IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint of TERRELL EDWARD JONES, Petitioner.	No. 42223-9-II UNPUBLISHED OPINION

Johanson, A.C.J. – Terrell Edward Jones pleaded guilty to a series of charges as part of a plea deal that included a charge for a felony violation of a no-contact order (VNCO). Jones filed a personal restraint petition (PRP) claiming that the trial court misinformed him about the direct consequences of his VNCO plea, so he did not plead guilty knowingly, voluntarily, and intelligently. Consequently, he asserts that he should be allowed to withdraw all his guilty pleas because they were part of a package deal. Because Jones fails to demonstrate any actual prejudice, we deny his petition.

FACTS

In November 2010, Jones pleaded guilty in Clark County Superior Court to five criminal charges, including a felony violation of a no-contact order (VNCO), a class C felony.[1] Jones's guilty plea statement indicates that, given his offender score, his sentence for the VNCO conviction carries a standard range of 60 months' confinement. Community custody is listed as 12 months, and the maximum term is listed as five years. Jones's guilty plea statement also

[1] RCW 26.50.110(4).

indicates that he will be placed on community custody for 12 months or up to the period of earned release, whichever is longer.

Jones's VNCO judgment and sentence states that Jones's standard range and maximum sentence term is 60 months and 5 years. It also lists Jones's community custody as the longer of his period of early release or 12 months.

Jones now challenges, through a PRP, the validity of his VNCO guilty plea, and he seeks to withdraw all his guilty pleas.

ANALYSIS

I. PRP Standard of Review

A PRP is not a substitute for an appeal. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 823, 650 P.2d 1103 (1982). A personal restraint petitioner must prove either a constitutional error that caused actual prejudice or a nonconstitutional error that caused a miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). If a petitioner claims a constitutional error but fails to make a prima facie case showing of actual prejudice, we must dismiss the petition. *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

Jones contends that the trial court misinformed him of the duration of his community custody sentence when he pleaded guilty because he was told that he would be required to serve the longer term of 12 months or his period of earned early release. He asserts that because this misinformation led him to plead guilty, he may withdraw his guilty pleas included in this package plea deal. The State responds that Jones is not entitled to withdraw his guilty pleas because the trial court did not misinform him about a direct consequence of his guilty plea. Furthermore, the

State responds that Jones does not demonstrate actual prejudice, a requisite to a successful PRP. We agree that Jones fails to demonstrate any actual prejudice.

II. Actual Prejudice

Jones asserts that, by demonstrating that the trial court misadvised him of the direct consequences of his plea, he satisfies the standard to successfully raise a PRP. The State responds, however, that even if the trial court did misadvise Jones of the sentencing ramifications of his guilty plea, Jones must also demonstrate actual prejudice. Because Jones demonstrates no actual prejudice, we deny his PRP.

Instead of demonstrating actual prejudice, Jones argues that we must presume prejudice from his illegal sentence, relying on *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006), *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004), and *In re Pers. Restraint of Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009). Jones's reliance on these cases, however, is misplaced.

First, Jones correctly contends that *Mendoza* held that a defendant seeking to withdraw a guilty plea need not establish a causal link between the misinformation and his decision to plead guilty. *See Mendoza*, 157 Wn.2d at 590-91. But *Mendoza* involved a direct appeal, and PRPs like Jones's appeal here involve a different standard of review.

Next, Jones relies on *Isadore*, a PRP. In *Isadore*, the State attempted to add a community custody provision term to Isadore's sentence after the time for a direct appeal had expired. *Isadore*, 151 Wn.2d at 299-300. Because Isadore did not have an opportunity to challenge that decision on direct appeal, the Supreme Court did not apply the heightened PRP standards:

"Instead, the petitioner need show only that he is restrained . . . and that the restraint is unlawful." *Isadore*, 151 Wn.2d at 299. Consistent with this standard of review, the court ultimately concluded that Isadore's plea was involuntary because he was misinformed about community custody, a direct consequence of the plea. *Isadore*, 151 Wn.2d at 302. Because he pleaded involuntarily, his restraint was unlawful and the court granted his petition. *Isadore*, 151 Wn.2d at 302.[2]

Finally, in *Bradley*, our Supreme Court relied on *Isadore*, holding that a personal restraint petitioner could withdraw his plea simply by showing he was misadvised as to a direct consequence of the plea. *Bradley*, 165 Wn.2d at 941. Bradley had pleaded guilty to possessing cocaine and possessing it with intent to deliver, and the sentencing court imposed concurrent sentences. *Bradley*, 165 Wn.2d at 937-38. After Bradley learned that the court had miscalculated his offender score for the simple possession conviction, he filed a PRP seeking to withdraw both guilty pleas. *Bradley*, 165 Wn.2d at 938. Because Bradley's sentence on the possession with intent to deliver charge was longer than the miscalculated sentence on the simple possession charge, the State argued that the miscalculated sentence "was not a direct consequence of his plea because it had no practical effect on his sentence; he would have served the same sentence either way." *Bradley*, 165 Wn.2d at 940. The court rejected this argument though. *Bradley*, 165 Wn.2d at 940. Without discussing PRP standards or the defendant's burden of showing actual prejudice, the court held: "Bradley was misinformed about a direct consequence of his simple

