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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29252-5-III**
Respondent,	)	
v.	)	**Division Three**
JOSE LUIS RODRIGUEZ GUZMAN,	)	**UNPUBLISHED OPINION**
Appellant.	)	

Brown, J. • Jose L. Rodriguez Guzman appeals his conviction on an *Alford*[1] plea for second degree murder while armed with a deadly weapon. He contends the trial court erred in refusing his motion to withdraw his plea because it was involuntary. Based on this record, we disagree and affirm.

FACTS

On March 10, 2010 the State charged Mr. Rodriguez Guzman with one count of first degree murder while armed with a firearm and armed with a deadly weapon other than a firearm. The State amended the information on April 9, 2010, charging Mr.

[1] *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Rodriguez Guzman with one count of first degree murder while armed with a firearm and a deadly weapon, and acting as a principal or an accomplice.

On June 25, 2010, the trial court held an *Alford* plea hearing for Mr. Rodriguez Guzman on the amended charge. At the plea hearing, Mr. Rodriguez Guzman appeared before the trial court with the assistance of a certified court interpreter. The court first explained that it was in receipt of the second amended information. It then informed Mr. Rodriguez Guzman that his attorney had indicated he had discussed the second amended information with him and that the court did not need to read the information aloud or readvise him of his constitutional rights. The court asked Mr. Rodriguez Guzman if that was correct and he replied: “A little.” Report of Proceedings (RP) (June 25, 2010) at 3. The court clarified that it could read the amended information aloud and readvise Mr. Rodriguez Guzman of his constitutional rights, or Mr. Rodriguez Guzman could “waive that today and simply acknowledge this is the second amended information and we proceed forward.” *Id.* Mr. Rodriguez Guzman responded: “That’s fine.” *Id.*

The court continued: “I have been handed forward a statement of defendant on plea of guilty form, a 10-page document that indicates it is your intentions to plead guilty to second degree murder today, is that correct?” *Id.* Defense counsel interjected that it was through an *Alford* plea and Mr. Rodriguez Guzman answered: “Yes.” *Id.*

The court explained that an *Alford* plea is still a plea of guilty, and asked Mr. Rodriguez Guzman again if he intended to plead guilty to the charge. Mr. Rodriguez

Guzman replied: "Well, it also depends on the time that they're going to want to give me." *Id.* at 4. In light of Mr. Rodriguez Guzman's response, the court explained the purpose of an *Alford* plea, the terms of the plea agreement, and the State's recommendation (234 months plus a deadly weapon enhancement), and that the judge would determine the actual sentence. The court asked Mr. Rodriguez Guzman if he still wanted to take advantage of the State's offer and he replied: "But they're not sure how much it's going to be." *Id.* at 5.

Unsatisfied with Mr. Rodriguez Guzman's response, the court replied: "That's not the question. We've already covered that. I don't know what your sentence is going to be." *Id.* It continued, "I'm not taking a plea that is put into question in any way, shape or form because if you don't want to do this today, I'm great with that. We'll put you back on a trial track." *Id.* Then, it again explained the purpose of an *Alford* plea, the terms of the plea agreement, and the State's recommendation. It asked Mr. Rodriguez Guzman again if he wished to take advantage of the State's offer, to which Mr. Rodriguez Guzman replied: "Yes." *Id.*

The court told Mr. Rodriguez Guzman the effect of an *Alford* plea and asked if he had considered that effect, to which Mr. Rodriguez Guzman replied: "Yes." *Id.* The court told Mr. Rodriguez Guzman the consequences of an *Alford* plea and asked if he understood, to which Mr. Rodriguez Guzman replied: "Yes." *Id.* at 8. The court continued its colloquy with Mr. Rodriguez Guzman and acknowledged that he was freely and voluntarily pleading guilty by way of an *Alford* plea. He further

acknowledged he had read, understood, and had signed the written guilty plea and had had enough time to discuss it with his attorney. The court again asked, "[T]his is what you want to do today?" to which Mr. Rodriguez Guzman replied: "Yes." RP (June 25, 2010) at 9. The court then reviewed the specific sentencing possibilities and Mr. Rodriguez Guzman continuously acknowledged that he understood.

