

W8847-2

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NO. 68847-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY WOODS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE KIMBERLEY PROCHNAU

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

LAURA A. PETREGAL
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 FEB 25 PM 3:07

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A. ISSUES PRESENTED

1. IN DECIDING TO PLEAD GUILTY, DID WOODS MATERIALLY RELY ON MISINFORMATION ABOUT A COLLATERAL CONSEQUENCE OF HIS GUILTY PLEA?

In his brief, Woods identifies one issue pertaining to error.

Woods argues that defense counsel led him to believe he would be released after serving only 10 months of a 15 month sentence.¹

Did Woods receive misinformation about his sentence and if so, did he materially rely on that information in deciding to plead guilty?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Woods with one count of Violation of the Uniform Controlled Substances Act Possession of Cocaine and one count of Violation of the Uniform Controlled Substances Act Delivery of Cocaine. CP 1, 105. Woods accepted a plea agreement in which he pled to one count of VUCSA Possession of Cocaine and a reduced charge of VUCSA Solicitation to Deliver Cocaine. CP 21-27, 126-30. Woods's Appendix B consisted of eight felonies ranging in dates from 1975-1999. CP 128-29. The

¹ Woods did not address the offender score issue and therefore, absent further direction from this court, the respondent's brief will only address the misinformation issue.

parties agreed that 4 of the priors would not score. CP 28, 127.

The concurrent offense and the remaining 4 felonies resulted in an agreed offender score of 5 and an agreed 15 month sentence recommendation. CP 28, 127.

Woods filed a timely motion to withdraw his plea claiming that he received ineffective assistance of counsel. CP 51-69. Woods offered four bases for his ineffective assistance of counsel challenge: (1) that counsel failed to challenge the inclusion of his out-of-state convictions in his offender score on the basis of reliability; (2) that counsel failed to investigate the issue of comparability of the out-of-state convictions; (3) that counsel failed to specifically object at plea or sentencing hearings to certain out-of-state convictions being deemed comparable felonies; (4) that counsel failed to advise the defendant that DOC would hold him for his full sentence unless he provided a valid address prior to release. CP 51-69.

On April 13, 2012, the trial court denied Woods's claims finding that Woods failed to prove that the out-of-state convictions were wrongly included in his offender score. CP 70-77.

On June 5, 2012, Woods filed a supplemental motion to withdraw his guilty pleas making the same claims he did in his initial

motion. CP 80-90. Additionally, he argued that he should be allowed to withdraw his guilty pleas because counsel failed to move for his immediate release at the time of sentencing. CP 80-90. The court again denied Woods's motion. CP 102.

2. SUBSTANTIVE FACTS

At the hearing on February 24, 2012, Woods did not testify. 4RP 1-41. Woods did not provide any information from the Department of Corrections about the circumstances surrounding his release. 4RP 1-41. Woods failed to offer any evidence in support of the contention that DOC failed to release him earlier due to a lack of a valid address. 4RP 1-41.

Instead, Woods presented the testimony of his prior attorney Mr. Mark Flora. Mr. Flora testified that he discussed with Woods a joint resolution of his two cases. 4RP 8. Flora discussed with Woods the risk of a lengthier sentence if he proceeded to trial and was convicted. 4RP 8. Flora recollected that Woods would have been looking at a longer sentence of about 20-60 months if he did not accept the plea. 4RP 9. Flora said he thought one of the main reasons that Woods did not want to plead guilty was because he thought the "cops were all lying." 4RP 16-17.

Flora remembered a specific conversation about how much time Woods would serve on a 15 month sentence with good time. 4RP 25. Flora recalled giving Woods the impression that “DOC would be crazy not to release him.” 4RP 25. Flora stated that he did not know why DOC did not release Woods or whether or not it was because he had an address. 4RP 25. Flora never alerted Woods that DOC might not release him without a stable address. 4RP 26. Flora thought that Woods probably had the impression that Flora could not imagine DOC not releasing him. 4RP 26. Flora stated, “I don’t know the rules with respect to DOC.” 4RP 26. Flora was aware of Mr. Woods’s housing situation. 4RP 27. He knew that at times Woods had some housing assistance. 4RP 27. Flora did not recall if the DOC release planning people were going to hook Woods back into housing programs or not. 4RP 27. No information was provided about DOC’s specific release plan as is related to Woods.