[2] Although its holding is consistent with direct appeal standards, the *Isadore* court also stated, in dicta, that "even if Isadore were required to meet the standard personal restraint petition requirements, he has done so in this petition." *Isadore*, 151 Wn.2d at 300.

possession plea. Therefore, his plea was involuntary and he is entitled to withdraw it." *Bradley*, 165 Wn.2d at 944.

Both the *Bradley* and *Isadore* courts applied the direct appeal test when determining whether a personal restraint petitioner may withdraw a plea rendered involuntary by misinformation, but neither *Bradley* nor *Isadore* discussed a defendant's heightened PRP burden of establishing actual prejudice. For that reason, we follow our own court's decision, *In re Pers. Restraint of Stockwell*, 161 Wn. App. 329, 254 P.3d 899 (2011), *review granted*, No. 860017 (Wash. Sept. 6, 2012), and not *Bradley* and *Isadore*.

Jones argues that we must read *Bradley* and *Isadore* as having lessened the standard for raising a PRP based on an illegal sentence. In *Stockwell*, however, we confirmed that we would not read *Bradley* and *Isadore* as implicitly holding that (1) we should assume prejudice whenever a PRP defendant demonstrates that his plea was involuntary, or (2) the plea itself was the actual prejudice. 161 Wn. App. at 337. We rejected the idea that our Supreme Court, through its *Isadore* and *Bradley* opinions, intended to abandon by implication the actual prejudice standard required in PRPs. *See Stockwell*, 161 Wn. App. at 337.

First, in *Stockwell* we noted that the defendants in *Isadore* and *Bradley* both suffered actual prejudice beyond merely pleading guilty without being properly informed of all direct consequences of the plea. 161 Wn. App. at 337. In *Isadore*, for example, the State sought to impose an additional mandatory term of community custody of which neither the court nor counsel advised Isadore before he pleaded guilty. Thus, the misinformation would have resulted in Isadore's actual prejudice in the form of a longer sentence. In *Bradley*, the sentencing court

incorrectly calculated Bradley's offender score and imposed a concurrent sentence that exceeded what his actual offender score would have supported.

Second, in *Isadore* and *Bradley*, the State framed the issues as whether the pleas were involuntary, not whether the misinformation resulted in actual prejudice to the defendants. In *Isadore*, the State argued that a defendant must show how misinformation was material to his decision to plead guilty to prove that the plea was involuntary. *Isadore*, 151 Wn.2d at 300. The court rejected this argument, holding that a defendant does not have to show materiality. *Isadore*, 151 Wn.2d at 302. Similarly, in *Bradley*, the State again argued that Bradley's wrongful lesser sentence was not a direct consequence of his plea because a longer sentence subsumed it. *Bradley*, 165 Wn.2d at 940. The Supreme Court rejected that argument. *Bradley*, 165 Wn.2d at 940. Both the *Isadore* and *Bradley* courts focused on whether the defendants' pleas were involuntary, not whether the defendants suffered actual prejudice.

Ultimately, in *Stockwell* we held that a trial court misinforming a defendant of his potential maximum sentence does not necessarily result in a defendant's actual prejudice. 161 Wn. App. at 339. We also held that neither *Isadore* nor *Bradley* expressly held that a plea rendered involuntary due to misinformation constitutes actual prejudice. *Stockwell*, 161 Wn. App. at 339. We then analyzed whether Stockwell demonstrated any actual prejudice and held that he never claimed he suffered any actual prejudice from a misstated sentence in his plea form, and the record contained "no hint" of such harm. *Stockwell*, 161 Wn. App. at 339. Consequently, we denied his PRP.

Here, Jones asserts that a guilty plea based on misinformation automatically entitles him to

withdraw his guilty pleas. Because he believes he is automatically entitled to withdraw his guilty pleas, he makes no effort in his PRP to demonstrate any actual prejudice. As in *Stockwell*, Jones's record on review contains "no hint" of actual prejudice. Accordingly, because Jones fails to include any evidence of actual prejudice, we decline to decide whether he was misinformed, and we must deny his PRP. *See Hews*, 99 Wn.2d at 88.

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.

Johanson, A.C.J.

We concur:

Hunt, J.

Penoyar, J.