IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AKEEM NURUDDIN HENDERSON, Appellant.	No. 40254-8-II UNPUBLISHED OPINION

Johanson, J. — Akeem Henderson appeals his convictions of felony violation of a no-contact order and fourth degree assault—domestic violence. He contends that he must be allowed to withdraw his guilty plea because it was not knowing, intelligent, and voluntary. We affirm.

FACTS

According to the affidavit of probable cause, in April 2008, Henderson went to Brandi Guffey's residence in violation of a court order. He yelled at Guffey, pulled her off the porch and punched her in the face more than 10 times. Henderson pleaded guilty in exchange for the State's agreement to dismiss five additional charges. Those charges included unlawful imprisonment, assault, and interfering with a 911 call. Henderson entered an *Alford*[1] plea for the felony no-

[1] *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

contact order violation and the fourth degree assault charge.

At Henderson's arraignment and plea hearing, Judge Ronald Culpepper began by reciting both counts against Henderson and asking whether he understood the charges. Henderson nodded his head, and responded that he wished to plead guilty to the charges. Judge Culpepper then asked whether Henderson entered his plea voluntarily and freely. When Henderson responded in the affirmative, Judge Culpepper noted, "[n]ot very enthusiastically, though, apparently." Report of Proceedings (RP) at 4. Judge Culpepper continued with colloquy, ensuring that Henderson had reviewed his plea of guilty. Judge Culpepper additionally recited the elements that the State would be required to prove beyond a reasonable doubt if Henderson chose to go to trial, and he listed the rights Henderson would have at trial that he gave up by pleading guilty.[2] Henderson responded, confirming that he had no questions about those rights. He indicated also that he understood that the court was not bound by the State's initial sentencing recommendation. After confirming that nobody had made any threats or promises to Henderson, Judge Culpepper asked why Henderson had decided to plead guilty. Henderson stated, "There's no way I could beat it. This is an ongoing matter." RP at 7.

Before concluding the colloquy, Judge Culpepper read from paragraph 11 of Henderson's statement on plea of guilty, which provides:

---

[2] Henderson's statement on plea of guilty also includes the reasonable doubt standard and a list of the rights given up by pleading guilty. Henderson indicated during colloquy that he had reviewed every page of the document with his attorney.

> I didn't assault Brandi Guffey on April 4th 2008. I wasn't there. She was angry that I was staying away from her. I am pleading guilty to take advantage of the State's offer. I have considered the evidence. I think there is a substantial likelihood of conviction of one of these charges.

Clerk's Papers at 13.

While he read from the statement, Judge Culpepper altered the wording of the last sentence, stating instead, "I [have] considered the evidence and I think there is a substantial likelihood of conviction of one *or more* of these charges." RP at 8 (emphasis added). Henderson and his counsel made no objection, and the court continued, reading the affidavit of probable cause. After Henderson's counsel stipulated to the statement of probable cause, Judge Culpepper concluded that the facts appeared sufficient to support the guilty plea as to both charges. The court sentenced Henderson to 15 months. Henderson appeals.

ANALYSIS

Constitutional due process requires an affirmative showing that a defendant's guilty plea is knowing, intelligent, and voluntary. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008); *State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980). The defendant must enter the plea competently and with an understanding of the nature of the charge and the consequences of the plea, including the understanding that he or she necessarily waives important constitutional rights. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996); *Codiga*, 162 Wn.2d at 922. A court determines voluntariness on the basis of the totality of the circumstances. *Branch*, 129 Wn.2d at 642. On appellate review of a guilty plea, the State bears the burden of proving the plea's validity, including the defendant's knowledge of the direct consequences of the plea. *State v. Knotek*, 136 Wn. App. 412, 423, 149 P.3d 676 (2006) (citing *State v. Ross*, 129 Wn.2d

279, 287, 916 P.2d 405 (1996)), *review denied*, 161 Wn.2d 1013 (2007). When a defendant raises the issue of voluntariness for the first time on appeal, however, he must show that the alleged constitutional error is manifest, or in other words obvious and directly observable. *Knotek*, 136 Wn. App. at 423.

Henderson has failed to make that showing. He argues that an *Alford* plea is by its nature equivocal, and he points to the judge's observation that he was not very enthusiastic about the plea. Primarily, he relies on the language of his plea statement, asserting that it indicated that he believed the State could prove only one of the crimes charged, and not one *or more* of the charges as Judge Culpepper stated during colloquy. Thus, he argues, there was no reasonable basis for pleading guilty to both charges, and his plea could not have been informed and intelligent.

Henderson's contention regarding his plea does not take into account the totality of the record, which includes his own handwritten recitation of the elements for both the crimes to which he pleaded and the judge's oral statements regarding both charges to which neither Henderson nor his attorney objected. In addition, his argument ignores the fact that the plea bargain was based on the State's agreement to dismiss five additional charges in two other pending cases. That was a substantial benefit and indicates a knowing and intelligent plea. The record as a whole shows clearly that Henderson had discussed the entire plea agreement with his attorney. He understood the nature of the charges, the likelihood of prevailing against them, and the consequences and advantages of accepting the State's bargain.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Hunt, J.

Penoyar, C.J.