FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29403-0-III**
Respondent,	)	
v.	)	**Division Three**
JOSE FRANCISCO GONZALEZ, JR.,	)	**UNPUBLISHED OPINION**
Appellant.	)	

Brown, J. • Jose F. Gonzalez, Jr., appeals the trial court's decision to deny his motion to withdraw his guilty plea to first degree identity theft and first degree theft. He contends his plea was involuntary and he received ineffective assistance of counsel. He raises multiple concerns in his Statement of Additional Grounds for Review (SAG). We affirm.

FACTS

Mr. Gonzalez committed 22 felonies by age 32, apparently to support a drug habit. In April 2009, Mr. Gonzalez was under community custody supervision when he was charged with first degree identity theft and first degree theft. The information alleged aggravating circumstances pursuant to RCW 9.94A.535(2)(c), based on

"multiple current offenses" and Mr. Gonzalez's high offender score. Clerk's Papers (CP) at 2. The State provided a letter to the defendant giving notice that it was not making any offer and intended to recommend a 10-year sentence.

On June 18, 2009, after Mr. Gonzalez elected to accept an informant contract for more favorable State sentencing recommendations, he pleaded guilty to both charges. The standard plea statement form recited he had received a copy of the information, listed the standard sentence ranges for the charges (43 to 47 months for identity theft charge and 63 to 84 months for theft), and, noteworthy here, it specified:

> The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
> . . . .
> (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
> . . . .
> (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

CP at 13.

Mr. Gonzalez was then released on his personal recognizance to fulfill his informant contract, but less than one month later his release and contract were revoked when he was charged with a driving offense. Sentencing was delayed to investigate his ultimately unsuccessful drug offender sentencing alternative (DOSA) request and

accommodate attorney changes from Shelly Ajax to Dan Arnold and finally to Richard Johnston. Mr. Gonzalez, by Mr. Arnold, asked to withdraw his guilty plea; Mr. Johnston represented him at the hearing.

On June 25, 2010, the court heard the plea-withdrawal motion. Mr. Gonzalez testified he signed the informant contract, but had not reviewed it with his attorney. He testified Ms. Ajax had discussed the plea statement with him. Ms. Ajax testified she had thoroughly reviewed both the informant contract and the guilty plea with Mr. Gonzalez and had relayed to Mr. Gonzalez the State's 10-year sentencing recommendation, as well as the standard ranges. She related that shortly before the date of the plea, she went to the jail and reviewed with Mr. Gonzalez the terms of the contract and the terms of the plea agreement. Mr. Gonzalez was to consider the consequences of the contract and if he wanted to proceed, he would sign the agreement in court.

The trial court found Mr. Gonzalez voluntarily, knowingly, and freely pleaded guilty to one count of first degree identity theft and one count of first degree theft. The trial court further concluded that Ms. Ajax had reviewed the informant contract with Mr. Gonzalez and he understood its terms before he signed it. The trial court denied Mr. Gonzalez's motion to withdraw his guilty plea.

On September 23, 2010, the trial court granted the State's exceptional sentencing request of 120 months. Mr. Gonzalez appealed.

ANALYSIS

A. Motion to Withdraw Plea

The issue is whether the trial court erred in denying Mr. Gonzalez's motion to withdraw his guilty plea. Mr. Gonzalez contends his plea was involuntary and thus, a 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 which 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 L. Ed. 2d 274 (1969)). Accordingly, 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 charges and the consequences of the plea." CrR 4.2(d).

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 that 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, it creates a strong presumption that the plea is voluntary." *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998).

Mr. Gonzalez completed and signed the plea statement and acknowledged on the record that he had read it and understood it. Nonetheless, he contends his plea was involuntary because he was unaware that the sentencing lengths described in the plea form were tentative to the extent he was "not apprised of a direct consequence of his plea." Br. of Appellant at 6. He argues the court did not tell him "the State could change its recommendation based on the aggravated nature of the case." Br. of Appellant at 8.

First, the plea contained no recommendation from the State. Second, the record shows the State indicated from the beginning it would recommend that Mr. Gonzalez be sentenced to 10 years. Ms. Ajax testified she relayed that information to Mr. Gonzalez before he entered the informant contract. The trial court, after fact-finding, accepted Ms. Ajax's position, not that offered by Mr. Gonzalez. We accept trial court fact-findings supported by substantial evidence, as here. Third, the plea statement properly explained the judge could impose an exceptional sentence if the plea was for more

than one crime and Mr. Gonzalez had an offender score higher than nine; that was the case here. Mr. Gonzalez does not dispute those facts. Mr. Gonzalez signed the plea statement and admitted, even at the motion hearing to withdraw his plea, that he had reviewed it with his attorney. And the original information listed the aggravating circumstances.

