

NO. 71454-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,

v.

JOSEPH FRANCIS WILLIAMS,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MARY I. YU

BRIEF OF RESPONDENT

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COURT OF APPEALS
STATE OF WASHINGTON

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A. ISSUES PRESENTED

1. A defendant who seeks to withdraw his guilty plea after judgment must establish that relief is warranted under CrR 7.8 due to mistake, newly discovered evidence, fraud, voidness of the judgment, or any other reason justifying relief. A testimonial hearing revealed that the defendant's allegations that he received ineffective assistance of counsel and that the State violated a plea agreement were meritless. Did the trial court properly exercise its discretion in denying the defendant's motion to withdraw his guilty pleas?

2. A plea agreement is not binding until a defendant formally accepts the State's offer by entering pleas of guilty. When the defendant indicated mid-trial that he wished to plead guilty, the State extended a plea offer that was less favorable than a pre-trial offer that the defendant had previously rejected. Did the trial court properly exercise its discretion in finding that the defendant's mid-trial statement that he wished to plead guilty did not constitute binding acceptance of the pre-trial offer?

3. In order to prevail on a claim of ineffective assistance of counsel, a defendant must show both that his attorney's performance was deficient and that he suffered prejudice as a

result. Evidence offered before the trial court established that defense counsel acted reasonably and that the defendant was not prejudiced by the alleged attorney errors. Did the trial court properly exercise its discretion in finding that the defendant failed to establish that he received ineffective assistance of counsel?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The defendant, Joseph Francis Williams, was charged by amended Information with two counts of residential burglary, possessing stolen property in the third degree, two counts of trafficking in stolen property in the first degree, criminal trespass in the first degree, and theft in the second degree. CP 283-86. Williams pled guilty as charged in the middle of trial. CP 292. Williams later filed a pro se motion to withdraw his guilty pleas, which the trial court denied after a hearing. CP 265-69, 318-33. Williams timely appeals the trial court's ruling. CP 260-61.

2. SUBSTANTIVE FACTS.

a. Facts Of The Crimes.¹

Nancy Lawrence called 911 after she observed a male stranger—later identified as the defendant, Joseph Francis Williams—exit her open garage, get in a white Oldsmobile, and drive off. CP 221. Within an hour and less than a mile away, Donald Quinn and his twelve-year-old son G.Q. observed Williams enter the garage of their neighbor, Diana Kreklow. CP 221. They watched as Williams exited Kreklow's residence carrying a bag of golf clubs and returned to the same white Oldsmobile seen by Lawrence. CP 221. Quinn and G.Q. ran to confront Williams, causing him to flee on foot, dropping the clubs as he ran. CP 221. Quinn then called 911. CP 221.

Officers located Williams four blocks from Kreklow's residence, and he was identified by Quinn and G.Q. at that location as the man they had seen. CP 222. Williams was also later identified by Lawrence in a photo montage. CP 222-23. After being read his constitutional rights, Williams admitted being associated with the white Oldsmobile left at Kreklow's residence.

¹ Because Williams pled guilty, the facts are taken from the Certification for Determination of Probable Cause.

CP 222. Investigating officers located another set of golf clubs and several electric scooters in the Oldsmobile, and located a footprint in the dust in Kreklow's garage that appeared to match the shoes worn by Williams. CP 222.

Officers discovered that the golf clubs found in the Oldsmobile belonged to Kurt Gahnberg, who lived near Lawrence and Kreklow. CP 223. Gahnberg had been unaware that the clubs were missing; he indicated that they had been stored in his garage, and were likely taken when his garage door was left open on the same day that the Lawrence and Kreklow residences were burglarized. CP 223. During their follow-up investigation, officers also discovered that Williams had recently pawned property that had been stolen from the residence of Mark Kihlstrom and the residence of Kenneth Westerberg in recent burglaries. CP 224-25.

