

No. 66679-7-1

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

STATE OF WASHINGTON,
Respondent,
v.
MATTHEW CASTRO,
Appellant.

2011 NOV 14 PM 4:51
COURT OF APPEALS
STATE OF WASHINGTON

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

MR. CASTRO'S GUILTY PLEA WAS NOT
KNOWING, INTELLIGENT AND VOLUNTARY
BECAUSE HE WAS NOT INFORMED OF THE
CORRECT POSSIBLE MINIMUM TERM

Matthew Castro must be permitted to withdraw his guilty plea because he was not informed of the possible minimum term he faced as a direct consequence of his guilty plea. When he pled guilty, Mr. Castro was informed that the standard range for setting his minimum term was 67 to 89 months, but at sentencing the court determined the minimum term range was 72 to 96 months, apparently based upon a new conviction. CP 9, 38. At the plea hearing, the prosecutor explained that the prosecuting attorney's recommendation could change if Mr. Castro had additional criminal history not known at the time of the plea. 10/1/10RP 5. Neither the prosecutor nor the court, however, told Mr. Castro that the standard minimum term range could increase if additional criminal history was found. 10/1/10RP 5, 10-11.

Due process requires an affirmative showing that the defendant's guilty plea is knowing, intelligent and voluntary. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). While the court need not engage in a thorough colloquy with the defendant

when accepting a guilty plea, the court must “canvas the matter with the accused” to determine if the defendant understands the nature of the charges and the consequences of pleading guilty. In re Personal Restraint of Keene, 95 Wn.2d 203, 207, 622 P.2d 360 (1981). “When a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary.” State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998)

The prosecutor’s argument that Mr. Castro’s guilty plea was knowing, intelligent and voluntary rests entirely on the written plea statement and Mr. Castro’s acknowledgment that he read the statement. The guilty plea statement, however, was misleading. The Statement of Defendant on Plea of Guilty informed Mr. Castro that if he had criminal history not known at the time of the guilty plea, “both the standard sentence range and the prosecutor’s recommendations may increase or a mandatory sentence of life imprisonment without the possibility of parole may be required by law.” CP 10. It was not Mr. Castro’s standard sentence range that would increase based upon additional criminal history, however, but his standard minimum term range. The State’s reliance upon the written plea form thus ignores the failure of the written form to

accurately explain how additional criminal history would impact Mr. Castro's sentence.

The State's argument also fails because the prosecutor's oral statements at the time of the plea colloquy were incomplete and therefore misleading. In Smith, defense counsel articulated an erroneous legal interpretation of the guilty plea statement that was not corrected by the prosecutor or the court, leading to the conclusion that the defendant, as well as everyone else, misunderstood a direct consequence of the guilty plea. Smith, 134 Wn.2d at 853. Even though the consequence -- waiver of the right to appeal -- was correctly stated in the written plea form, the Smith Court could not conclude that the defendant knowingly, voluntarily, and intelligently waived that right. Id.

By telling Mr. Castro only that the prosecutor's recommendation might increase if additional criminal history was found, the prosecutor led Mr. Castro to believe this was not true of the standard minimum term range itself. As in Smith, this Court cannot be convinced that Mr. Castro understood this direct consequence of his plea.

A guilty plea is not voluntary unless the defendant understands the direct sentencing consequences of the plea, and

the defendant thus must be informed of all of those consequences at the time the plea is entered. Ross, 129 Wn.2d at 284. Mr. Castro was 20 years old at the time of the guilty plea and had no education beyond the 8th grade. CP 34. Because he was not clearly informed that the standard range used to set his minimum term would be increased upon the finding of additional criminal history, Mr. Castro's guilty plea was not knowing, intelligent and voluntary. His case must therefore be remanded to superior court so that he may withdraw his guilty plea. State v. Walsh, 143 Wn.2d 1, 10, 17 P.3d 591 (2001).

B. CONCLUSION

For the reasons stated above and in the Brief of Appellant, Matthew Castro asks this Court to remand his case to superior court with instructions to permit him to withdraw his guilty plea.

DATED this 14th day of November 2011.

Respectfully submitted,



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

STATE OF WASHINGTON,)

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v.)

MATTHEW CASTRO,)

Appellant.)

NO. 66679-7-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF NOVEMBER, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

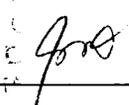
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