

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER DRYDEN,

Appellant.

No. 41703-1-II  
Consolidated with:

No. 41706-5-II  
and  
No. 41713-8-II

UNPUBLISHED OPINION

Johanson, A.C.J. — Christopher Dryden pleaded guilty to two counts of possession of methamphetamine and one count of second degree trafficking in stolen property in three different cause numbers. On appeal of all three cause numbers, Dryden argues that the trial court violated his due process rights because he did not plead guilty voluntarily, knowingly, and intelligently. Specifically, he claims that the trial court erred by failing (1) to advise him how his actions satisfied the elements of the crimes charged, (2) to accurately inform Dryden of the maximum sentence range in cause numbers 10-1-00001-4 and 10-1-00207-6, and (3) to inform Dryden that state law required consecutive sentences. We disagree with Dryden and affirm his convictions,

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but we remand for resentencing on all three cause numbers because, though Dryden failed to raise this claim on appeal, the trial court improperly sentenced Dryden to consecutive sentences.

#### FACTS

On January 4, 2010, the State charged Christopher Dryden, born on October 8, 1981, with possession of methamphetamine,<sup>1</sup> committed on January 2, 2010, in cause number 10-1-00001-4. On May 3, 2010, Dryden pleaded guilty as charged. As part of the plea proceedings, Dryden signed a statement of defendant on plea of guilty<sup>2</sup> that provided the “Maximum Term and Fine” for the offense was “5 years and or \$10,000 fine.”<sup>3</sup> CP (#10-1-00001-4) at 4. Before signing the statement, Dryden wrote, “on 1/02/2010 in GH County I was [in] possession of methamphetamine.” CP (#10-1-00001-4) at 10. The trial court ultimately accepted his guilty plea after orally confirming on the record that Dryden understood the nature of his crime.

Then, on May 28, 2010, the State charged Dryden with another count of possession of methamphetamine, committed on May 27, 2010, in cause number 10-1-00207-6. On June 28,

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<sup>1</sup> RCW 69.50.4013(1).

<sup>2</sup> The “Statement of Defendant on Plea of Guilty” requires a defendant to acknowledge the charged offense, its elements, the standard sentencing range for the charged offense(s), the maximum sentence, notifications relating to specific crimes, acknowledgement that the plea is being made voluntarily, without threat or promise, and that the defendant must “state what I did in my own words that makes me guilty of this crime.” CP (#10-1-00001-4) at 10; CP (#10-1-00207-6) at 16; CP (#10-1-30018-8) at 11.

<sup>3</sup> The record does not include a plea agreement form for cause number 10-1-00001-4.

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2010, Dryden pleaded guilty as charged. The statement of defendant on plea of guilty provided that the “Maximum Term and Fine” for the offense was “5 years or 10,000.” CP (#10-1-00207-6) at 10. Again, before Dryden signed the statement of defendant on plea of guilty, he wrote, “on May 27, 2010 in GH County I was in possession of methamphetamine.” CP (#10-1-00207-6) at 16. The trial court accepted his guilty plea after orally confirming that he understood the nature of his crime.

On September 13, 2010, the State charged Dryden with second degree trafficking in stolen property, committed on July 2, 2010, in cause number 10-1-00318-8. Dryden pleaded guilty to second degree trafficking in stolen property.<sup>4</sup> Before Dryden signed the statement of defendant on plea of guilty, he wrote, “On 7/2/2010, in Grays Harbor County, WA, I recklessly trafficked in stolen property.” CP (#10-1-30018-8) at 11. As before, the trial court accepted his guilty plea after orally confirming that he understood the nature of his crime.

The trial court sentenced Dryden on all three cause numbers on January 10, 2011. On each of the possession of methamphetamine counts, the trial court sentenced Dryden to six months in jail. The trial court sentenced Dryden to 12 months in jail for the second degree trafficking in stolen property conviction. The trial court ordered that Dryden serve all three sentences consecutively and imposed no fines. Dryden appeals.

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<sup>4</sup> RCW 9A.82.055(1).