Williams was initially charged with residential burglary of both the Kreklow and Gahnberg residences, possession of stolen property in the third degree for the stolen scooters found in his vehicle, and trafficking in stolen property in the first degree for pawning property stolen from Kihlstrom and Westerberg. CP 218-20.

b. First Representation By Defense Counsel
Harold Palmer.

Williams was represented by public defender Harold Palmer from the beginning of the case until mid-February of 2011. RP² 9, 123. During that period, Palmer conducted negotiations with Deputy Prosecuting Attorney Mafé Rajul, and received an initial oral offer (“first offer”) that the State would drop one of the trafficking in stolen property charges and recommend a low-end standard range sentence of 63 months in exchange for Williams’ guilty pleas to the remaining charges and agreement that he would not ask for a Drug Offender Sentencing Alternative (“DOSA”). RP 124; CP 314. In Palmer’s experience, it was not uncommon to have an initial offer made orally, and to delay having the prosecutor formalize the offer in writing until a defendant indicated that he was interested in negotiating. RP 167-68.

Palmer discussed the first offer with Williams, including the fact that Palmer believed the offer was perhaps “harsh,” but reasonable given Williams’ criminal history. RP 126, 139. Palmer did not advise Williams specifically whether he should take the offer

² The Verbatim Report of Proceedings in this case consists of a single volume from the October 23, 2013, hearing on Williams’ motion to withdraw his guilty plea, and will be referred to as “RP.”

or not, but communicated his own assessment of the pros and cons of the offer and whether it was reasonable. RP 130-31. Williams appeared dissatisfied with Palmer's assessment, and soon retained private counsel, Kris Jensen, to represent him. RP 146. At the time that Jensen took over, Palmer had not yet begun his pre-trial investigation. RP 146.

c. Representation By Defense Counsel Kris Jensen.

Jensen began representing Williams in February of 2011, shortly after Williams' case had been set for trial. RP 9; Supp. CP __ (sub 13). Jensen was aware of the offer previously received by Palmer, but he was able to negotiate for a better offer ("second offer") from trial prosecutor Suzanne Love. RP 11, 34, 96-97. Under that second oral offer, the State agreed to recommend a DOSA sentence of 36.75 months in prison and 36.75 months of DOC supervision if Williams pled guilty to the current charges plus an additional charge of theft in the second degree. RP 22, 137.

Jensen had discussed the possibility of a DOSA repeatedly with Williams throughout his representation, and urged him to accept the second offer. RP 42. However, Williams told Jensen

explicitly that he did not want to accept the offer, and wanted to go to trial. RP 19, 44. Jensen communicated this rejection to the prosecutor. RP 19. Because Williams wanted to go to trial but could not or would not pay the fee Jensen would charge to represent him at trial, Jensen sought and received permission from the court to withdraw in April of 2011, and Palmer was reappointed as Williams' counsel. RP 10, 24-26, 43.

d. Second Representation By Palmer.

When Palmer resumed representing Williams in April of 2011, he was aware of the second offer that Jensen had received. RP 143. Palmer understood that Williams had rejected that offer, and he made it clear to Williams that the second offer was no longer available. RP 140, 147, 161. Williams indicated that he was not interested in negotiating his case, and went so far as to instruct Palmer in writing not to discuss any plea offers with him. RP 161. Williams' sole desire was to have Palmer prepare for trial or bring a motion to dismiss the case. RP 161. Palmer prepared for trial, assigning an investigator to the case who interviewed nine witnesses. RP 141-42.

The parties appeared before Judge Mary Yu for trial in August of 2011. CP 28-29.³ Prior to addressing motions in limine, the trial court granted a recess so that Palmer could make some final preparations, such as getting appropriate clothes for Williams to wear. CP 31-32. The court indicated that it wanted to make sure that Palmer had an opportunity to talk to Williams about whether the case could be resolved short of trial and to make sure Williams understood the new charges that the State intended to add for trial. CP 30-31. Palmer assured the court that he would “get any final offers to resolve this case communicated to Mr. Williams.” CP 31.

