IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARY ANN GREENE, Appellant.	No. 39248-8-II Consolidated with: No. 39255-1-II UNPUBLISHED OPINION

Bridgewater, P.J. — Mary Ann Greene appeals her Clark County convictions of unlawful possession of a controlled substance—methamphetamine, unlawful possession of a controlled substance with intent to deliver—marijuana, attempted bail jumping, and second degree theft. She pleaded guilty to these crimes and now seeks to withdraw her plea, contending that it was not knowing, intelligent, or voluntary. We affirm.[1]

FACTS

Greene pleaded guilty to the four crimes on March 27, 2009. Pursuant to the parties' agreement, the State amended a bail jump charge to the attempted bail jump, reducing the standard range for that crime from 51-60 months to 0-365 days.[2] In return, Greene stipulated to an exceptional sentence in the form of consecutive terms, totaling 34 months.

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

[2] Greene had an offender score of 9. The attempted crime was a gross misdemeanor, making the offender score not applicable. *See* RCW 9A.76.170(1) and (3)(c) and RCW 9A.28.020(3)(c).

At the hearing on the change of plea, Greene assured the court that she had reviewed her plea statement with her attorney, that she understood the charges against her, and that she understood she was relinquishing a number of rights, including her right to a trial by jury. Additionally, she acknowledged that she understood the potential sentencing possibilities, and the agreed recommendation, and she understood that the court did not have to follow that recommendation.

After the court accepted the guilty plea, the prosecutor explained the parties' agreement, which he said was the result of extended negotiations. Defense counsel confirmed the agreement. Greene also addressed the court. She acknowledged her ongoing drug problem and said that this time, she was determined to address her addiction. She told the court that before the bail jump, she had negotiated a 22-month recommendation, and the additional 12 months was "quite a jump." RP at 18. She expressed a hope for something less, stating, "I know it's ultimately up to you to make the choice on whether my sentences are running consecutive or concurrent. Today I would hope that you'd have a little bit of leniency on me." RP at 18.

The court indicated that the proposed sentence was longer than the usual sentence for these crimes, and the parties, including Greene, explained the reasons for the agreement. The court then imposed the recommended sentence. It made written findings of fact and conclusions of law indicating that Greene had waived her right to have a jury determine any issues related to the imposition of an exceptional sentence, and Greene signed them.

ANALYSIS

Constitutional due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). This means that the defendant must enter the plea competently and with an understanding of the nature of the charge and the consequences of the plea, including the understanding that he or she necessarily waives important constitutional rights like the right to a jury trial. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996); *Codiga*, 162 Wn.2d at 922. A court determines voluntariness on the basis of the totality of the circumstances. *Branch*, 129 Wn.2d at 642.

Greene contends that she did not understand that she had a right to have a jury determine whether there were facts supporting an exceptional sentence, and therefore, her plea was not knowing and voluntary. *See Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Her argument is not persuasive.

Greene received a significant benefit from the reduced charge. Her participation in the colloquy with the court regarding the reason for the amount of time recommended indicated that she understood the bargain and was in favor of it. Moreover, her statement on plea of guilty specifically and clearly informed her that unless she had an offender score of more than 9 or stipulated to an exceptional sentence above the standard range, the State would have to prove the facts constituting aggravating factors to a jury beyond a reasonable doubt. Greene assured the court that she had reviewed that statement with her attorney, and she signed an acknowledgment that she understood it "in full." CP at 9, 45.[3]

Greene points to no evidence of confusion except her request for leniency, which she argues, indicated an ignorance of the stipulation. We think it shows instead that she had an accurate understanding of the law and hoped to apply it to her advantage. Having considered the totality of the circumstances, we are convinced that Greene's plea was knowing, voluntary, and intelligent.

Affirmed.

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.

Bridgewater, P.J.

We concur:

Armstrong, J.

Hunt, J.

[3] In addition, she signed the findings of fact and conclusions of law that explicitly referred to her waiver of her right to a jury determination under *Blakely* and *Apprendi.* Even if she signed that document after entering her plea, her signature without protest on the record, or an immediate attempt to withdraw her plea suggests that the information it contained came as no surprise.