely ever occurred.

⁴ CrR 4.2 provides in pertinent part:

(d) Voluntariness. The 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. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(e) Agreements. If the defendant intends to plead guilty pursuant to an agreement with the prosecuting attorney, both the defendant and the prosecuting attorney shall, before the plea is entered, file with the court their understanding of the defendant’s criminal history, as defined in RCW 9.94A.030. The nature of the agreement and the reasons for the agreement shall be made a part of the record at the time the plea is entered. The validity of the agreement under RCW 9.94A.090 may be determined at the same hearing at which the plea is accepted.

....

(g) Written Statement. A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

Because Kennar addressed only the requirements of CrR 4.2 and did not address any constitutional claim or discuss the actual maximum sentence authorized by law as indicated in Blakely, it does not dictate the analysis or result in the case at bar. Id.

Mr. Williams was not properly informed of the consequences of his plea he must be permitted to withdraw it.

d. Because the court misinformed him of the consequences of his plea, Mr. Williams is entitled to withdraw his plea. “Where a plea agreement is based on misinformation . . . generally the defendant may choose . . . withdrawal of the guilty plea.” Walsh, 143 Wn.2d at 8 (citing State v. Miller, 110 Wn.2d 528, 532, 756 P.2d 122 (1988)). The premise of this holding is that a guilty plea is not voluntary and thus cannot be valid where it is made without an accurate understanding of the consequences. Walsh, 143 Wn.2d at 8. As Mendoza made clear, it does not matter whether the misadvisement was material to Mr. Williams’s decision to plead guilty or whether his sentence was more lenient than previously indicate. 157 Wn.2d at 590-91.

E. CONCLUSION.

For the foregoing reasons, Mr. Williams must be permitted to withdraw his plea.

Respectfully submitted this 17th day of June 2010.



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