After the recess, neither party gave any indication that they had been able to reach a resolution. CP 33-34. The trial court granted the State’s motion to amend the information to add charges of criminal trespass in the first degree for entering the Lawrence residence, theft in the second degree for the theft of Gahnberg’s golf clubs, and theft in the third degree for the theft of Kreklow’s golf clubs. CP 33, 283-86; RP 134. Palmer did not object, noting that he had received notice of the proposed amendments more than a month earlier. CP 33.

³ The transcripts of Williams’ partial jury trial and guilty plea are contained within the clerk’s papers at CP 28-198.

During motions in limine, Palmer discovered that the State had in evidence the shoes Williams had been wearing when he was arrested, in addition to a blurry photograph of a shoeprint found at the scene of one of the burglaries that Palmer had previously known about. CP 43-44; RP 156-58. Palmer arranged with the prosecutor to view the shoes and the original photograph before the next trial day, when jury selection would occur. CP 43-44; RP 159. Palmer discussed with Williams whether to object to the perceived late disclosure or ask for a continuance, and made a strategic decision not to do either at that point, as it was not yet clear whether the shoes would weaken or strengthen the State's case. RP 157-59.

Palmer also made a strategic decision not to bring a motion to suppress items found after a search warrant was executed on the white Oldsmobile, despite Williams' desire that Palmer do so. RP 165-66. Palmer believed that such a motion would not be helpful, because many of the items had already been lawfully observed in the vehicle by witnesses prior to the execution of the search warrant, and because Williams' defense was that he was not the person associated with the items in the vehicle. RP 165-66.

A jury was selected and the trial commenced the following week. CP 289-90. When an officer testified about the blurry photograph of the shoeprint at the crime scene, Palmer effectively cross-examined him about his failure to check whether the print matched the shoes of any of the home's residents. RP 180; CP 121-23. The State did not offer the shoes themselves as an exhibit at trial. RP 155, 177.

e. Mid-Trial Guilty Plea.

Victim Nancy Lawrence testified at the beginning of the second day of trial and identified Williams in court. RP 180-81; CP 292. Shaken up by Lawrence's testimony and the knowledge that 12-year-old G.Q. was about to testify against him as well, Williams indicated to Palmer at the end of the State's direct examination of Lawrence that he wanted to plead guilty. RP 180-81; CP 157. Palmer promptly asked for a recess, and informed the court outside the jury's presence that Williams was interested in pleading guilty. CP 157.

Palmer indicated that he was not sure what terms Williams had in mind, and asked for time to discuss the issue with Williams and Love. CP 157-58. During the ensuing recess, Love made an

offer (“third offer”) that involved Williams pleading as charged and recommending whatever sentence he wanted, including a DOSA. RP 183; CP 205. Under Love’s offer, the State would recommend an exceptional sentence consisting of concurrent mid-range 78-month sentences on the burglary and trafficking charges and a consecutive low-end 22-month sentence on the felony theft charge. CP 205, 228-30, 234.

After receiving the third offer, Palmer discussed the offer thoroughly with Williams, answering his questions and making sure he understood all the consequences of accepting the offer. RP 183-84. Williams decided to accept the offer. RP 183. After the recess, Palmer notified the court that the parties had reached a resolution, and asked for time to complete the necessary paperwork. CP 158.

Love noted on the record that if the plea fell through trial testimony would resume that afternoon, and asked the court what she should tell the witnesses who were waiting in the hall. CP 158-59. The trial court instructed the parties that the witnesses and jurors should remain in place in case something went wrong with the plea, stating, “I unfortunately have had too many things go

wrong, one recently. We're not taking any risks. We do this now or we keep going in trial." CP 159.