Given all, we reject Mr. Gonzalez's contention that he was misinformed about the potential sentencing length. Thus, Mr. Gonzalez fails to establish a manifest injustice. Therefore, the trial court did not abuse its discretion in denying Mr. Gonzalez's motion.

B. Ineffective Assistance of Counsel

The issue is whether trial counsel was ineffective for failing to assist Mr. Gonzalez in deciding whether to plead guilty. Mr. Gonzalez contends his attorney's failure to "adequately inform him" of the consequences of the informant contract prejudiced him because he would not have pleaded guilty "if he knew the State could ask for 120 months." Br. of Appellant at 11.

We review a challenge to effective assistance of counsel de novo. *State v. White*, 80 Wn. App. 406, 410, 907 P.2d 310 (1995). A defendant possesses the right to effective assistance of counsel in criminal proceedings. *Strickland v. Washington*, 466 U.S. 668, 684-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We presume counsel was effective. *State v. McFarland*, 127 Wn.2d 322, 335, 889 P.2d 1251 (1995). To prove ineffective assistance of counsel, Mr. Gonzalez must show (1) defense counsel's

representation was deficient, falling below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). In the context of a guilty plea, the defendant must show that his attorney failed to assist him in deciding whether to plead guilty, and that but for counsel's failure to offer adequate advice, he would have not pleaded guilty. *State v. McCollum*, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997).

Here, Mr. Gonzalez claims his attorney was deficient because she did not review the terms of the informant contract with him before he signed it, but Ms. Ajax testified to the contrary. The trial court believed her testimony. In any event, Mr. Gonzalez fails to show necessary prejudice. "If an ineffective assistance claim can be resolved on one prong of this test, the court need not address the other prong." *State v. Staten*, 60 Wn. App. 163, 171, 802 P.2d 1384 (1991). As discussed above, the trial court had the sentencing authority to sentence Mr. Gonzalez to 120 months based on the plea statement, a sentencing consistent with the State's announced recommendation.

Given all, we reject Mr. Gonzalez's ineffective assistance claim.

C. Statement of Additional Grounds for Review

Mr. Gonzalez raises multiple concerns in his statement of additional grounds for review. Mainly, Mr. Gonzalez's contentions supplement appellate counsel's adequately argued plea-withdrawal and ineffective assistance contentions and we will not consider them further. The purpose of SAG is to permit the appellant, "to identify and discuss those matters which the defendant/appellant believes have not been adequately

addressed by the brief filed by the defendant/appellant's counsel." RAP 10.10(a). We acknowledge Mr. Gonzalez's additional concerns.

First, regarding Mr. Gonzalez's concerns about whether the informant contract should have been made part of the plea record, it was immaterial to whether Mr. Gonzalez voluntarily pleaded guilty. The plea statement did not mention the informant contract for obvious safety and practical reasons. And Mr. Gonzalez repeatedly acknowledged he read and understood the plea statement. The plea statement alone gave the court the authority to sentence Mr. Gonzalez to 120 months.

Second, regarding sentencing above the standard range, the court confirmed with Mr. Gonzalez that he had read and acknowledged the plea statement. The plea statement explicitly informed Mr. Gonzalez that the court could sentence him above the standard range if he was pleading to more than one offense and had an offender score higher than nine. Mr. Gonzalez does not dispute either of those facts.

Third, Mr. Gonzalez's claim that Ms. Ajax had a conflict of interest at the time he pleaded guilty is not supported in our record.

Fourth, regarding the practical workability of the informant contract, Mr. Gonzalez broached this subject with the trial court before the trial court found he had read and understood the consequences of his plea. And the informant contract was not formally or informally incorporated into the statement on plea of guilty.

Fifth, regarding concerns about the interplay of entering the guilty plea/informant contract and drug offender sentencing alternative, the evidence does not show that Mr.

Gonzalez was currently on a DOSA when he entered the plea here. In any event, DOSA was denied.

Sixth, regarding knowledge of the aggravating factors, Mr. Gonzalez confirmed on the record that he had read and understood the plea statement. The plea statement explicitly stated he was pleading to the charges in the original information and that he had read the information. The information describes the aggravating factors. And, Mr. Gonzalez does not dispute the aggravating factors.

Given all, we find no merit in Mr. Gonzalez's SAG concerns.

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 record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, A.C.J.

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Siddoway, J.