

NO. 69697-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

COURT OF APPEALS
STATE OF WASHINGTON
2022 JUN 19 11:45
[Signature]

STATE OF WASHINGTON,

Respondent,

v.

VINCENT PETTIE,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION.

Vincent Pettie rejected the State's plea bargain offer and began his jury trial because, as he told the judge, "I just really didn't do anything." The judge warned Mr. Pettie that legal rulings would make it easier for the State to prove its case, told a story about another defendant who turned down a plea offer and regretted it after trial, and insisted that Mr. Pettie seriously consider the consequences of not accepting the plea offer. Mr. Pettie agreed to plead guilty but told the judge he felt he had "no choice in the matter." Because judges are strictly prohibited from offering direct or indirect advice about the wisdom of pleading guilty, the judge's involvement in procuring Mr. Pettie's plea renders the plea involuntary and requires remand so that Mr. Pettie may have the opportunity to withdraw his plea.

B. ASSIGNMENT OF ERROR.

The court's involvement in convincing Mr. Pettie to plead guilty rendered the plea involuntary.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

A judge is barred from encouraging an accused person to plead guilty by case law, statute, and standards established by the American Bar Association. During Mr. Pettie's jury trial, the judge initiated a

lengthy discussion with Mr. Pettie for the purpose of telling him about the advantages of pleading guilty and the disadvantages of failing to do so. Did the judge's involvement in Mr. Pettie's decision to plead guilty undermine the voluntariness of Mr. Pettie's plea?

D. STATEMENT OF THE CASE.

John Jackson assaulted Anthony Narancic with a pipe. CP 7-8. Vincent Pettie was present during Mr. Jackson's assault and was accused of momentarily holding Mr. Narancic, which assisted Mr. Jackson. CP 8. Mr. Jackson and Mr. Pettie were jointly charged with first degree assault and proceeded to trial together. CP 1; 9/10/12RP 3. After selecting a jury and hearing testimony from several witnesses, Mr. Jackson decided to plead guilty. 9/11/12RP 88-89, 104, 120; 9/12/12RP 131. Judge Michael Hayden recessed the trial and accepted Mr. Jackson's guilty plea. 9/12/12RP 135-36.

After Mr. Jackson pled guilty, Judge Hayden encouraged Mr. Pettie to do the same. 9/12/12RP 144. Judge Hayden warned Mr. Pettie that he would give the jury an instruction on the inferior degree offense of second degree assault, which would be "a lot easier" for the State to prove and would result in the same persistent offender life sentence for Mr. Pettie. 9/12/12RP 147-48.

Mr. Pettie told Judge Hayden that, “I just really didn’t do anything.” 9/12/12RP 148. Judge Hayden again told Mr. Pettie that his job was to make sure Mr. Pettie was aware of the potential consequences of going to trial. *Id.* Judge Hayden then told Mr. Pettie a story about another defendant who had not wanted to plead guilty because he did not believe he committed the charged crime. 9/12/12RP 150-51. When that other defendant was convicted, the judge had no discretion over his persistent offender sentence and had to impose a term of life without the possibility of parole. 9/12/12RP 151.

Judge Hayden asked about the terms of the plea offer and directed Mr. Pettie to discuss it with his lawyer. 9/12/12RP 148-49. He told Mr. Pettie it was a “very serious decision” that he needed to make. 9/12/12RP 152. Mr. Pettie accepted the plea offer and the court excused the jury. 9/12/12RP 153-61.

Mr. Pettie pled guilty to burglary in the second degree and assault in the third degree. 9/12/12RP 154, 157-58; CP 14, 22. He agreed to a jointly-recommended exceptional sentence of the statutory maximum term for each offense that would be consecutively imposed, resulting in a 15 year sentence. 9/12/12RP 156; CP 17.

Immediately after he entered his guilty plea, Mr. Pettie told his lawyer he wanted to withdraw the plea. 10/5/12RP 3-4. Mr. Jackson also asked to withdraw his plea. 10/5/12RP 5, 8-9. Mr. Pettie argued that he should be permitted to withdraw his plea contingent on Mr. Jackson's plea as a manifest injustice, because Mr. Pettie felt he had no choice but to plead guilty after Mr. Jackson claimed in his own plea that Mr. Pettie was a knowing participant in the assault. 10/5/12RP 14-15, 20; 11/1/12RP 5, 19. The court denied both defendants' motions to withdraw their pleas and imposed the sentence of 15 years as recommended by the plea agreement. 12/12/12RP 4-5.

E. ARGUMENT.

The court impermissibly pressured Mr. Pettie to waive his right to trial and plead guilty

1. *A guilty plea must be voluntarily entered without judicial pressure*

A criminal defendant's waiver of his right to trial by jury and entry of a guilty plea must be an intentional relinquishment of a known right, indulging in every presumption against waiver. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); U.S. amends. 6, 14. An involuntarily entered plea establishes a manifest injustice permitting withdrawal of the plea. *State v. Turley*, 149 Wn.2d 395, 398,

69 P.3d 338 (2003). When a trial court coerces or pressures a person to plead guilty, the plea is rendered involuntary. *State v. Wakefield*, 130 Wn.2d 464, 473, 925 P.2d 183 (1996).

Standards set by the American Bar Association caution judges not to participate in plea negotiations and strictly denounce urging a defendant to plead guilty. American Bar Association, *ABA Standards for Criminal Justice: Pleas of Guilty*, 3rd Ed. (1999);¹ *Wakefield*, 130 Wn.2d at 473 (agreeing with limits on judicial intervention as set forth in ABA Standards); *State v. Pouncey*, 29 Wn.App. 629, 635-37, 630 P.2d 932, *rev. denied*, 96 Wn.2d 1009 (1981). The ABA rules formerly permitted a judge to sua sponte “inquire of the parties whether disposition without trial has been explored and may allow an adjournment to enable plea discussions to occur.” *ABA Standards for Criminal Justice*, 2d. ed. (1980), section 14-3.3(e). However, the current ABA rules direct that a judge “should not ordinarily participate in plea negotiation discussions among the parties.” *ABA Standards* 3d. ed. 14-3.3(d). Moreover, both the current and former ABA standards agree:

The judge should not through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered.

14-3.3(c); see also Former ABA Standards, 2d. ed. (1980), section 14-3.3(f). The statute permitting plea agreements expressly limits the trial court's involvement: "The court shall not participate in any discussions under this section." RCW 9.94A.421.

It is "wholly inappropriate" for a judge to advise a defendant to take a plea. *State v. Watson*, 159 Wn.2d 162, 165, 149 P.3d 360 (2006). In *Watson*, the judge told an accused person that he should "take [the State's plea] offer." *Id.* at 163. Months later, Mr. Watson pled guilty before a different judge. *Id.* The Supreme Court did not believe this earlier discussion undermined the voluntariness of Watson's plea but took the unusual step of granting review solely to emphasize that "[t]rial judges are to refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty." *Id.* at 164-65.

A trial court's participation in plea negotiations may render a guilty plea involuntary. *Wakefield*, 130 Wn.2d at 473. In *Wakefield*, the

¹ Available at:
http://www.americanbar.org/publications/criminal_justice_section_archive/crimj_ust_standards_guiltypleas_toc.html (last accessed July 16, 2013).

court told the defendant it was concerned she was not accepting a plea offer that would “subject her to much less jeopardy.” *Id.* The court further “urge[d]” the defendant to take her attorney’s advice and accept the guilty plea, while reminding the defendant it could not “force” her to accept the attorney’s advice. *Id.* The court also indicated it would impose a standard range sentence if Wakefield pleaded guilty. *Id.* Wakefield pleaded guilty shortly after hearing the court’s remarks, indicating several times that her plea was voluntary, but at sentencing the court imposed a higher sentence than it indicated it would during the plea discussions. *Id.* at 469-70.

On appeal, the court ruled the guilty plea was involuntary due to the court’s role in urging Wakefield to plead guilty. *Id.* at 475. The court reversed the conviction and remanded the case for Wakefield to have the opportunity to withdraw her plea if she so desired. *Id.* Similarly to Wakefield, the court’s direct involvement in pressing Mr. Pettie to plead guilty undermines its voluntariness and requires remand so that he may have the opportunity to withdraw his plea.

2. *The judge pressured Mr. Pettie to plead guilty.*

Mr. Pettie showed no inclination to plead guilty before the court’s intervention, even when the principle assailant Mr. Jackson

entered a guilty plea in the middle of the jury trial. 9/12/12RP 131, 141; 10/5/12RP 4. However, after Mr. Jackson pled guilty, the judge initiated a discussion with Mr. Pettie about the advantages of pleading guilty and the disadvantages of continuing with his jury trial.

