

March 10, 2020

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

**DIVISION II**

In the Matter of the  
Personal Restraint of

MICAH ANTHONY NYE,

Petitioner.

No. 53550-5-II

UNPUBLISHED OPINION

SUTTON, J. -- Micah Nye seeks relief from personal restraint imposed as a result of his 2018 pleas of guilty to two counts of first degree rape of a child.<sup>1</sup> First, he claims that his speedy trial rights were violated. But all extensions of the time for trial were either the result of Nye's waivers or for a continuance for good cause shown. *State v. Ollivier*, 178 Wn.2d 813, 837, 312 P.3d 1 (2013); *State v. Torres*, 111 Wn. App. 323, 330, 44 P.3d 903 (2002).

Second, Nye claims that the State engaged in prosecutorial vindictiveness when it threatened to file a sentencing aggravator allegation if he did not plead guilty. But that alone does

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<sup>1</sup> Nye timely filed a motion for relief from judgment and sentence in the trial court. That court transferred his motion to us under CrR 7.8(c) to be considered as a personal restraint petition.

not constitute prosecutorial vindictiveness. *State v. Bonisisio*, 92 Wn. App. 783, 790, 964 P.2d 1222 (1998).

Third, Nye argues that his statement was taken in violation of his *Miranda*<sup>2</sup> rights because he was intoxicated at the time he was interviewed. But by pleading guilty, he waived his right to challenge the admissibility of his statements.

Fourth, Nye argues that his convictions should have been treated as parts of the same criminal conduct in calculating his offender score. But under former RCW 9.94A.589(1)(a) (2002), crimes must have been committed at the same time to be parts of the same criminal conduct. Nye pleaded guilty to first degree rapes of a child occurring at different times.

Fifth, Nye argues that there was insufficient evidence of sexual assault. But by pleading guilty, he waived his right to challenge the sufficiency of the evidence. *State v. Carrier*, 36 Wn. App. 755, 757, 677 P.2d 768 (1984).

Sixth, Nye argues that he was denied his right to counsel when the trial court would not grant him a continuance to obtain private counsel. But he does not present any evidence that he could have retained private counsel and so does not demonstrate that the court erred in denying him a continuance.

Seventh, Nye argues that there was no probable cause to support the charges against him. But the probable cause declaration the State filed presented sufficient probable cause.

Eighth, Nye argues that he received ineffective assistance of counsel because his counsel advised him to plead guilty and did not interview potential defense witnesses. To establish ineffective assistance of counsel, he must show his counsel's performance fell below an objective

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

standard of reasonableness or that as a result of that deficient performance the result of his case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). This court presumes strongly that trial counsel's performance was reasonable. *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011). By pleading guilty, he received a considerably shorter sentence and he does not present any evidence of what the potential defense witnesses would have said if interviewed. Nye shows neither deficient performance nor resulting prejudice and so does not show that he received ineffective assistance of counsel.

Ninth, Nye argues that he was not advised of his constitutional rights when he pleaded guilty. But the transcript of his change of plea hearing demonstrates otherwise.

Tenth, Nye argues that he was not informed that his term of confinement would be determined by the Indeterminate Sentence Review Board rather than by the court. But page 4 of his statement on plea of guilty to sex offense demonstrates otherwise.

Finally, Nye seeks to withdraw his plea, asserting that his counsel provided ineffective assistance by not seeking to exclude the statements he made during his police interview, by not interviewing witnesses, and by not sharing the discovery with him. “[T]he court shall allow a defendant to withdraw the defendant’s plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.” *State v. Quy Dinh Nguyen*, 179 Wn. App. 271, 282, 319 P.3d 53 (2013) (quoting CrR 4.2(f)). “Withdrawal may be necessary to correct a manifest injustice where the defendant establishes (1) he or she received ineffective assistance of counsel; (2) the plea was not ratified by the defendant or one authorized by him or her to do so; (3) the plea was involuntary; or (4) the plea agreement was not kept by the prosecution.” *Id.* “The defendant

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generally bears the burden of establishing the necessity for withdrawing the plea.” *Id.* at 282-83. Nye makes no such showing that withdrawal of his plea of guilty is necessary to correct a manifest injustice. He does not demonstrate ineffective assistance of counsel, and in both his statement on plea of guilty to sex offense and his plea colloquy, he stated that he was making his plea knowingly and voluntarily.

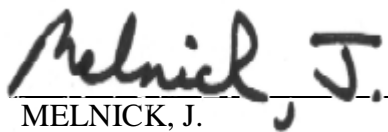
In sum, Nye does not show that he is entitled to relief from restraint. We therefore deny his petition and his request for appointment of counsel.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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SUTTON, J.

We concur:

  
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WORSWICK, P.J.

  
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MELNICK, J.