IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29951-1-III
Respondent,	)	
v.	)	
PAUL SCOTT BICKLE,	)	UNPUBLISHED OPINION
Appellant.	)	

Siddoway, J. — Three months after being sentenced on a plea of guilty to four second degree burglaries, Paul Scott Bickle moved to withdraw his plea. Because the unsworn statements he filed to support the motion did not meet the requirements of CrR 7.8(c)(1) for supporting affidavits or the essentials of an affidavit substitute under RCW 9A.72.085, the trial court dismissed his motion for noncompliance with the rule. Dismissal was proper. He raises an additional challenge to his legal financial obligations that is not properly before us on this direct appeal. His pro se statement of additional grounds raises no issues having merit. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Paul Bickle was charged in August 2010 with committing 21 property crimes over a 3-week period, including 7 counts of second degree burglary.

In early October, his lawyer filed a motion to suppress evidence obtained through an allegedly defective search warrant, setting the motion for hearing on October 22. The State filed its opposition to the motion to suppress on the date set for the hearing. The motion was never heard. Instead, on October 29 the parties appeared before the trial court to report a plea agreement and for Mr. Bickle to enter his plea. The clear implication of the record is that the parties agreed to strike the hearing of the motion to suppress as a part of their plea negotiation.

Under the plea agreement, the State agreed to reduce the charges against Mr. Bickle to 4 counts of second degree burglary in exchange for Mr. Bickle's agreement to plead guilty to the 4 counts, pay restitution for all of the crimes including the dismissed charges, and stipulate to an offender score of 22 points.

After a lengthy colloquy with the court affirming his understanding of the plea and its consequences, Mr. Bickle pleaded guilty to the four charges. The court found that the plea was knowingly, voluntarily, and intelligently made. The statement on plea of guilty signed by Mr. Bickle stated that neither he nor anyone else had been threatened in order to coerce his plea.

At a December 3 sentencing hearing, the court sentenced Mr. Bickle to 68 months

of incarceration and imposed restitution, a fine, attorney fees, and statutory costs. The judgment and sentence included a finding that Mr. Bickle had the ability or likely future ability to pay the legal financial obligations imposed. No direct appeal was taken from the judgment and sentence.

Three months later, acting pro se, Mr. Bickle filed a CrR 7.8 motion to withdraw his guilty plea. In support of his motion, he submitted a statement entitled "Affidavit in Support of Motion to Withdrawal of Guilty Plea." The statement was prefaced "I, Paul Scott Bickle, Defendant, Pro Se, affirm under penalty of perjury" and was signed by Mr. Bickle, but was not sworn before a notary public or other official under oath. Clerk's Papers at 89. His statement alleged that his lawyer was deficient in his handling of the case, coerced him into pleading guilty through threats and deceit, and ignored his pleas for a mental health evaluation.[1] He also claimed he had been suffering withdrawal from drugs and alcohol and was of unsound mind at the time he entered his plea.

In response to the motion, the trial court ordered the parties to appear in late April 2011 to determine whether an evidentiary hearing would be required and other related matters. At that time, the State not only contested the sufficiency of the substance of Mr. Bickle's submissions but also pointed out that Mr. Bickle's motion was not

[1] Mr. Bickle also submitted a document entitled "Affidavit in Support of Motion to Withdrawal of Guilty Plea Addendum," which repeated and supplemented matters set forth in the principal statement.

supported with an affidavit as required by CrR 7.8. After reviewing the record before it, the court agreed with the State and dismissed the motion stating, in part:

> You [Mr. Bickle] filed a motion, you filed a document that was entitled "affidavit," but it, when you review it carefully, as [the prosecutor] argued, it's not an affidavit. You just filed a written unsworn statement, making a number of allegations. . . . And based on that and that alone I do not feel it would be proper for the court to schedule a hearing on the motion or let alone to grant the motion that was made, here.
>
> So on that basis, the motion to withdraw the guilty plea, on that basis alone, must be and will be denied.

Report of Proceedings at 62-63.

Findings of fact and conclusions of law were entered at a May 10 presentment hearing. The trial court entered a further conclusion that even if Mr. Bickle's statements had been made under oath, his motion would not merit a fact-finding hearing.

Mr. Bickle timely appealed the court's denial of his CrR 7.8 motion.

ANALYSIS

Mr. Bickle argues that the trial court erred by denying his CrR 7.8 motion on the basis that it was not supported by an affidavit. He claims that the statements he submitted satisfy the requirements of RCW 9A.72.085, which permits a party who is required to provide an affidavit to substitute an unsworn statement in the form authorized by the statute.