The judge informed Mr. Pettie that the prosecution would be allowed to ask the jury to convict Mr. Pettie of the inferior degree offense of second degree assault, and the penalty attached to a second degree assault conviction would be the same for Mr. Pettie as the sentence he faced for first degree assault. 9/12/12RP 147-48. When Mr. Pettie told the judge, "I just really didn't do anything," the judge offered a lengthy warning to Mr. Pettie about the consequences of going ahead with trial. 9/12/12RP 148.

The judge asked the prosecution about the details of the offer being made to Mr. Pettie and suggested he should receive less time as an accomplice than if he were the principle. 9/12/12RP 149. He told Mr. Pettie a story about another defendant who had appeared in his courtroom and spurned a plea offer because he did not feel he had committed the crime for which he was charged. 9/12/12RP 150-51. Similarly to Mr. Pettie, this other person had faced a "three-strike" life sentence and when he was convicted of the charge, the judge had no

discretion to give him less time. *Id.* The judge emphasized that it was not his job to tell Mr. Pettie what to do, but it was his job to “let you know . . . what you are facing.” *Id.* at 151.

After the judge directed Mr. Pettie to talk to his lawyer about pleading guilty and told him he needed to make a “very serious decision,” Mr. Pettie opted to plead guilty. Mr. Pettie signed a guilty plea form and answered the plea colloquy questions. 9/12/12RP 153-58.

Mr. Pettie’s answers during the plea colloquy show his reluctance to enter the plea and his recognition that he was accepting what others told him was in his best interest. When asked whether anyone made threats or promises to force him to plead guilty, Mr. Pettie responded, “[o]ther than the plea negotiations.” 9/12/12RP 156. The prosecutor asked Mr. Pettie if he was entering the plea in a voluntary fashion, and Mr. Pettie said, “Yes I am pleading like it is there.” *Id.* When asked if the description of his involvement in the crime was true, Mr. Pettie said, “I accept that statement, ma’am.” *Id.*

The judge again told Mr. Pettie he knew it was a very difficult decision and asked whether he understood he could not come back later. 9/12/12RP 159. Mr. Pettie said he understood “what could

happen, and said, “As much as I know what I know, I still have no choice in the matter.” *Id.*

These statements demonstrate that Mr. Pettie entered the plea based on the circumstances as presented by the judge. 10/5/12RP 18. He felt he had “no choice in the matter” after the judge prevailed upon him to pled guilty. 9/12/12RP 159. In fact, later the same day, Mr. Pettie contacted his lawyer and said he wanted to withdraw his plea. 10/5/12RP 4. The court denied his request and sentenced him based on the plea he entered. 12/12/12RP 3-5.

Because Mr. Pettie’s plea followed immediately from the judge’s extensive efforts to press Mr. Pettie to consider pleading guilty, the judge’s role in obtaining Mr. Pettie’s plea is undeniable. Mr. Pettie had not been interested in accepting a plea before the judge insisted that he needed to consider doing so and warned him of the consequences of failing to do so. Mr. Pettie entered his plea immediately after the judge told a story about another person in the same situation who regretted turning down a guilty plea, as well as after the judge advised Mr. Pettie that the jury instructions would include a lesser offense that would be easier for the State to prove. The circumstances of the case show that but for the court’s personal intervention, Mr. Pettie would not have

pleaded guilty and the judge violated the Supreme Court's warning in *Watson* that trial judges must "refrain from offering defendants any advice, direct or implied, about the wisdom of pleading guilty." 159 Wn.2d at 164-65.

3. *Remand is required for Mr. Pettie to consider whether he wants to withdraw his guilty plea.*

As in *Wakefield*, the court urged Mr. Pettie to plead guilty by intervening in plea negotiations, even though Mr. Pettie made clear that he "just really didn't do anything" during the charged incident. 130 Wn.2d at 470-71; 9/12/12RP 148. The court's repeated and vocal involvement in convincing Mr. Pettie to plead guilty "cast significant doubt on the voluntariness" of the guilty plea. *Wakefield*, 130 Wn.2d at 475. The appropriate remedy is to remand the case and permit Mr. Pettie the opportunity to withdraw his guilty plea. *Id.*

F. CONCLUSION.

For the reasons stated above, Mr. Pettie respectfully asks this Court to remand his case so that he may have the opportunity to withdraw his guilty plea.

DATED this 18th day of July 2013.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 69697-1
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VINCENT PETTIE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF JULY, 2013, I CAUSED THE ORIGINAL **OPENING 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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