After another recess to prepare the paperwork, Love conducted a colloquy with Williams to verify that he understood the rights he was giving up and the consequences of pleading guilty, including what the State's sentencing recommendation would be. CP 159-75. After hearing from Palmer and conducting its own supplementary colloquy, the trial court accepted Williams' guilty pleas as knowingly, intelligently, and voluntarily entered. CP 175-78.

At sentencing, Williams asked for a DOSA and the State recommended the exceptional sentence that had been described in the plea documents. CP 184-89. The trial court imposed a standard range sentence of 84 months. CP 302.

f. Hearing On Motion To Withdraw Guilty Plea.

Within one year after his conviction became final, Williams filed a pro se motion in the trial court to withdraw his guilty plea under CrR 7.8 based primarily on claims of ineffective assistance of counsel. CP 316-33, 350. The trial court held an evidentiary hearing, at which Jensen, Palmer, Love, and Rajul testified to the

facts presented above.⁴ RP 4-203. Williams, who was represented by private counsel at the hearing, did not testify. RP 194; CP 248.

One week after the hearing, the trial court issued a written opinion denying the motion. CP 265-69. The trial court found that Williams did not receive ineffective assistance of counsel in plea bargaining because his attorneys communicated to Williams the pre-trial offers that were made by the State, each of which Williams rejected, and because Williams understood what offer he was accepting at the time he pled guilty. CP 255-56.

The trial court also found that Williams did not receive ineffective assistance of counsel in trial preparation, because the evidence showed that, contrary to Williams' allegations, Palmer conducted an adequate pre-trial investigation. CP 256. The trial court found that Williams' plea was voluntary, and concluded that there was no legal or factual basis to allow him to withdraw it. CP 257. Williams timely appealed. CP 260-61.

⁴ Mafé Rajul testified by declaration. CP 254, 313-15.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING WILLIAMS' POST-JUDGMENT MOTION TO WITHDRAW HIS GUILTY PLEAS.

Williams contends that the trial court erred when it denied his post-conviction motion to withdraw his guilty pleas based on allegations that the State violated a binding plea agreement and that Williams received ineffective assistance of counsel. This claim should be rejected. Because the evidence presented at the hearing on Williams' motion to withdraw his plea established that the claims Williams raised in his motion were meritless, the trial court properly exercised its discretion in denying the motion to withdraw the guilty pleas.

A motion to withdraw a guilty plea after judgment has been entered is governed by CrR 7.8(b), which states that a court "may relieve a party from a final judgment" for five specified reasons, including mistake, newly discovered evidence, misconduct of an adverse party, voidness of the judgment, or any other reason justifying relief. CrR 4.2(f); CrR 7.8(b); In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 595, 316 P.3d 1007 (2014).

The defendant bears the burden of establishing that relief is warranted. See State v. Hardesty, 129 Wn.2d 303, 317, 915 P.2d 1080 (1996) (fraud must be shown by clear and convincing evidence); State v. Pierce, 155 Wn. App. 701, 710, 230 P.3d 237 (2010) (moving party must demonstrate that newly discovered evidence merits a new trial); State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974) (in pre-sentencing motion to withdraw a guilty plea, defendant bears burden of establishing a manifest injustice).

A trial court's ruling on a motion for relief under CrR 7.8 is reviewed for abuse of discretion. Hardesty, 129 Wn.2d at 317. A trial court abuses its discretion only if no reasonable judge would have reached the same conclusion. State v. Bourgeois, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997). For the reasons stated below, the testimony at the hearing established that the claims underlying Williams' motion to withdraw his guilty plea were meritless. The trial court therefore properly exercised its discretion in denying the motion.

