IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. YOLANDA DENICE POUNCEY, Appellant.	No. 40567-9-II UNPUBLISHED OPINION

Worswick, A.C.J. — Yolanda Pouncey appeals her convictions of 24 counts of residential burglary, two counts of second degree theft, one count of first degree theft, and one count of theft of a firearm. She contends that her guilty plea was not knowing, voluntary, and intelligent. We affirm.

FACTS

Between December 24, 2008 and October 11, 2009, Pouncey entered into the homes of more than 20 elderly persons, asking to use the telephone, or a phone book, or the bathroom. She would then take any valuable items she could find, including checkbooks, credit and debit

cards, social security cards, cash, jewelry, and prescription drugs. The State charged her with a total of 52 crimes. The charges included 23 counts of residential burglary, 23 counts of second degree theft, two counts of first degree theft, one count of first degree burglary, one count of theft of a firearm, one count of second degree identity theft, and one count of third degree theft. All of these crimes, except for the firearm theft, occurred in Pierce County.

Without counting the current crimes, Pouncey had an offender score of 18. At least one of the charged crimes was a strike crime and there were circumstances that a jury could find to be aggravating factors. She bargained with the State to avoid the possibility of consecutive sentences amounting to a life sentence. She agreed to enter an *Alford* plea[1] to 28 of the 52 charges listed above. She also waived her right to a jury determination on four aggravating factors and her right to challenge an exceptional sentence. The agreement provided that the State would recommend an exceptional sentence of 300 months and Pouncey could argue for a sentence of 204 months.

At the plea hearing, Pouncey's attorney told the court that he had spent an hour and a half going over the plea agreement and the second amended information with her. He said that he had explained the elements of the crimes and the aggravating factors for sentencing. Responding to the trial judge's questions, Pouncey confirmed that she had carefully reviewed her statement on plea of guilty with her attorney, that she understood the consequences of the plea, and that there was nothing in the document that confused her. She also said that she understood the

[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).

elements of each crime. Finally, she confirmed that she understood the rights she was giving up by pleading guilty, that she understood that the court was not bound by the State's sentencing recommendation, and that she had agreed to an exceptional sentence.

The State then explained that the theft of a firearm charge stemmed from conduct in Thurston County, but the prosecutor there agreed to cede jurisdiction so that it could be included in the plea agreement in Pierce County. That led to the following colloquy:

> Q. Ms. Pouncey, is that your understanding as well?
> A. Yeah, to a certain degree, yes.
> Q. I want to know to what degree. I want to make sure that you understand it.
> A. I was with the person that took the gun so—
> Q. Not as to the facts.
> ([Defense counsel] discussing with the defendant.)
> A. Yes.
> Q. Yes?
> A. Yes.

Verbatim Report of Proceedings at 20.

The court accepted Pouncey's guilty pleas and ultimately sentenced her to the 300 months recommended by the State.

ANALYSIS

Constitutional due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). 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.

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)). However, when, as here, a defendant raises the issue of voluntariness of a plea agreement for the first time on appeal, the defendant must show that the alleged constitutional error is manifest, or in other words obvious and directly observable. *Knotek*, 136 Wn. App. at 423.

When a defendant completes a written plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Likewise, an information that notifies the defendant of the nature of the crimes to which he or she is pleading creates a presumption that the plea was knowing, intelligent, and voluntary. *In Re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993).

Pouncey assured the trial court that she understood the elements of her crimes. She also said that she had carefully reviewed the plea agreement, which included the second amended information, listing all of the elements for each crime. She argues that the presumption is overcome in this case by the court's failure to read the elements of the crimes to her, or discuss each of the rights she was waiving.

This argument is meritless. Pouncey concedes that a detailed colloquy is not mandatory. *See In re Pers. Restraint of Keene*, 95 Wn.2d 203, 207, 622 P.2d 360 (1980). But she asserts that it was required here because she expressed uncertainty during the colloquy about the

Thurston County crime. In that colloquy, she appeared to be disputing who took the gun. An *Alford* plea, however, is valid despite the defendant's assertion of innocence. *See In Re Pers. Restraint of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005). The court permitted Pouncey to discuss the matter with her attorney and she then affirmed her understanding of the agreement. She has shown no lack of understanding and no manifest injustice.

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.

Worswick, A.C.J.

We concur:

Armstrong, J.

Johanson, J.