In denying his motion to withdraw the plea, the court found that Woods did not automatically or immediately lose the opportunity to be released early by pleading guilty. CP 76. The court found that Flora and Woods did not discuss the consequences of a failure to give an address that met DOC criteria.

CP 71. The court found that Woods failed to show that he was held for his full sentence because of an inadequate address as part of his release plan. CP 76. The court also found that Woods failed to show that his homeless status at the time of the plea was the reason he was held beyond his release date or that his homeless status was an immutable characteristic which triggered direct and definitive consequences. CP 78-79.

The court found that Flora knew Woods was homeless at the time of incarceration. CP 71. Flora told Woods that "DOC would be crazy not to release him on his good time date because they are going broke and gave him the impression that he would be released absent some affirmative misconduct." CP 71. The Court found that Flora did not specifically discuss with Woods the consequences of failure to give an address that met DOC criteria. CP 71. The court found that, other than argument by Woods's current counsel on the motion to withdraw, Woods failed to present any evidence as to why DOC did not release him until the completion of his full sentence. CP 72. The court found that Woods presented no evidence as to how his release plan failed to meet DOC criteria or whether something could have been modified to satisfy DOC. CP 72. The court found that Woods offered no

evidence showing that an inmate's homeless status automatically disqualifies an inmate from consideration for early release. CP 72. The court found that the fact that Woods was held for his full sentence, rather than released early, due to an inadequate release plan, was not a direct consequence of pleading guilty. CP 76.

C. ARGUMENT

1. WOODS FAILED TO ESTABLISH THAT HE RECEIVED MISINFORMATION ABOUT THE CONSEQUENCES OF HIS PLEA.

Woods seeks to withdraw his guilty plea because he claims he pled guilty based on inaccurate information from his lawyer. He claims that Flora told him that he would be released after serving 10 months of a 15 month sentence. However, although Flora gave Woods the impression that DOC would be nuts not to release him, Flora did not give any more specific assurances or information to Woods. Flora did not provide any specific misinformation about DOC release plans to Woods. Flora did not specifically discuss the consequences of failing to give DOC approved address information. Furthermore, nothing in the record shows that Woods specifically inquired about release planning.

2. MISINFORMATION ABOUT WHETHER DOC WOULD RELEASE WOODS EARLY IS COLLATERAL AND WOODS HAS FAILED TO ESTABLISH THAT HE MATERIALLY RELIED ON SUCH MISINFORMATION IN PLEADING.

Woods is entitled to withdraw his plea only if he demonstrates that doing so is necessary to avoid a manifest injustice. If he can demonstrate that he pled guilty involuntarily or that ineffective assistance of counsel caused him to plead guilty, he has demonstrated a manifest injustice. In re Reise, 146 Wn. App. 772, 786-87, 192 P.3d 949 (2008).

A guilty plea is involuntary when a defendant is misinformed about a direct consequence of pleading guilty. State v. Mendoza, 157 Wn.2d 582, 587-88, 591, 141 P.3d 49 (2006); In re Isadore, 151 Wn.2d 294, 300, 88 P.3d 390 (2004). A direct consequence of pleading guilty is one having a definite, immediate, and largely automatic effect on the sentence. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). Consequences that are not “automatically imposed” by the sentencing court, that do not “automatically enhance” the sentence, or that do “not alter the standard of punishment” are collateral. State v. Ward, 123 Wn.2d 488, 513-14, 869 P.2d 1062 (1994). Because a defendant need not be informed of all possible collateral consequences,

misinformation about a collateral consequence does not make a guilty plea involuntary per se. In re Isadore, at 298. However, affirmative misinformation about a collateral consequence may still create a manifest injustice if the defendant materially relied on that misinformation when deciding to plead guilty. State v. A.N.J., 168 Wn.2d 91, 116, 225 P.3d 956 (2010); State v. Conley, 121 Wn. App. 280, 285, 87 P.3d 1221 (2004); State v. Stowe, 71 Wn. App. 182, 187-89, 858 P.2d 267 (1993).

