IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JACOB LEON HADLEY, Appellant.	No. 41217-9-II UNPUBLISHED OPINION

Worswick, A.C.J. — Jacob L. Hadley appeals his guilty plea convictions of second degree murder with a deadly weapon enhancement, second degree assault, and second degree unlawful possession of a firearm. He claims his trial counsel failed to tell him that the decedent's sister would testify that Christopher Randon, not Hadley, had committed the murder and that, therefore, the trial court erred in denying his motion to withdraw his guilty pleas. In a statement of additional grounds (SAG), Hadley claims that his pleas were involuntary and that defense counsel's testimony at Hadley's plea withdrawal hearing exceeded the allowable scope of his waiver. We affirm.

FACTS

A scuffle broke out at a birthday party in Spanaway, Washington, about 1:45 am on February 1, 2009, during which John Stratton was shot and killed and Octavier Bushnell was wounded. On March 3, 2010, in a joint plea hearing, Hadley admitted killing Stratton and Randon admitted shooting Bushnell.

The trial court had before it Hadley's 10-page "Statement of Defendant on Plea of Guilty." Clerk's Papers (CP) at 9. The trial court discussed each of the three charges with Hadley, the sentencing ranges for each offense, including the deadly weapon sentencing enhancement, and the required community custody. It determined that there was a factual basis for each count and satisfied itself that Hadley made his pleas freely, voluntarily, and intelligently with an understanding of the rights he was giving up.

The trial court scheduled Hadley's sentencing for April 23, 2010, but proceeded immediately to sentencing Randon so the out-of-town members of Stratton's family would have an opportunity to address the court. During Randon's sentencing hearing, Stratton's sister, Rachel Stratton, chastised Randon for letting Hadley take the blame for her brother's death when she had seen Randon shoot him.

On April 1, 2010, Hadley obtained new counsel and sought to withdraw his guilty pleas, claiming his counsel was ineffective during plea negotiations. In his declaration in support of his motion to withdraw his guilty pleas, Hadley asserted that (1) he never reviewed the discovery nor talked about it with his attorney, (2) he was unaware of the conflicting stories witnesses gave about what occurred, (3) he never reviewed the witness list, (4) he was stunned when Rachel

Stratton said that she saw Randon shoot her brother, and (5) the plea was put together so quickly that he simply acquiesced with his attorney's demand without fully understanding what he was doing.

On July 30, 2010, the trial court held a hearing on the motion to withdraw guilty plea in which the trial court allowed the State to examine Gary Clower, Hadley's counsel during the plea negotiations. Clower testified about his representation of Hadley up to and including the plea hearing. He stated that he had three full binders of discovery and he had discussed it all with Hadley. He testified that plea negotiations began in January 2010, and that he discussed every offer with Hadley. He explained that he and Hadley discussed at length that two different firearms were involved, that witnesses attributed the nine millimeter semiautomatic handgun to Randon, that he, Hadley, admitted to having a .44 caliber handgun, and that the bullet that killed Stratton was from a .44. He said that Rachel Stratton's belief that Randon shot her brother was inconsistent with the evidence and that Rachel's description of the assailant was consistent with Hadley's appearance, including his clothing and his braces. After Clower interviewed Rachel Stratton, he discussed this interview with Hadley and her likely misidentification. Clower testified that he explained to Hadley that the State's theory of the case was one of accomplice liability and thus it "might not matter terribly who shot who if each of them shot somebody" as they would both be responsible for each other's actions.

As to the plea negotiations, he explained that Hadley's primary concern was the amount of time he would have to serve in prison. He explained that Hadley faced 30 years if he accepted the State's first plea offer and significantly more if he went to trial. Clower tried to get the murder

charge reduced to manslaughter but the State would only reduce the charge to second degree murder and recommend a reduced sentence of 15 years. When asked about Hadley's statement in his declaration that Rachel Stratton's statements at Randon's sentencing stunned him, Clower responded, "[T]hat's not accurate at all." Report of Proceedings (RP) at 89. He said that her statements were not a surprise and, in fact, he and Hadley had talked about them before going into the plea hearing. As to Hadley's assertion that he did not have time to think before deciding to plea, Clower responded, "As I said, this didn't happen just that afternoon. This was the end of a process that had been going on for probably over a month." RP at 91. The State then asked, "Did he agree to enter a factual statement that he fired the shot that killed John Stratton?" RP at 92. Clower responded, "Yes." RP at 92. The State then asked, "Do you believe he did that with full understanding that Rachel Stratton thought Christopher Randon was the gunman?" RP at 92 Clower responded, "Yes." RP at 92. Finally, Clower testified that Hadley expressed no confusion about his plea and that he knew "full well" what he was doing. RP at 95.

The trial court explained that it had reviewed relevant case law, reread the transcripts of the plea hearing several times, considered Hadley's declaration, heard Clower's testimony, and was satisfied that no manifest injustice occurred. It then denied the motion and proceeded to sentencing, where it followed the State's recommendation of a 178-month standard range sentence. Hadley appeals.

Discussion

I. Motion To Withdraw Guilty Pleas

A. *Standard of Review*

We review a trial court's decision on a motion to withdraw a guilty plea for an abuse of discretion. *State v. Zhao*, 157 Wn.2d 188, 197, 137 P.3d 835 (2006). A trial court abuses its discretion when its decision rests on clearly untenable grounds or is manifestly unreasonable. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009).

B. *Manifest Injustice*

CrR 4.2(f), which governs the withdrawal of a guilty plea made before sentencing, provides in part: "The 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." A "manifest injustice" is "an injustice that is obvious, directly observable, overt, not obscure." *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). In *Taylor*, the Supreme Court discussed four indicia, any one of which would independently establish manifest injustice: (1) the denial of effective assistance of counsel, (2) the plea was not ratified by the defendant, (3) the plea was involuntary, and (4) the plea was not honored by the prosecution. 83 Wn.2d at 597 (quoting Criminal Rules Task Force, Washington Proposed Rules of Criminal Procedure, CrR 4.2 cmt. at 50 (1971)). CrR 4.2(f) places a demanding standard on the defendant. Hadley's claims fall under categories (1) and (3) of these indicia.

1. *Effective Assistance of Counsel*

To establish ineffective assistance of counsel, Hadley must show both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Failing to make either showing is fatal to the claim. *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726 (2007). Counsel's performance is deficient if it falls below an objective standard of reasonableness based on a consideration of all the

circumstances. *State v. Stenson*, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). We strongly presume effective representation. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). To prove prejudice, Hadley must show that but for counsel's deficient performance, there is a reasonable probability the outcome of the proceedings would have differed. *McFarland*, 127 Wn.2d at 335.

To challenge a guilty plea, we analyze prejudice in terms of whether the attorney's performance affected the outcome of the plea process. *State v. Garcia*, 57 Wn. App. 927, 932-33, 791 P.2d 244 (1990). "In a plea bargain context, 'effective assistance of counsel' merely requires that counsel 'actually and substantially [assist] his client in deciding whether to plead guilty.'" *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (alteration in original) (quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d 901, *review denied*, 96 Wn.2d 1023 (1981)).

In deciding the adequacy of Clower's representation, the trial court had to weigh Hadley's declaration against Clower's testimony. In denying the motion to withdraw, the trial court noted that it had a vivid recollection of the hearing, that it had reviewed the transcripts multiple times, and that it had carefully discussed the plea agreement with Hadley. It also noted that Hadley was aware before he entered the pleas that the Stratton family thought the State had charged the wrong person.

Hadley fails to show that counsel's recommendation to accept the plea offer resulted from ineffective assistance of counsel. Hadley's does not question that Clower did extensive discovery, interviewed multiple witnesses, and acquired a favorable plea agreement for his client. Unless Hadley can demonstrate otherwise, we must presume that Clower's representation was effective

and that he substantially assisted Hadley in his decision to accept the State's plea offer. *McFarland*, 127 Wn.2d at 334-35. Because Hadley cannot show that counsel's performance was inadequate, we need not address prejudice. *State v. Foster*, 140 Wn. App. at 273.

Because Hadley cannot show that Clower's performance was inadequate, he has not met his burden to show that Clower was ineffective. Under these circumstances, the trial court did not abuse its discretion in finding no manifest injustice based on ineffective assistance of counsel.

2. *Voluntariness of Pleas*

In his pro se SAG, Hadley claims that his pleas were involuntary. He focuses on his unwillingness to enter a straight plea to the murder charge and instead wanting to enter a *Newton* plea.[1] He claims that trial counsel should have asked for a continuance instead of telling him this was his only choice unless he wanted to risk going to trial.

We have observed:

> When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea's voluntariness. When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.

State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982) (citations omitted). Hadley fails to refute this presumption.

During the plea hearing, Hadley expressed no concern, misunderstanding, or confusion

[1] *State v. Newton*, 87 Wn.2d 363, 366, 552 P.2d 682 (1976) (adopting *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (a defendant may plead guilty while disputing the facts alleged by the prosecution)).

about what he was agreeing to do. During the plea colloquy, the trial court gave Hadley multiple opportunities to express any concerns, misunderstandings, or disagreements. He expressed none but instead affirmatively stated that he understood the agreement and was knowingly and voluntarily pleading guilty. During the hearing on Hadley's motion to withdraw his plea, his defense attorney testified that he had made Hadley aware of the facts of the case and the consequences of his decision to plead guilty or go to trial. Keeping in mind that, as a reviewing court, we do not weigh witness credibility, it was the trial court's province, and only its province, to judge the conflicting testimony and allegations in deciding the facts and determining whether to exercise its discretion and grant or deny the motion. The trial court did not abuse its discretion in finding no manifest injustice based on involuntary pleas.

II. Scope of Testimony

In his SAG, Hadley also claims that defense counsel's testimony exceeded the scope of his waiver of attorney client communications. He cites one instance in the record where his attorney objected to the State's question of Clower because "it goes to the ultimate issue." RP at 92-93. The trial court limited the State's question to, "[Did] you ask" Hadley if the statement he was entering was true? CP at 93. Clower responded that he did not remember if he had asked that exact question.

RPC 1.6(b)(5) provides: "A lawyer to the extent the lawyer reasonably believes necessary . . . (5) may reveal information relating to the representation of a client . . . to respond to allegations in any proceeding concerning the lawyer's representation of the client." Here, the questions asked and the answers given pertained to matters related to Clower's representation of

Hadley, which Hadley put in issue when he claimed ineffective assistance of counsel. We find no error.

We affirm.

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.

Worswick, A.C. J.

We concur:

Hunt, J.

Quinn-Brintnall, J.