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## ANALYSIS

### Due Process

Dryden argues that because he did not knowingly, voluntarily, and intelligently plead guilty, the trial court violated his due process rights by accepting his guilty pleas in cause numbers 10-1-00001-4, 10-1-00207-6, and 10-1-00318-8. Specifically, Dryden argues that the trial court failed (1) to make him aware of the elements of the crimes charged, and how his actions related to those elements, (2) to inform him of the maximum sentence of each charge in cause numbers 10-1-00001-4 and 10-1-00207-6, and (3) to advise him that state law required his consecutive sentences. But, the record demonstrates that Dryden read and understood the elements of his charges in relation to his actions. The record, viewed as a whole, also demonstrates that the trial court did not materially misinform Dryden of his maximum statutory sentencing range; and finally, Dryden relies upon improper authority when he claims the trial court erred in failing to advise him of consecutive terms.

#### A. Elements of the Crime

Dryden first argues that the trial court erred in failing to inform him how his actions related to the elements of the charged crimes in cause numbers 10-1-00001-4, 10-1-00207-6, and 10-1-00318-8. However, the record demonstrates that Dryden understood how his actions related to the elements of the charged crimes.

Constitutional due process requires an affirmative showing that a defendant's guilty plea

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be 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). Defendants must enter their pleas competently and with an understanding of the nature of their charges and the consequences of their pleas, including the understanding that they necessarily waive important constitutional rights. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). 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 “[k]nowledge of the direct consequences of the plea.” *State v. Knotek*, 136 Wn. App. 412, 423, 149 P.3d 676 (2006) (quoting *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996)), *review denied*, 161 Wn.2d 1013 (2007). When defendants raise the issue of voluntariness for the first time on appeal, however, they must show that the alleged constitutional error is manifest, or obvious and directly observable. *Knotek*, 136 Wn. App. at 423.

Here, the totality of the circumstances demonstrates that Dryden understood the elements of the charged crimes when he pleaded guilty in all three cause numbers. First, Dryden’s charging document outlined the elements of illegal possession of methamphetamine. Second, Dryden reviewed the plea agreement and his statement of defendant on plea of guilty before submitting them to the trial court. Third, the trial court identified both the plea agreement form and the statement of defendant on plea of guilty form, and during the plea agreement

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proceedings, Dryden assured the trial court that he had read and understood both documents. Fourth, Dryden orally admitted to the trial court that he possessed methamphetamine and knew it was illegal. Fifth, before Dryden signed his statement on plea of guilty, he wrote, “on 1/02/2010 in GH County I was in possession of methamphetamine.” CP (#10-1-00001-4) at 10. Sixth, the record reflects that the trial court asked Dryden if he had any questions about the plea agreement form and his statement on plea of guilty, and he responded that he understood both and did not have any questions. The trial court went to great lengths to assure that Dryden understood the facts of his case in relation to the elements of possession of methamphetamine. Therefore, the record demonstrates that Dryden understood how his actions related to the elements of the possession of methamphetamine charge in cause number 10-1-00001-4.

Similarly, in cause number 10-1-00207-6, the trial court reviewed Dryden’s guilty plea with him on the record. Again, the record demonstrates that Dryden understood how his actions related to the elements of the charged crime in cause number 10-1-00207-6. First, Dryden’s charging document alerted him to the elements of illegal possession of methamphetamine. Second, Dryden told the trial court that he possessed methamphetamine and knew it was illegal. Third, the trial court identified both the plea agreement form and the statement of defendant on plea of guilty form and Dryden assured the trial court that he had read and understood both. Fourth, the trial court relied upon Dryden’s signed statement on plea of guilty in which he wrote,

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“on May 27, 2010 in GH County I was in possession of methamphetamine.” CP (#10-1-00207-6) at 16. Again, the record demonstrates that Dryden understood how his actions related to the elements of the possession of methamphetamine charge in cause number 10-1-00207-6.

Finally, in cause number 10-1-30018-8, the trial court reviewed Dryden’s guilty plea with him on the record. Again, Dryden understood how his actions related to the elements of the charged crime in cause number 10-1-30018-8. First, Dryden’s charging document alerted him to the elements of second degree trafficking in stolen property. Second, Dryden reviewed the information with his attorney and told the trial court that he had read his statement on plea of guilty. Third, the trial court asked Dryden if he understood everything and if he had any questions concerning his plea, and Dryden stated that he understood and had no questions. Fourth, the trial court relied upon Dryden’s signed statement on plea of guilty, in which he wrote, “On 7/2/2010, in Grays Harbor County, WA, I recklessly trafficked in stolen property.” CP (#10-1-30018-8) at 11. Fifth, Dryden assured the trial court that he had read and understood the facts in support of the crime charged. Sixth, Dryden discussed the plea with his attorney. Therefore, the record demonstrates that Dryden understood how his actions related to the elements of the trafficking in stolen property charge in cause number 10-1-30018-8.