Unlike the defendants in both A.N.J. and Stowe, Woods not only failed to establish that he received specific misinformation; he also failed to establish that he materially relied on any such specific misinformation from Flora. In State v. A.N.J., A.N.J. was unclear about the difference between registration as a sex offender and the permanent record of conviction. Id. at 117. A.N.J.'s attorney led him to believe that a juvenile conviction for a sex offense could, at some later point, be removed from one's record. Id. at 116. The attorney had submitted a declaration stating that he believed the conviction could be removed from A.N.J.'s record when he was eighteen or twenty-one. Id. at 117. The court noted that although the failure to advise A.N.J. that his conviction for a sex offense would remain on his record forever, in and of itself, would not rise to

manifest injustice, the misinformation that it could be removed would be a basis to allow withdrawal of his plea. Id. at 116. The court concluded that A.N.J. could withdraw his plea because he pled to a sex offense that would remain on his record forever but had pled under the specific misinformation that the conviction could be removed. Id. at 117.

In State v. Stowe, defense counsel affirmatively misadvised the defendant about the effect of an Alford plea on his military career. Id. at 186. Stowe made it clear to his attorney that he would rather risk a trial and lengthy prison sentence, than plead guilty and face discharge from the military. Id. at 188. The court examined whether counsel's performance fell below the objective standard of reasonableness when counsel affirmatively misadvised Stowe about the collateral consequences of his guilty plea. Id. at 187. The court explained that the voluntary nature of a defendant's plea is not automatically destroyed because of erroneous advice by counsel. Id. at 188. The court noted that, under Strickland, even if counsel's performance is deemed deficient, the defendant must show prejudice; a reasonable probability that, but for counsel's unprofessional errors, defendant would not have pled guilty and

would have gone to trial. Id. (citing Hill v. Lockhart, 474 U.S. 52, 58, 106 S. Ct. 366 (1985) and Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)). The court found that counsel knew saving Stowe's military career was the main reason for Stowe not wanting to accept the plea bargain. Id. Because Stowe told his attorney that he wanted to remain in the military, and established that he relied on his attorney's advice regarding his military career in making his decision to plead guilty, he was able to show that he would not have pled absent his attorney's misinformation. Id. The the court allowed him to withdraw his plea. Id.

Unlike the defendants in both A.N.J. and Stowe, Woods never established that he materially relied on misinformation from Flora. Woods never established that the main reason he was pleading guilty was because he wanted good time credit from DOC on his 15 month sentence. In fact, although Flora may have led Woods to believe that DOC would be crazy not to release him, nothing in the record establishes that Woods relied upon this statement in his decision to plead guilty. In fact, Flora testified that he discussed with Woods the possibility of a longer sentence if Woods went to trial on the original charges. Flora never testified that "good time credit" was Woods's primary motivation in pleading

guilty. Instead, Flora testified that one of Woods's main reasons for pleading initially appeared to be that he believed the cops were all lying. Nothing about Woods's plea triggered an automatic, direct consequence such as the end of a military career or a non-removable sex conviction on his record. In fact, Woods's situation with regard to his release from DOC could have been affected by many numerous factors that were not evident until well after he pled and was sentenced. Woods did not lose a career or plead to a permanent juvenile sex offense based upon misinformation; instead, he lost about five months of good time credit from DOC for reasons that were never established in the record.

D. CONCLUSION

For the reasons stated above, the State respectfully requests that the court deny Woods's motion to withdraw his plea.

DATED this 25 day of February, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

LAURA A. PETREGAL, WSBA #26016
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher H. Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. ANTHONY WOODS, Cause No. 68847-2-I, in the Court of Appeals, Division I, for the State of Washington.

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

Betty A. Huddleston
Name

Done in Seattle, Washington

2/25/13
Date