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

In the Matter of the Personal	)	No. 74507-7-I
Restraint Petition of	)	
	)	UNPUBLISHED OPINION
WILLIAM NEAL FRANCE,	)	
	)	
<u>  </u> Petitioner.	)	FILED: July 24, 2017

SCHINDLER, J. — On October 19, 2011, William Neal France pleaded guilty to nine counts of felony harassment. On December 8, 2015, France filed a personal restraint petition. France argues that because the course of conduct is repeatedly threatening to cause bodily harm to a victim, multiple convictions for the same offense violate double jeopardy. France asserts State v. Vidales Morales, 174 Wn. App. 370, 298 P.3d 791 (2013), supports his argument and we must vacate six of the nine convictions. We considered and rejected the same argument in the linked case, State v. France, No. 74508-5-I (Wash. Ct. App. July 24, 2017). Because unlike in Vidales Morales France made different types of threats to cause bodily harm to each of the three victims at different times and locations, we conclude the unit of prosecution is each threat, and deny the personal restraint petition.

The procedural history is more fully set forth in the linked case, France, No. 74508-5-I, and is repeated only as necessary.

On September 23, 2011, the State charged France with six counts of felony harassment in violation of RCW 9A.46.020 of his former The Defender Association (TDA) attorney Anita Paulsen, five counts of felony harassment of TDA Deputy Director Lisa Dugaard, and five counts of felony harassment of TDA social worker Nina Beach. The State alleged France manifested deliberate cruelty and committed the offenses against Paulsen and Dugaard as officers of the court as aggravating factors. On October 19, 2011, France pleaded guilty to nine counts of felony harassment. France stipulated that he committed the crimes against Paulsen and Dugaard as officers of the court.

France pleaded guilty to three counts of felony harassment of Paulsen on December 28, 2010, count 3; January 10, 2011, count 4; and January 25, 2011, count 6.

The December 28 voice mail France left for Paulsen states:

Hey Anita bitch, how yeah doin'? This is France again. Did you get my message this mornin'? Were you in, were you in the closets over at the King County, King County Courthouse, in the closet with some motherfucker suckin' some mo, suckin' more cock so you can make more money? Huh? You out suckin' more cock? Huh? Suckin' dick, huh? You're a good dick suckin' bitch, aren't yeah? Plus you're a snitch bitch. Yeah, well I got a surprise for you when I get out a jail bitch. I'm gonna take a hold a yeah, I'm gonna grab a hold of yeah and rip your fuckin' shirt right off yeah so I can see those big tits a yours. I wanna see them big fuckin' tits you've got. I wanna maybe even suck on 'em, suck on 'em and see how you fuckin' feel bitch. See, huh? Then maybe bend you over and stick my dick in your ass. Fuck you in your ass, yeah. While I'm suckin' on your tits. Yeah. Just do it right in the main street, right on a sidewalk. Bitch, I got surprises for you, you snitchin' motherfuckin' bitch. You just fuckin' wait. When I get out, you gonna get a whole lot of it. A whole lot a my cock up in your ass.

The January 10 voice mail to Paulsen states:

Hey Anita, this is France calling ya. You got such a sweet voice, you know it? I bet you got some sweet lips too to go around my fuckin' cock. Suck my dick when I want, when I want you to. You know that I got a shit sandwich for you? Yeah, when I see you on the streets. I get out in nine months, bitch. None mother fucking months I'm getting out. You got it? And I'm going to be, I'm going to be all over you like stink on shit, bitch. I got a shit sandwich for you. Oh yeah. You don't think this is all going to happen? You fucked off. You're a worthless, fucking lawyer. You brung [sic] shit on me that came out of Chehalis and should have never came up. Eleven fucking years old. You understand? Eleven fucking years old, period. It should have stayed in the archives, you dumb bitch. You're stupid. You're really fucking stupid. I didn't want to hear nothing about that shit in Chehalis every [sic] again. I walked out of that fucking jail and I got that mother fucker behind me. You wanted to bring it up in court. You're a worthless bitch, Anita. You're worthless. And I'm going to stick a fucking shit sandwich down your fucking throat when I get out of prison. I'm going to find ya. I'm going to find ya coming out of that mother fuckin' building. I'm going to do [it]. I'm going to walk right up to you and I'm going to shove it right down your fucking throat. Count on it, bitch. It's a dream come true. Don't think I'm not going to do it because I will do it. You have a nice fucking life until I get out, which is nine months away.