2. WILLIAMS' ORAL STATEMENT THAT HE WAS INTERESTED IN PLEADING GUILTY DID NOT CREATE A BINDING CONTRACT WITH THE STATE.

Williams contends that the trial court erred when it found that his mid-trial oral statement that he wished to plead guilty did not constitute legal acceptance of the State's second plea offer, creating a binding contract that the State violated when it set out different terms in the third plea offer. This claim should be rejected. Because a plea bargain is made binding only by the defendant's entry of a guilty plea, a plea offer may be modified or rescinded at any time prior to the entry of a guilty plea. The trial court thus properly exercised its discretion in finding that no binding agreement was created by Williams' announcement that he wished to plead guilty.

A plea agreement is essentially a contract between the prosecutor and the defendant. Hardesty, 129 Wn.2d at 318 (citing Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). However, contract law cannot "be appropriately transported, in toto, into criminal law." State v. Reed, 75 Wn. App. 742, 744, 879 P.2d 1000 (1994). Many contract law doctrines

apply to plea agreements “only by analogy, if they have any application at all.” Id.

The conception of a plea bargain as a contract arises from the understanding that when a defendant enters a plea of guilty in reliance on a promise or agreement of the prosecutor, due process considerations require the prosecutor to adhere to the terms of the agreement. See Santobello, 404 U.S. at 262; State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997). Thus, a plea agreement becomes binding only once the defendant actually enters a plea of guilty. See United States v. Harvey, 791 F.2d 294, 300 (4th Cir. 1986) (defendant who has fully performed by pleading guilty is entitled to appropriate remedy if government breaches the agreement) (cited with approval in Sledge, 133 Wn.2d at 839).

Consistent with this understanding of what constitutes acceptance of a plea offer, the written plea agreement Williams signed memorializing the third offer explicitly stated, “The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea.” CP 227. Because Williams had to actually enter a guilty plea in order to formally accept the State’s plea offer and bind the State to fulfill the

terms of the agreement, Williams' mid-trial statement that he wanted to plead guilty did not bind the State to honor the terms of the second plea offer, which Williams had rejected months earlier. The State was entitled to withdraw the second plea offer at any time prior to the entry of a guilty plea, and to extend a different offer when Williams indicated his willingness to plead guilty mid-trial.

Neither the State's refusal to re-extend the second plea offer in the middle of trial, nor defense counsel's failure to object to the State's refusal to do so, entitled Williams to withdraw his guilty plea. The trial court therefore properly exercised its discretion in denying Williams' motion to withdraw his guilty plea.

3. WILLIAMS FAILED TO ESTABLISH THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

Williams contends that the trial court erred when it found that he had failed to establish that either Palmer or Jensen rendered ineffective assistance of counsel. This claim should be rejected. At the hearing on his motion, the evidence showed that neither attorney rendered deficient performance, and that Williams was not prejudiced by the alleged deficiencies. The trial court thus properly

exercised its discretion in finding that Williams had failed to establish that he received ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution and Article 1, Section 22 of the Washington State Constitution guarantee a criminal defendant's right to the effective assistance of counsel. In re Pers. Restraint of Davis, 152 Wn.2d 647, 672, 101 P.3d 1 (2004). A defendant who claims to have received ineffective assistance of counsel has the burden to establish that (1) defense counsel's representation was deficient and (2) the deficient representation prejudiced the defendant. Id. at 672-73 (citing Strickland v. Washington, 466 U.S. 668, 684-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

An attorney's representation is deficient if it falls below an objective standard of reasonableness. Id. at 672. There is a strong presumption that an attorney's performance was reasonable, and where the challenged conduct can be characterized as legitimate trial strategy or tactics, the attorney's performance is by definition not deficient. State v. Kylo, 166 Wn.2d 856, 862-63, 215 P.3d 177 (2009). An attorney's deficient performance prejudices a defendant if there is a reasonable probability that the result would have been different if not for the attorney's errors. Id. at 672-73.