The court once more asked Mr. Rodriguez Guzman if he was agreeing to plead guilty by way of an *Alford* plea and Mr. Rodriguez Guzman once more replied: "Yes." *Id.* at 12. Then, the court asked Mr. Rodriguez Guzman if he had "[a]ny questions about what you're doing today?" *Id.* Mr. Rodriguez Guzman replied: "I'll think about it later." *Id.* The court, in turn, said: "No, you think about it now," explaining that it would not accept his plea if he was not sure about his decision. *Id.* Mr. Rodriguez Guzman responded: "Well, I don't have any questions right now." *Id.*

Upon receiving Mr. Rodriguez Guzman's reassurance that he had thoroughly discussed the decision with his attorney, that his attorney had answered any questions, and that he still wanted to proceed, the court accepted his plea and found him guilty of second degree murder. After setting a sentencing hearing for one week later, the court asked Mr. Rodriguez Guzman if he had any questions and Mr. Rodriguez Guzman replied: "Well, I was supposed to be sentenced today also. That's the reason I was pleading guilty." *Id.* at 13. The court explained that Mr. Rodriguez Guzman would be sentenced in one week and receive credit for time served.

On July 9, 2010, the court held a hearing on a motion to withdraw his guilty plea.

Mr. Rodriguez Guzman appeared with the assistance of a court interpreter. Mr. Rodriguez Guzman had apparently filed a declaration on July 6, 2010. The court read Mr. Rodriguez Guzman's declaration aloud:

> I want to withdraw my plea of guilty entered last Friday, June 25th of 2010. When the judge was talking to me during my plea hearing, she was very forceful with me. I got scared that she would give me a longer sentence. I felt cornered. That is why I said yes to her questions.
>
> The interpreter, Ms. Ornelas, was talking too fast for me to understand while she read me my plea paperwork. Then during the plea hearing she was talking too quietly for me to hear. I did not understand the proceedings.
>
> I believed my plea offer was for 158 months. Instead I am facing a range of 158 to 258 months. I do not want to risk getting the 258 months.
>
> My understanding was the sentencing was going to be on the same day as my plea. I did not agree that my sentencing hearing could be held later.

RP (July 9, 2010) at 6. The court asked Mr. Rodriguez Guzman if he wanted the court to consider anything else. Mr. Rodriguez Guzman responded that he misunderstood the discussions he had with his attorney and he did not feel his attorney was properly representing him. After the trial court thoroughly reviewed the earlier colloquy on the record, Mr. Rodriguez Guzman said: "[Y]ou can't give me a sentence as if I was a murderer because I'm very conscious of the fact that I haven't done anything." *Id.* at 12. The State opposed Mr. Rodriguez Guzman's motion.

The court concluded Mr. Rodriguez Guzman entered a knowing, intelligent, and voluntary plea and denied his motion to withdraw his plea. The court imposed a sentence of 208 months with 24 months of community custody. Mr. Rodriguez Guzman appealed.

ANALYSIS

A. Motion to Withdraw *Alford* Plea

The issue is whether the trial court erred in denying Mr. Rodriguez Guzman's motion to withdraw his *Alford* plea. Mr. Rodriguez Guzman contends his *Alford* plea was involuntary and so withdrawal was necessary to correct manifest injustice.

We review a trial court's decision on a motion to withdraw a guilty plea for abuse of discretion. *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). A trial court abuses its discretion when it adopts a position that is manifestly unreasonable or based on untenable grounds or reasons. *State v. Valdobinos*, 122 Wn.2d 270, 279, 858 P.2d 199 (1993) (citing *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971)).

Due process requires a guilty plea be "knowing, voluntary, and intelligent." *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004) (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 1 Ed. 2d 274 (1969)). Thus, before accepting a plea of guilty, a court must first determine "that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). The court must be satisfied "that there is a

factual basis for the plea." *Id*.

> Ordinarily, when a defendant pleads guilty, the factual basis for the offense is provided at least in part by the defendant's own admissions. With an *Alford* plea, however, the court must establish an entirely independent factual basis for the guilty plea, a basis which substitutes for an admission of guilt.

State v. D.T.M., 78 Wn. App. 216, 220, 896 P.2d 108 (1995).