The January 25 voice mail to Paulsen states:

Hey Paulsen. This is France again. You ain't scared yet? You better be. You better be, you be, you better quiverin' in them fuckin', those panties you got on. You're gonna be quiverin' in that pussy you got in between your legs. Because what you did to me in fuckin' court while I was in jail, you're gonna be, you're, you're, you're fuckin' gonna, you're gonna pay the price. I got nine more months to go and I'm out a this motherfuckin' place. Nine fuckin' months and I'm gonna check you out. I'm gonna find out where the fuck you live and the whole ball a wax. Yep. It's time for me to put a bullet in yeah. Not kill yeah, just put a bullet in yeah. If you know what the phrase is. Not kill yeah, just make you walk with a fuckin' limp for the rest of your fuckin' life. And if you ain't scared now, you better be in nine motherfuckin' months bitch. Take heed, I'll be back. I'll be out there pretty soon. Ha, ha, ha, ha, ha, ha, ha. You worthless nigger bitch.

France pleaded guilty to three counts of felony harassment of Daugaard on January 11, 2011, count 7; January 12, 2011, county 8; and January 25, 2011, count 9.

The January 11 voice mail to Daugaard states:

Hey Lisa, this is France. In nine months you're going to be available because you got a bullet with your fucking name on it, bitch. Don't interfere with anything I'm doing on the phone with fucking Paulsen. You got that? Or Nina Beach. Got that? You got, you got that? Get it up your cunt, bitch. Get wise. Don't be stupid.

The January 12 voice mail to Daugaard states:

Yeah, well Lisa, this is France again. I'm trying to get a hold of you. Apparently some man came to my door and told me that you're my, you was my fucking lawyer at one point and time. You've never been my lawyer. Okay. That I can remember. Okay. Ah, as far as it goes by, by me, me pursuing what I've told you what I'm going to do. Yes. I got nine fucking months. And I got a surprise for you. Okay. Like I said, you got a fucking bullet with your fucking name on it, bitch. So does Paulsen. Okay. She's going to eat a shit sandwich first because I'm going to put it right in the fuckin' kneecap. And I'm going to cut your bra off when I see you in the mother fucking hallway or in the fucking elevator. When I first put sights on you, bitch, I'm cutting your bra right off you. And I'm going to do it. I don't give a fuck what the consequences. You got in my fucking position. You got in my program. So eat shit and die, bitch. Got it? Huh? Ya got it?

In the January 25 voice mail to Daugaard, France states:

Hey Lisa, this is Mr. France callin' you again. What the fuck . . . possesses you to call the penitentiary, and, and talk to some fat motherfucker that comes to my fuckin' door tellin' me that you used to be my fuckin' lawyer. You've never been my fuckin' lawyer, you, you fuckin' (unintelligible) ignorant tramp. You stupid bitch. And what all I've, what I've been sayin' about how, what I'm gonna do to yeah, I'm gonna put a fuckin' bullet in your fuckin' kneecap when I see yeah on the streets. You are developing a big pain in my motherfuckin' dick and the only way to get rid of the pain in my dick is if I put a bullet in your goddamn kneecap, make sure you walk around, . . . wobble around for awhile. You know? Stay in a wheelchair for awhile is what you deserve you little nigger bitch. Cause I'm gonna get you when I get out. This is affirmative. This is like ball, this is a ballpark field. You know? It's, it's a homerun bitch. You know? And like uh, uh I'm pretty pissed off at yeah. Real mad. Real mad, I'm mad as a motherfucker. Mad as a motherfucker. I'm really fuckin' mad. And I've never been, been so mad since, at a bitch, my whole fuckin' life like I am at you. You are, are history. You're gonna hit, you're gonna hit the motherfuckin' wheelchair real soon. Soon as I get out. And I know what you look like. You're not gonna know what the fuck

I look like, but I'm gonna find out what the fuck you look like. You fuckin' right I am. As soon as I do, ha, ha, ha, oh yeah, you're fuckin' gonna get it. You're gonna get it on the slide side. Comin' out an elevator, pow, right in the fuckin' kneecap . . . and I'm gonna walk away. Oh I'm gonna make sure sweetheart. A good gun don't make a lot a noise see. I got a be professional. You can get anything you want on the street if you got the fuckin' money. Anything you want. Anything. It don't matter what the fuck it is. Anything you want you can get. Uh just remember, I'm gonna be seein' you in about nine motherfuckin' months. Do you hear me Lisa? Yeah, 'bout nine motherfuckin' months. And I'm gonna get yeah, get you, get you, good. Think about [it] bitch, while you sit there, think hard about it how it's gonna fuckin' feel. Uh, huh. Or that I can just put a cut in your tit, just cut your tits. You know? Cut your motherfuckin' bra off and cut your tit. Ha, ha, ha, ha, ha. Make it bleed baby, like your pussy. You sometimes bleed out of the pussy don't yeah? Yeah, I but [sic] you do. I like to lick it up. Yeah cause that's how I am. I like to lick the pussy when it's on the rag, when bitches are on the rag. You're on the fuckin' rag bitch, I'll find you when you're on the rag and I'll eat your pussy and put my dick in your booty. Ha, ha, ha.