A claim of ineffective assistance of counsel fails if either prong of the Strickland test is not met. Strickland, 466 U.S. at 673. In the context of a plea bargain, effective assistance of counsel merely requires that counsel actually and substantially assist the defendant in deciding whether to plead guilty. State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984). In order to establish prejudice from counsel's deficient performance at the plea stage, a defendant must show a reasonable probability that he otherwise would not have pled guilty and would have insisted on going to trial. In re Pers. Restraint of Riley, 122 Wn.2d 772, 780-81, 863 P.2d 554 (1993).

a. Allegations Regarding Palmer's First Period Of Representation.

Williams alleges that Palmer was constitutionally ineffective during his first period of representation because Palmer did not conduct an investigation and did not get the first plea offer in writing, and did not explicitly advise Williams whether or not he should accept the offer. Brief of Appellant at 27. These allegations are without merit.

Although it is true that Palmer's investigation had not yet begun when he was replaced by Jensen six months before trial, Williams offers no authority to support his contention that Palmer's performance was deficient in this regard. The case was not set for trial until the very end of Palmer's first period of representation, and it was reasonable for Palmer to delay interviewing witnesses until it was clear whether Williams would set the case for trial. Cf. In re Personal Restraint of Pirtle, 136 Wn.2d 467, 488, 965 P.2d 593 (1998) (no absolute requirement that defense counsel interview witnesses before trial); Supp. CP ___ (sub 13). Furthermore, there is no indication that Williams would have made different choices had Palmer interviewed witnesses during his first period of representation rather than during his second. Williams has thus failed to establish that he received ineffective assistance of counsel in this regard.

Williams has also failed to establish that Palmer rendered deficient performance in failing to get the first plea offer in writing, and has failed to establish that he would not have rejected that offer had Palmer obtained it in writing. Palmer testified that it was common for plea offers to initially be made orally, and that it was frequently preferable to delay solidifying an offer in writing until the

defendant had a chance to consider whether he wanted to accept the offer or try to negotiate further. RP 167-68. Furthermore, Palmer accurately conveyed the first offer to Williams, but Williams did not accept it. RP 130-31, 139, 146.

Finally, Williams has failed to establish that he suffered ineffective assistance of counsel due to Palmer's failure to explicitly advise him whether or not to accept the first plea offer. Palmer gave Williams his assessment of the pros and cons of the offer and the consequences of accepting it or going to trial, and advised Williams to consider it seriously in light of the strengths and weaknesses Palmer had identified in the case against him. RP 130-31, 139. However, Palmer did not explicitly advise Williams to take or turn down the offer, as it is his practice not to do so unless "the scales are a lot more tipped" than they were in Williams' case. RP 130.

Williams offers no support for his contention that Palmer's conduct fell below an objective standard of reasonableness in this regard, nor does he claim to have been prejudiced by it. Indeed, any claim of prejudice would be unsupported; it is undisputed that Williams' decision to reject the first plea offer was, in retrospect, the correct choice, as the State later made a second plea offer with

more favorable terms. The trial court thus properly exercised its discretion in finding that Williams failed to establish that Palmer rendered ineffective assistance of counsel during his first period of representation.

b. Allegations Regarding Jensen's Representation.

Williams alleges that Jensen was constitutionally ineffective due to his failure to obtain the second plea offer in writing and his refusal to represent Williams at trial. Brief of Appellant at 30. These allegations are without merit.

Jensen's choice to withdraw rather than represent Williams at trial was due to Williams' refusal or inability to pay for Jensen's services at trial, and occurred several months before trial. RP 25-26. Williams offered no evidence that Jensen's withdrawal was unreasonable, or that Williams would have done anything differently had Jensen not withdrawn. He has thus failed to establish that Jensen was constitutionally ineffective in this regard.

Jensen's failure to obtain the second plea offer in writing was not deficient for the same reasons discussed above

regarding Palmer's failure to obtain the first plea offer in writing. See supra, C.3.a. Jensen's conduct was not prejudicial because he accurately conveyed the substance of the offer to Williams, and Williams emphatically and explicitly rejected it. RP 19, 42-44. The trial court thus properly exercised its discretion in finding that Williams failed to establish that Jensen rendered ineffective assistance of counsel.

c. Allegations Regarding Palmer's Second Period Of Representation.

