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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. TERVEYON T. CURTIS, Appellant.	No. 80183-0-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Terveyon Curtis appeals the denial of his motion to withdraw his guilty plea. Curtis contends that the trial court abused its discretion because he did not enter his guilty plea voluntarily and with an understanding of the consequences of the plea. Specifically, Curtis asserts that he did not understand that two mandatory deadly weapon sentence enhancements would run consecutively to each other.

We conclude that because the totality of the circumstances demonstrates that Curtis understood the applicable sentencing range—and therefore, the consequences of his plea—the trial court did not abuse its discretion when it denied Curtis' motion. However, we hold that the trial court erred in imposing discretionary community supervision fees. Therefore, we affirm but remand to the trial court with directions to strike the community supervision fees.

Citations and pin cites are based on the Westlaw online version of the cited material.

FACTS

On March 7, 2017, the State charged Curtis with robbery in the first degree (count 1) and burglary in the first degree (count 2). And on April 1, 2019, Curtis pleaded guilty to both counts. The State's sentence recommendation for the plea specified that the standard sentencing range for count 1 was 46 to 61 months and count 2 was 31 to 41 months to be served concurrently. Additionally, each count carried a mandatory deadly weapon sentence enhancement of 24 months, which would run consecutively to the standard range and to each other.

On April 1, 2019, the day of the scheduled trial, the State announced to the court that the parties had reached a plea agreement. During the hearing that followed, the State ran through a series of questions intended to ensure that Curtis understood the terms of his plea agreement. The State summarized the sentence enhancements and provided the State's recommended sentence. But when the State asked Curtis to confirm his understanding, Curtis asked the State, "What'd you say? Can you repeat that?" Curtis' attorney then spoke to Curtis—part of which was on the record—stating, "It's the 94 to 109." Following Curtis' attorney's explanation, the State again asked whether Curtis understood, and Curtis said, "Yeah." The court later accepted Curtis' guilty plea.

Pursuant to Curtis' plea of guilty, the parties submitted three documents to the court: (1) Curtis' statement of defendant on plea of guilty, (2) the State's sentencing recommendation, and (3) the plea agreement. Curtis' statement, which he and his attorney signed and initialed, specified that both counts

included a sentence enhancement of 24 months each. The statement also included a chart, which provided the sentence enhancements that would be added to the standard range and the standard sentencing range for both of the charges. Similarly, the State's sentence recommendation specified that the sentence would include two consecutive 24-month sentence enhancements and that the State recommended the high end of the sentence range, 109 months. The signed felony plea agreement included a check box for the sentence enhancements. However, the parties failed to check the box or write in the amount of time for each enhancement.

Following the plea hearing but prior to sentencing, Curtis filed a motion to withdraw his guilty plea. After a hearing on the motion, the trial court denied Curtis' motion. The trial court found that the record provided sufficient evidence to demonstrate that Curtis knowingly and voluntarily entered his guilty plea. The trial court further determined that the unchecked box on the plea agreement was a harmless clerical error.

Thereafter, the court sentenced Curtis to 101 months in custody, and 18 months of community supervision. The trial court found Curtis indigent and waived all discretionary legal financial obligations. However, appendix H to the felony judgment and sentence required Curtis to pay fees to the Department of Corrections for community supervision.

Curtis appeals.

ANALYSIS

Motion To Withdraw Guilty Plea

Curtis asserts that the trial court abused its discretion when it found that he entered into his guilty plea voluntarily and with an understanding of the direct consequences of his plea. We disagree.

On appeal, we review "[a] trial court's order on a motion to withdraw a guilty plea . . . for abuse of discretion." State v. Lamb, 175 Wn.2d 121, 127, 285 P.3d 27 (2012). A trial court abuses its discretion when its decision is "'manifestly unreasonable or based upon untenable grounds or reasons.'" Lamb, 175 Wn.2d 127 (quoting State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)). A decision is manifestly unreasonable if it is "'outside the range of acceptable choices given the facts and applicable legal standard'" and is untenable if its "'factual findings are unsupported by the record.'" Lamb, 175 Wn.2d at 127 (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)).