France pleaded guilty to three counts of felony harassment of Beach on December 28, 2010, count 12; January 12, 2011, count 14; and January 25, 2011, count 15.

The December 28 voice mail to Beach states:

Nina. You're nothing but a snitching fucking bitch. You know that? A rotten fucking nigger. This is France calling you, cunt. When I get out of jail, I've got a surprise for you. A big fucking surprise. When I see you come out of that fucking building, I'm going to grab a hold of you and rip your fucking shirt right off ya. Because I want to see them big brown fucking tits, bitch. Because you're fucking mine, when I get out. You hear me, you nigger bitch? You rotten snitching fucking bitch. I got a letter from Lisa telling me I've been harassing you. I didn't harass your fucking ass. At least you could have done is wrote me a fucking letter and told me that you couldn't help me. But you didn't want, want to do that. You want to be a stupid nigger bitch. And I'm out to get ya. Believe it. I'm going to get ya. I get out in a fucking year, bitch. And I'm going to get you. I'm going to get you good.

The January 12 voice mail to Beach states:

Nina. How come you never answer your fucking phone, your [sic] worthless black fucking nigger bitch? This is France. And by the way, you

think for one fucking minute of what I'm telling you on the fucking phone, and been telling you on the fucking phone, won't come true? My dreams come true, bitch. And when I get out in nine mother fucking months, I'm going to stalk you. In the right place, the right time. I'm cutting your fucking bra right off you, bitch. And I'm going to put a shit sandwich down your mother fucking throat. Count on it, bitch. It's like a deposit in the fucking bank. You worthless nigger bitch. You're worthless. You're worthless fucking nigger bitch. But you do got nice titties. You do got some nice tits.

The January 25 voice mail to Beach states:

It's more like Nina bitch. You know Nina bitch. Yeah Nina, this is France again. How you gonna feel when I suck on your fuckin' black tits and I put my white cock in your ass? Huh? Cause I'm gonna stalk the bitch when I get out. I'm gonna find out where the fuck you live. And I'm gonna fuckin' kick your fuckin' door in and have my, I'm gonna have some fuckin' fun with you. Oh I'm gonna have some motherfuckin' fun with you bitch. You're nothin' but a worthless tramp, fuckin' worthless cunt, motherfuckin' snitch bitch and I don't like snitchin' bitches. So take heed, if you ain't scared now, you're gonna be in nine fuckin' months when I get out of, when I get out a, get out a prison. Cause I'm gonna, I'm gonna fuck your whole world up bitch. I'm gonna fuckin' suck on them tits. I'm puttin' my white cock in your ass. Oh yeah. And if you smell good enough, I might eat your pussy. I don't know yet. That's a, that's a tosser, but I will put my dick in your ass though. That's for goddamn sure. How does it feel to be called a fuckin' nigger? Huh? How does it feel to be called a fuckin' snitch bitch? Huh? I didn't, I didn't, I wasn't harassin' you and I wasn't threatenin' you. I just wanted to get your fuckin' help . . . , but you wouldn't even write me back and tell me what the fuck is going on. You're a worthless motherfuckin' cunt man. You're worthless and I'm gonna get yeah. Get yeah. I'm gonna keep callin' yeah and lettin' you know that you got a rabbit on your ass and I'm gonna chew you up.

In his "Statement of Defendant on Plea of Guilty," France states, "I placed the calls that are contained in pre-trial exhibit 1." Pre-trial exhibit 1 contains audio recordings and transcripts of the voice mails to Paulsen, Daugaard, and Beach. The State agreed to dismiss the other seven counts of felony harassment and the aggravating factor of manifest deliberate cruelty. The court imposed a 180-month exceptional sentence and ordered no contact with the victims for 15 years.