"In an *Alford* plea, the defendant does not admit guilt, but concedes that a jury would most likely convict him based on the strength of the State's evidence." *State v. Scott*, 150 Wn. App. 281, 294-95, 207 P.3d 495 (2009) (citing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)). An *Alford* plea may still be knowing, voluntary, and intelligent even though the defendant is "unable or unwilling to admit that he participated in the acts constituting the crime." *In re Pers. Restraint of Montoya*, 109 Wn.2d 270, 277, 744 P.2d 340 (1987). But, the court must still ensure that the plea is knowing, voluntary, and intelligent. *Id*. at 277-78 (citing *State v. Newton*, 87 Wn.2d 363, 373, 552 P.2d 682 (1976)). A trial 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." CrR 4.2(f). A manifest injustice is "an injustice that is obvious, directly observable, overt, not obscure." *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). Our Supreme Court has recognized an involuntary plea amounts to manifest injustice. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006).

When a defendant completes a plea statement and admits to reading,

understanding, and signing it, we presume the plea is voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). When a trial court verifies the criteria of voluntariness in a colloquy with the defendant, the presumption of voluntariness is "well nigh irrefutable." *State v. Perez*, 33 Wn. App. 258, 262, 654 P.2d 708 (1982). "To be voluntary, a plea of guilty must be freely, unequivocally, intelligently and understandingly made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act." *Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601 (1966).

Here, the record reflects a thorough and exhaustive colloquy between the court and Mr. Rodriguez Guzman regarding his *Alford* plea. Mr. Rodriguez Guzman admitted to reading, understanding, and signing the plea statement. Further, the court verified on the record that Mr. Rodriguez Guzman was pleading freely and voluntarily. It verified that Mr. Rodriguez Guzman understood the State's offer, understood the legal effect of his *Alford* plea, and understood the plea consequences. And, it verified he understood the sentencing possibilities.

Mr. Rodriguez Guzman argues he was equivocal, but the record shows the trial court clarified when Mr. Rodriguez Guzman failed to give a clear answer. The trial court twice explained to Mr. Rodriguez Guzman he had the option to go to trial instead of pleading guilty.

Mr. Rodriguez Guzman argues it was evident throughout the proceeding he was concerned about the sentencing length. While true, the trial court responsively

explained the sentencing range, the sentencing recommendation, and that the court would make the final sentencing determination. Moreover, during the colloquy, Mr. Rodriguez Guzman said he understood the sentencing scheme.

Finally, Mr. Rodriguez Guzman argues the trial court "disregard[ed] its duty to exercise extreme caution when accepting an *Alford* plea." Appellant's Br. at 8. But the record shows the trial court was particularly cautious.

Mr. Rodriguez Guzman's assertions that his plea was involuntary because he was afraid of the judge, he felt pressured, and that the interpreter was talking too fast and too quietly for him to fully understand the proceedings do not rebut the voluntariness of his plea clearly demonstrated by the record. Accordingly, we find no manifest injustice and conclude the trial court did not abuse its discretion in denying Mr. Rodriguez Guzman's motion to withdraw his plea.

B. Statement of Additional Grounds (SAG)

Mr. Rodriguez Guzman filed two SAGs. In the first, he contends his attorney "made a plan to close [his] case" because Mr. Rodriguez Guzman did not want the attorney to continue representing him. SAG (Jan. 16, 2011) at 1. But the record is inadequate to review this contention with solely his bare statement. His other contention is that the trial judge yelled loudly at him to frighten him and that he was sentenced by force. His argument appears to be the same as appellate counsel's argument that we have rejected.

In his supplemental SAG, Mr. Rodriguez Guzman reiterates his voluntariness

arguments and includes a plea hearing transcript indicating his attorney told him "[j]ust say yes." Supplemental SAG (Nov. 3, 2011) at 9. Where the transcription came from is unclear because it is not in our record. In any event, Mr. Rodriguez Guzman suggests he said "yes" to all of the court's questions because he was afraid of the judge. However, the record shows that Mr. Rodriguez Guzman did not simply answer "yes" to all of the court's questions after the alleged comment.

Given all, we conclude Mr. Rodriguez Guzman fails to present issues not already adequately presented by his appellate counsel and addressed above.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public records pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Korsmo, A.C.J.

Siddoway, J.