We ordinarily review a trial court's decision on a CrR 7.8 motion for abuse of

discretion. *State v. Martinez*, 161 Wn. App. 436, 440, 253 P.3d 445, *review denied*, 172 Wn.2d 1011 (2011). When the trial court bases an otherwise discretionary decision solely on application of a court rule or statute to particular facts, however, the issue is one of law, which we review de novo. *State v. Dearbone*, 125 Wn.2d 173, 179, 883 P.2d 303 (1994) (citing *State v. Tatum*, 74 Wn. App. 81, 86, 871 P.2d 1123 (1994)).

A defendant bringing a CrR 7.8 motion must support it "by affidavits setting forth a concise statement of the facts or errors upon which the motion is based." CrR 7.8(c)(1). An affidavit is a "'voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public.'" *State v. Forest*, 125 Wn. App. 702, 706, 105 P.3d 1045 (2005) (quoting Black's Law Dictionary 62 (8th ed. 2004)); *see also Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wn.2d 439, 452-53, 842 P.2d 956 (1993) (recognizing that an affidavit is by definition a sworn written statement made under an oath or on affirmation before an authorized officer).

The written statements submitted by Mr. Bickle in support of his motion are not sworn to before an authorized official and he concedes they are not affidavits. But he correctly argues that RCW 9A.72.085 permits a party to rely on an unsworn statement whenever an affidavit would otherwise be required by a court rule.

RCW 9A.72.085 provides that to qualify as an adequate substitute, the unsworn

statement must:

> (1) Recite[] that it is certified or declared by the person to be true under penalty of perjury;
> (2) [Be] subscribed by the person;
> (3) State[] the date and place of its execution; and
> (4) State[] that it is so certified or declared under the laws of the state of Washington.

The provision is a part of the Washington criminal code. Only unsworn statements that meet the provision's requirements are treated as if made under oath for purposes of the crime of perjury. *See* RCW 9A.72.010(2)(c), .020(1), .030(1).

Mr. Bickle's statements submitted in support of his motion fail the third and fourth requirements of the statute: they do not state the place of execution and fail to declare under the laws of the state of Washington that they are true. These are not inconsequential deficiencies. They could be relied upon by Mr. Bickle to argue that his statements, if false, are not punishable as perjury. When the State pointed out this deficiency, the trial court properly denied Mr. Bickle's CrR 7.8 motion on that basis. *See Forest*, 125 Wn. App. at 706-07 (affirming a trial court's denial of a defendant's CrR 7.8 motion because the defendant failed to submit supporting affidavits or satisfy the requirements of RCW 9A.72.085). Since the motion was justifiably denied on the basis of this threshold issue, we need not address whether a decision on the merits of the motion required an evidentiary hearing.

Mr. Bickle also contests the imposition of legal financial obligations as part of his judgment and sentence, arguing that the evidence does not support the sentencing court's finding that he had the present or future ability to pay the amounts ordered. This issue was not raised by Mr. Bickle's CrR 7.8 motion and is not properly before us on direct appeal. Our review at this juncture is limited to the CrR 7.8 hearing, not the underlying judgment and sentence. *See, e.g.*, *State v. Gaut*, 111 Wn. App. 875, 881, 46 P.3d 832 (2002) (recognizing that "our scope of review is limited to the trial court's exercise of its discretion in deciding the issues that were raised by the [CrR 7.8] motion").

STATEMENT OF ADDITIONAL GROUNDS

In a pro se statement of additional grounds (SAG), Mr. Bickle challenges the court's award of restitution, alleges prosecutorial misconduct and ineffective assistance of counsel, and asserts double jeopardy violations. For several reasons, the arguments made in Mr. Bickle's SAG do not entitle him to relief. An overarching reason is that he is raising arguments for the first time on appeal, which we do not consider absent manifest constitutional error. RAP 2.5(a). With the exception of his ineffective assistance of counsel argument, Mr. Bickle never advanced the issues in his SAG to the trial court, nor has he demonstrated manifest constitutional error. His argument of ineffective assistance of counsel does nothing to address the deficiency with his motion that justified dismissal by the trial court.

We affirm the trial court's dismissal of the CrR 7.8 motion.

A majority of the panel has determined that 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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Siddoway, J.

WE CONCUR:

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Korsmo, C.J.

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Sweeney, J.