Williams alleges that Palmer was constitutionally ineffective during his second period of representation due to Palmer's failure to object to the perceived late disclosure by the State that Williams' shoes were in evidence, his failure to move to suppress evidence obtained from the white Oldsmobile or testimony regarding Nancy Lawrence's identification of Williams, and his failure to object to the amended information on double jeopardy grounds. These claims are without merit.

Palmer was not constitutionally ineffective for failing to object to the perceived late disclosure of the shoes because he made a

reasonable strategic choice not to do so during pre-trial motions.⁵ Because Palmer had not yet had an opportunity to view the shoes, it was not clear during pretrial motions whether the shoes would help or harm the State's case. RP 158-59. Palmer testified that he knew he would have an opportunity to object to the shoes if and when they were offered by the State, and so chose not to object during pretrial motions after consulting with Williams on the issue. RP 157-58. Williams then pled guilty mid-trial, before the shoes were ever offered by the State.⁶ RP 155, 177. Williams does not allege that he would not have pled guilty had Palmer objected to the shoes during pretrial motions. Williams has thus failed to establish that Palmer was ineffective for not objecting during pretrial motions.

Williams has failed to establish that Palmer was constitutionally ineffective for failing to move to suppress evidence obtained from the white Oldsmobile pursuant to a search warrant or

⁵ It is not clear from the record whether the State was actually tardy in disclosing that Williams' shoes were in evidence. As pointed out by Williams' counsel during the hearing on the motion to withdraw the guilty pleas, the fact that Williams' shoes were collected by officers was mentioned in the affidavit to the search warrant for the white Oldsmobile. RP 154. There is no indication that Palmer was not provided that document in discovery.

⁶ It is likely that the State did not plan to ever offer the shoes, as the officer who observed the shoeprint at the scene and compared it to Williams' shoes completed his testimony without any attempt by the State to offer the shoes. CP 69-141.

to suppress Lawrence's photo montage identification of Williams, because Palmer's assessment that such motions would not affect the outcome of the trial was reasonable, and because Williams suffered no prejudice. Palmer testified that, even if a motion to suppress items in the vehicle were granted, a jury would still hear testimony from witnesses who had lawfully observed the stolen property in the vehicle prior to the execution of the search warrant. RP 166. Lawrence was also not the only witness who would identify Williams at trial. RP 180-81.

Furthermore, Williams offers no basis to believe that a motion to suppress either the contents of the vehicle or Lawrence's montage identification of Williams would have been successful, and does not allege that he would not have pled guilty if it had been successful. Williams has thus failed to establish that Palmer's choices constituted ineffective assistance of counsel.

Finally, Palmer was not constitutionally ineffective for failing to object to the amended information filed immediately before trial on double jeopardy grounds. The State may bring, and a jury may consider, multiple charges arising from the same criminal conduct

information, and Palmer was not constitutionally ineffective for failing to object to the information or the plea bargain on double jeopardy grounds.

For all the above reasons, Williams failed to establish that he received ineffective assistance of counsel from Palmer or Jensen. The trial court therefore properly exercised its discretion in denying Williams' motion to withdraw his guilty pleas.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the trial court's denial of Williams' motion to withdraw his guilty pleas.

DATED this 26th day of September, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
STEPHANIE FINN GUTHRIE, WSBA #43033
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 the appellant, Joseph Francis Williams, DOC #954443, at Monroe Correctional Center, P.O. Box 777, Monroe, WA, 98272, containing a copy of the BRIEF OF RESPONDENT, in State v. Joseph Francis Williams, Cause No. 71454-6, 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.

Dated this 26th day of September, 2014.

U Brame

Name

Done in Seattle, Washington