We affirmed the imposition of the exceptional sentence. State v. France, 176 Wn. App. 463, 465, 308 P.3d 812 (2013). The Washington Supreme Court denied the petition for review. The mandate issued on March 21, 2014.

France filed a personal restraint petition on December 8, 2015, arguing six of the nine felony harassment convictions violate double jeopardy. The State argues that because France agreed to his criminal history as part of the negotiated plea agreement, he waived his right to challenge the convictions on double jeopardy. We disagree.

A petitioner filing a personal restraint petition is entitled to relief if he is under an unlawful restraint as defined in RAP 16.4. A restraint is “unlawful” where “[t]he conviction was obtained . . . in violation of the Constitution of the United States or the Constitution . . . of the State of Washington.” RAP 16.4(c)(2). A petitioner raising constitutional error must show the error caused actual and substantial prejudice. In re Pers. Restraint of Davis, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004); In re Pers. Restraint of Cook, 114 Wn.2d 802, 811-12, 792 P.2d 506 (1990).

As a general rule, a knowing, voluntary, and intelligent guilty plea prohibits the collateral attack of a plea agreement because the defendant “waives constitutional rights that inhere in a criminal trial, including the right to trial by jury, the protection against self-incrimination, and the right to confront one’s accusers.” Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004); Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973); In re Pers. Restraint of Breedlove, 138 Wn.2d 298, 310, 979 P.2d 417 (1999).

In United States v. Broce, 488 U.S. 563, 573-75, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989), the Supreme Court held that a defendant who has entered a plea of guilty

to a criminal charge may not assert a double jeopardy claim in a collateral attack upon the sentence unless an exception applies. An exception applies if either the plea entered was not knowing and voluntary or the government had no right to bring the charges at all. Broce, 488 U.S. at 573-75. In In re Personal Restraint of Francis, 170 Wn.2d 517, 242 P.3d 866 (2010), the court held that while “[a] guilty plea, by its nature, admits factual guilt—and thus waives any challenge on that ground,” pleading guilty does not waive a double jeopardy challenge to “ ‘the very power of the State to bring the defendant into court to answer the charge brought against him.’ ” Francis, 170 Wn.2d at 522 (quoting State v. Knight, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008) (quoting Blackledge v. Perry, 417 U.S. 21, 30, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974))).

Because the guilty plea did not waive a double jeopardy challenge to entry of multiple convictions for the same offense, the one-year time limit under RCW 10.73.090 does not apply to a personal restraint petition based solely on the grounds of double jeopardy. Francis, 170 Wn.2d at 522; RCW 10.73.100(3).

Here, as in the linked case, because the facts establish France made different types of threats to cause bodily injury to Paulsen, Daugaard, and Beach at different times and places, the unit of prosecution is each threat.

France left voice mails for Paulsen on December 28, 2010; January 10, 2011; and January 25, 2011. In the December 28 voice mail, France threatens to “grab” her, “rip” her shirt off, and sexually assault her “in the main street, right on a sidewalk,” when he “get[s] out a jail.” In the January 10 voice mail, France threatens to force Paulsen to perform oral sex on him “in nine months” when he finds her leaving work. In the January 25 voice mail, France tells Paulsen he will find out where she lives and “put a

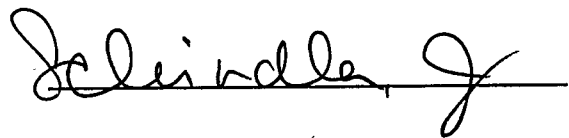


bullet" in her.

France left voice mails for Daugaard on January 11, 2011; January 12, 2011; and January 25, 2011. In the January 11 voice mail, France tells her that in nine months, he has "a bullet" for her. In the January 12 voice mail, France threatens to sexually assault Daugaard in the hallway or the elevator and tells Daugaard that she can "die." In the January 25 voice mail, France threatens that when he sees her "on the streets," he will "cut" her, he will sexually assault her, and he will make sure she stays "in a wheelchair for awhile."

France left voice mails for Beach on December 28, 2010; January 12, 2011; and January 25, 2011. In the December 28 voicemail, France threatens Beach that when he gets out in a year, he will "grab" her and "get [her] good" as she is leaving work and he will "rip [her] shirt right off." In the January 12 voicemail, France tells Beach that "in nine . . . months," he will "stalk" her and sexually and physically assault her. In the January 25 voice mail, France threatens to "kick [her] door in" and "get" her.

Because we conclude the guilty plea to nine counts of felony harassment do not violate double jeopardy, we deny the personal restraint petition.



WE CONCUR:

