

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

STATE OF WASHINGTON,
Respondent,

v.

SHALAMAR HAMILTON JANUARY,
Appellant.

No. 38237-7-II

Consolidated with
No. 38307-1-II)

UNPUBLISHED OPINION

Van Deren, C.J. — January appeals his guilty plea for unlawful possession of a controlled substance and two counts of bail jumping. He argues that he should be permitted to withdraw his guilty plea because it was involuntary. He also petitions for release from unlawful restraint in a personal restraint petition (PRP), arguing that his sentence was for 12 months and, therefore, he should not have been incarcerated in a state prison. We affirm.

FACTS

On November 6, 2007, at approximately 3:49 am, Tacoma Police Patrol Officer Eric Robison stopped January for running a red light. Robison asked January for his license, registration, and proof of insurance and January informed him that he did not have a valid driver's

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license. Robison performed a search using January's name and birth date and confirmed that January did not have a valid driver's license. He placed January under arrest for "no valid . . . operator's license." Report of Proceedings (RP) (July 7, 2008) at 20. Robison "searched Mr. January's person prior to placing him in [his] patrol car" and found "two, what we call 'push rods,'" which are typically used to ingest crack cocaine. RP (July 7, 2008) at 24. Robison then searched the vehicle and found "[a] baggie containing . . . an off white rock substance . . . under the passenger side floor mat." Clerk's Papers (CP) at 3. The substance was later tested and found to be cocaine.

The State charged January with unlawful possession of a controlled substance, to wit: cocaine (count I) and no valid operator's license (count II). The State later amended the charges to include two counts of bail jumping (counts III and IV).

Before trial, the trial court considered and denied January's pro se motion to suppress the drug evidence. It then held a CrR 3.5 hearing regarding January's statements to Robison and found the statements voluntary. January requested 10 to 15 days "to hire [himself] a private lawyer." RP (July 7, 2008) at 37. He complained that his attorney did not argue in favor of suppression. The trial court denied the motion for new counsel, explaining that "there wasn't an issue. There wasn't anything [for defense counsel] to argue about." RP (July 7, 2008) at 37.

January then requested a lie detector test and fingerprinting of the bag containing the drugs. The trial court denied these requests and advised January to "behave with the jury." RP (July 7, 2008) at 38. "You want to have a fair trial. You need to act appropriate. . . . You don't want to be agitated about things. You want to be calm and let them see a calm individual who

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wants to have a fair trial, because everything you do, they're going to be watching." RP (July 7, 2008) at 39. In response, January stated, "Can I change my plea to guilty then? Because I'm going to get railroaded." RP (July 7, 2008) at 39. He stated, "I'm tired of this, Your Honor. I don't got nobody to -- I don't got no help. I need some help." RP (July 7, 2008) at 40. The trial court recessed.

Upon returning to the courtroom, January's counsel explained that the parties "did take some time and were unable to resolve the case at this time," indicating that the parties had attempted to agree on a plea bargain. RP (July 7, 2008) at 42. The parties began conducting voir dire. Outside the presence of the jury, January's counsel expressed concern that January's outbursts during voir dire were viewed by the jurors. "[H]e was visibly angry and upset and wanted me to ask specific questions that I did not -- I decided not to ask, based on reasons of my own." RP (July 7, 2008) at 44. "In some ways he could be better served by representing himself, in that a juror may give his attitude a bit more leeway than if he's represented by an attorney." RP (July 7, 2008) at 45.

The trial court asked January, "What do you know about the rules of evidence"? RP (July 7, 2008) at 45. January responded, "I know about the truth." RP (July 7, 2008) at 46. It noted January's earlier admission that he lacked legal knowledge and his inability to control himself in front of the jury, explaining that these factors would be "a huge detriment" to January if he were to represent himself. RP (July 7, 2008) at 46. January stated, "I'm going to go to prison anyway, Your Honor. I already see it. It's written on the wall." RP (July 7, 2008) at 51. The trial court advised January to consider the issue overnight.

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The next morning, January's counsel explained that January wanted to change his plea to guilty. The trial court stated, "We're in the middle of picking the jury, Mr. January. What we talked about at the end of the day, yesterday, was whether you want to represent yourself, and that's the conversation I wanted to have with you this morning. And I guess that's what I want to know is how you're feeling about that right now." RP (July 7, 2008) at 56. January responded:

[JANUARY]: I ain't feeling too good about it.

.....

[JANUARY]: I want to plead guilty.

THE COURT: Do you want [defense counsel] to help you with that and represent you in that regard?

[JANUARY]: Yes, ma'am.

RP (July 8, 2008) at 56. The trial court gave the parties 10 minutes to negotiate a plea agreement.

When the parties returned, the State explained that January was willing to change his plea to the State's amended information, dismissing the charge of no valid operator's license.

January's counsel added:

Your Honor, Mr. January and I spent a great amount of time, yesterday, going over the plea to the three counts before you. We also spent some time today, probably another 15 minutes, going over the plea today as well. Mr. January has decided he does not want to go through the process of the jury trial. He would prefer to plead guilty to the amended information, than go through a jury trial and be sentenced after that.

.....

I also explained to him I don't know the exact number of points he has. . . . That sentencing recommendation could change. His range could change, depending upon whether or not the State finds additional [criminal] history out there. He's aware of that.

RP (July 8, 2008) at 58-59.

The trial court then questioned January:

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[THE COURT:] Is what [defense counsel] just said all true?
[JANUARY:] Yes, ma'am.
[THE COURT:] Were you listening to everything that he said?
[JANUARY:] Uh-huh. (Affirmative Response.)
[THE COURT:] Did you go over this form with him in detail?
[JANUARY:] Yes, ma'am.
. . . .
[THE COURT:] Did you have any questions, at all, about the form that he
could not answer for you?
[JANUARY:] No. No, he answered.

RP (July 8, 2008) at 59-60. The trial court then explained the standard ranges for each of the counts and stated:

[THE COURT:] So, you understand these listed here, . . . the important
rights that you have?
[JANUARY:] Yes, ma'am.
[THE COURT:] And you want to give up those rights by pleading guilty?
[JANUARY:] That's what I'm a have to do [sic], yes, ma'am.
. . . .
[THE COURT:] . . . [I]t says here that you believe that you're innocent, but
you think that there's a likelihood you'd be found guilty.
So, do you want to go ahead --
[JANUARY:] Yes, ma'am. Yes, yes, yes.
[THE COURT:] -- and enter a plea?
[JANUARY:] Yes.

RP (July 8, 2008) at 62-64. The trial court then asked January whether anyone had threatened him in order to get him to plead guilty.

[JANUARY:] Somebody in the courtroom? Somebody in the courtroom
you talking about?
[THE COURT:] No. I'm just saying, has anybody made a threat to you to
say, "I'm going to do something bad to you unless you
plead guilty"?
[JANUARY:] (Defendant nods affirmatively.)
[THE COURT:] Tell me about that.
. . . .
[JANUARY:] Guy who owned the car I was driving.
[THE COURT:] The guy who owned the car? When has he had contact with
you?

[JANUARY:] Said he gon' [sic] kill my family because he had drugs -- more drugs and money in the trunk, and the car got towed. And then when -- he was scared to go get it. He was scared to go get it because he had --

[THE COURT:] Okay. I've lost track here. Did he threaten you and say you have to plead guilty to this?

[JANUARY:] He told me, I'm gon' [sic] kill your family. I got to get out the way.

[THE COURT:] He's threatened you about the situation with the car; I understand that.

[JANUARY:] He wants money, wants drugs --

[THE COURT:] I'm talking about the plea of guilty. Did somebody threaten you?

[JANUARY:] Told me I better not get out of jail.

[DEFENSE COUNSEL]: Did he tell you if you didn't plead guilty he would kill you?

[JANUARY:] No, he didn't tell me that. He told me I better not come out of jail. I better have his money.

THE COURT: Okay. We're talking about -- I need to make a determination whether you're pleading guilty of your own free will.

. . . .

. . . . Right now I'm talking about pleading guilty. Has somebody threatened you and said you have to plead guilty, as opposed to continue --

[JANUARY:] No, ma'am. No, ma'am.

. . . .

[THE COURT:] Okay. Is this something that you're doing of your own free will, something you choose to do?

[JANUARY:] Yes.

RP (July 8, 2008) at 64-66.

The trial court then asked January for his plea regarding each of the three remaining counts, unlawful possession of a controlled substance cocaine (count I), bail jumping (count III), and bail jumping (count IV). January pleaded guilty to all three counts. The State filed an amended information, omitting the no valid operator's license charge (count II). In his written guilty plea, January stated, "I believe I am innocent of these charges but believe there is a

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substantial likelihood I would be convicted at trial and I want to plead guilty to avoid a trial [and]

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take advantage of the State[']s offer.”¹ CP at 37. The trial court accepted January’s guilty plea.

At sentencing, the parties stipulated to an offender score of 4. The State recommended a sentence of 16 months. January’s defense counsel asked the trial court “to consider the low end, 12 and a day.” RP (July 25, 2008) at 6. Defense counsel further stated, “Mr. January’s 59 years old, and he’s going to have to spend some time in prison. He knows that and would like to keep it, the time he spends, as limited as possible.” RP (July 25, 2008) at 6. The trial court sentenced January to 12 months plus one day.

January filed a notice of appeal on August 27, 2008. He also filed a PRP on September 17, 2008. We consolidated the direct appeal and PRP on appeal.

ANALYSIS

I. Guilty Plea

January argues that he must be permitted to withdraw his guilty plea because “it was coerced by illegitimate threats against his family.” Br. of Appellant at 5. He argues that “[e]ven if the man making the threat did not specifically refer to a guilty plea, the only way January saw to prevent the threat from being carried out was to plead guilty.” Br. of Appellant at 7. He argues that “[t]here were no apparent reasons, other than the threat, for [his] decision to plead guilty.” Br. of Appellant at 8.

We review de novo the circumstances under which a guilty plea was made. *Young v. Konz*, 91 Wn.2d 532, 536, 588 P.2d 1360 (1979). “Due process requires that a defendant’s guilty

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). A defendant may plead guilty even where he maintains his innocence “when there [is] strong evidence of guilt before the trial court and the plea [is] ‘a voluntary and intelligent choice among the alternative courses of action open to the defendant.’” *State v. Newton*, 87 Wn.2d 363, 372, 552 P.2d 682 (1976) (quoting *Alford*, 400 U.S. at 31).

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plea be knowing, voluntary, and intelligent.” *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). CrR 4.2(d) mandates that the trial court not accept a guilty plea without first determining that a criminal defendant has entered into the plea voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. A court must allow a defendant to withdraw a guilty plea whenever “necessary to correct a manifest injustice.” CrR 4.2(f); *see also State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). A manifest injustice is one “that is obvious, directly observable, overt, not obscure.” *Taylor*, 83 Wn.2d at 596. A manifest injustice may arise where a defendant’s plea was involuntary. *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). The burden is on the defendant to show a manifest injustice. *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984).

A written plea statement is prima facie evidence that the plea is voluntary when the defendant acknowledges reading and understanding the written statement and that the contents of the statement are true. *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). And when the trial court has inquired into the voluntariness of the plea on the record, the presumption of voluntariness is “well nigh irrefutable.” *Perez*, 33 Wn. App. at 262.

Here, January signed a written plea statement. Further, the trial court inquired into the voluntariness of the plea on the record and entered a finding that January entered into the plea voluntarily. The written plea statement indicates that January was informed of the direct consequences of his plea and the plea was knowing, intelligent, and voluntary. During the plea colloquy, January’s defense counsel informed the court that he had spent time “a great amount of

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time” with January discussing the plea. RP (July 8, 2008) at 58. January told the trial court that no one had threatened or coerced him into pleading guilty. He also told the trial court that he did not have any questions about the guilty plea.

Furthermore, January’s argument that he had no choice but to plead guilty in order to protect his family is not supported by the record. January did not provide any evidence that he had been in contact with the owner of the vehicle. As stated by January in his brief, “[u]p until [the day he pleaded guilty], January had adamantly maintained his innocence, . . . had fought to present motions to the court . . . and to represent himself when he felt counsel was not doing an adequate job.” Br. of Appellant at 8-9. January’s actions indicated that he was dissatisfied with his counsel and it appears that the trial court’s denial of his request to change counsel or his counsel’s conduct of voir dire may have served as the basis of his decision to enter a guilty plea. These reasons do not constitute the basis of an involuntary plea, particularly in light of the court’s probing colloquy with him about whether he felt under duress to change his plea. Because the record shows January’s plea was knowing, intelligent and voluntary, his argument fails.

II. Personal Restraint Petition

January argues that his sentence was for “12 mo[nth]s[] only” and he “should [have] been incarcerated at county jail not . . . prison.” PRP (No. 383071)at 1 (emphasis omitted). He also argues that he “was told per attorney and [prosecutor] if [he] pled guilty ‘only jail time,’ not . . . prison time”! PRP (No. 383071)at 4 (emphasis omitted). He argues that his judgment and

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sentence shows he was sentenced to 12 months only, “not 12 mo[nth]s [and] 1 day.”² PRP at 4 (No. 383071). January completed serving his sentence on December 29, 2008, and his confinement status is now listed as “supervised.” Br. of Resp’t, App. A at 2.

“To obtain relief through a PRP, the petitioner must be subject to an unlawful restraint.” *In re Pers. Restraint of Smith*, 130 Wn. App. 897, 900, 125 P.3d 233 (2005). But a PRP is not necessarily moot due to the petitioner’s release from prison. *See In re Pers. Restraint of Silas*, 135 Wn. App. 564, 568, 145 P.3d 1219 (2006). An otherwise moot issue can be heard if it involves “continuing and substantial public interest.” *In re Pers. Restraint of Goulsby*, 120 Wn. App. 223, 226, 84 P.3d 922 (2004). To determine whether the PRP involves “continuing and substantial public interest,” this court considers the following elements: “(1) the public or private nature of the question presented, (2) the desirability of an authoritative determination which will provide future guidance to public officers, and (3) the likelihood that the question will recur.” *Smith*, 130 Wn. App. at 900.

Thus, because January is no longer in prison, his allegation that he should be incarcerated in jail rather than prison is moot. The issue January raises in his PRP is not of a public nature, there is no need for “authoritative determination” on the issue for the purpose of future guidance, and this court’s determination regarding January’s PRP would not assist in resolving similar challenges in the future. *Smith*, 130 Wn. App. at 900.

²January is incorrect about the length of his sentence. January’s judgment and sentence lists the “[a]ctual number of months of total confinement ordered” as “12 months + one day.” CP at 48. Further, there is no evidence on the record that defense counsel or the prosecutor told January he would serve his sentence in jail.

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We affirm January's guilty plea and dismiss his PRP.

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 pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.