In each of the three charges, the State outlined the elements of Dryden’s crimes in its charging documents, and how his conduct related to those elements. Dryden acknowledged in his plea documents that he committed the charged crimes. He reviewed all these documents and

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the trial court received oral assurances from Dryden on the record that he understood the nature of his charges and still desired to plead guilty. And the trial court orally reviewed each charge with Dryden. Accordingly, the record demonstrates that Dryden understood the crimes charged in relation to the factual circumstances surrounding the charges in cause numbers 10-1-00001-4, 10-1-00207-6, and 10-1-00318-8.

#### B. Maximum Sentences

Dryden next argues that the trial court erred by not accurately informing him in his statements on plea of guilty<sup>5</sup> of the maximum sentence of each charge in cause numbers 10-1-00001-4 and 10-1-00207-6.<sup>6</sup> Specifically, Dryden argues that the trial court did not accurately inform him of the maximum sentence and fine for each possession of methamphetamine charge because the word “or” was handwritten in his statement on plea of guilty for cause number 10-1-00207-6 instead of “and/or.” Br. of Appellant at 9. We disagree.

“Due process requires that a defendant’s guilty plea be knowing, voluntary, and intelligent.” *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006); CrR 4.2(d) (2005). Defendants must be aware of the statutory maximum for a charged crime, as this is a direct consequence of a guilty plea. *See* CrR 4.2(g). Defendants may challenge the voluntariness of their pleas if the trial court misinforms them of sentencing consequences. *See Mendoza*, 157 Wn.2d at 587–91.

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<sup>5</sup> Dryden refers to this as “plea statements.” Br. of Appellant at 9.

<sup>6</sup> Dryden does not appeal this for cause number 10-1-30018-8 and concedes that his offender score was correctly calculated.



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Dryden argues that the trial court misinformed him of his statutory maximum sentence and fine in his statements on plea of guilty due to an inconsistency between the handwritten language in cause number 10-1-00001-4, “5 years and/or \$10,000 fine,” and the handwritten language in cause number 10-1-00207-6, “5 years or 10,000”. CP (#10-1-00001-4) at 4; CP (#10-1-00207-6) at 10. We note that the preprinted language in these statements on plea of guilty states, “Each crime with which I am charged carries a maximum sentence, a fine, and a *Standard Sentence Range*,” and is identical in both statements of defendant on plea of guilty. CP (#10-1-00001-4) at 4; CP (#10-1-00207-6) at 10. This language indicates that the trial court may impose a term of incarceration “and” a monetary fine. CP (#10-1-00001-4) at 4; CP (#10-1-00207-6) at 10. Dryden assured the trial court that he understood both of his statements on plea of guilty that included the potential maximum sentence, fine, and standard range for each charge. We view the handwritten discrepancy between “and/or” and “or” in his statements on plea of guilty as a mere scrivener’s error and conclude that this discrepancy did not render involuntary Dryden’s guilty pleas in cause numbers 10-1-00001-4 and 10-1-00207-6.

### C. Consecutive Sentencing

Finally, Dryden argues that the trial court erred by failing to advise him that it must impose consecutive sentences for each of his three sentences per RCW 13.40.180, part of the Juvenile Justice Act of 1977. But, the Juvenile Justice Act does not apply to the adult Dryden.

Perhaps, as the State suggests, Dryden intended to challenge the trial court’s application of RCW 9.94A.589(1)(a):

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[W]henever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535.

RCW 9.94A.589(1)(a). Under RCW 9.94A.589(1)(a), the trial court should have sentenced Dryden concurrently unless it found an aggravating factor warranting an exceptional sentence. The trial court did not find an aggravating factor to warrant an exceptional sentence, however it still sentenced Dryden to consecutive sentences on the three charges. Therefore, the trial court erred in sentencing Dryden to consecutive sentences without finding an aggravator for an exceptional sentence. *See* RCW 9.94A.589(1)(a).

We affirm Dryden's convictions but remand for resentencing.

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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Johanson, A.C.J.

We concur:

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Quinn-Brintnall, J.

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Van Deren, J.

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