"Due process requires that a guilty plea may be accepted only upon a showing the accused understands the nature of the charge and enters the plea intelligently and voluntarily." State v. Robinson, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011) (citing State v. A.N.J., 168 Wn.2d 91, 117, 225 P.3d 956 (2010)). "[T]he record of the plea hearing must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea," Wood v. Morris, 87 Wn.2d 501, 503, 554 P.2d 1032 (1976), "determined from a totality of the circumstances." State v. Branch, 129 Wn.2d

635, 642, 919 P.2d 1228 (1996). And under CrR 4.2(f), a defendant is allowed to withdraw a guilty plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice." A manifest injustice is an "'injustice that is obvious, directly observable, overt, not obscure.'" Branch, 129 Wn.2d at 641 (quoting State v. Sass, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)). A per se manifest injustice occurs when the defendant makes an involuntary plea. State v. Paul, 103 Wn. App. 487, 494, 12 P.3d 1036 (2000). "A guilty plea is considered involuntary if the State fails to inform a defendant of a direct consequence of his plea." State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003) (citing State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996)). And "the length of the sentence is a direct consequence of pleading guilty." State v. Mendoza, 157 Wn.2d 582, 590, 141 P.3d 49 (2006).

The record demonstrates that Curtis entered his guilty plea voluntarily and knowingly and that he understood the full consequences of his plea. The plea agreement stated that the standard sentencing ranges for both counts were included as an appendix and specified that there were special deadly weapon findings. While the parties failed to check the box and fill out the text of the sentence enhancement section of the plea agreement, the agreement did provide the sentence range for each count based on Curtis' offender score. Furthermore, the State's sentence recommendation specified the standard sentence range for each count and provided that the State would recommend, "including all counts and enhancements," 109 months. And while the total sentence range did not break down the calculations, Curtis' statement indicated

he had obtained a 12th grade education, and he therefore could have determined that, with a total of 109 months, the enhancements were to be served consecutively. Moreover, in the recommendation, the State did check the box for weapons enhancements and provided that each sentence enhancement would require 24 months and would be "served consecutive to any other term of confinement." Both the plea agreement and the State's sentence recommendation were incorporated into Curtis' statement of defendant on plea of guilty.

In Curtis' signed statement, there was a table that included the standard sentencing range for both counts, 46 to 61 months for count 1 and 31 to 41 months for count 2, and indicated that an enhancement of 24 months would be added to the sentence for both counts. It also specified that both counts included deadly weapon sentence enhancements of 24 months each and that "[t]his additional confinement time is mandatory and must be served consecutively to any other sentence and any other enhancement."

At the plea hearing, the State confirmed that Curtis had gone over the plea agreement with his counsel and that Curtis' counsel had answered all of his questions. The State told Curtis that it would recommend a 61-month sentence for count 1 to be served concurrently with a 41-month sentence for count 2. Curtis stated that he understood. In addition, the State asked Curtis:

> [STATE]: Do you also understand that there is a mandatory enhancement that will be added to the standard range of 24 months for each count?
>
> [CURTIS]: Yeah.

Thereafter, the following exchange took place:

> [STATE]: . . . There's also a weapons enhancement which I've discussed, 24 months for count 1 and 24 months for count 2, which are served consecutively. Those are mandatory.
> I said what the State's going to recommend, the 61 months and the 41 months. However, your attorney is free to ask for less time within the standard range. Do you understand that?
>
> [CURTIS]: What'd you say? Can you repeat that?
>
> [DEFENSE COUNSEL]: It's the 94 to 109. That's based [inaudible].
>
> [CURTIS]: Alright. Whatever.
>
> [STATE]: So you understand that?
>
> [CURTIS]: Yeah.

Therefore, at the hearing, Curtis affirmatively stated that he understood both the enhancements and the standard sentencing range.

During the hearing, the trial judge "did not perceive the defendant to be confused during the hearing." The trial judge presided at both the plea hearing and the hearing on Curtis' motion to withdraw his guilty plea and was in the best position to determine Curtis' demeanor during the hearings. See, e.g., State v. Osborne, 102 Wn.2d 87, 98, 684 P.2d 683 (1984) (sustaining the trial court's denial of the petitioner's motion to withdraw her guilty plea because the trial court "had ample opportunity to observe petitioner's conduct, appearance and demeanor" to determine her competency). And the trial court determined that the failure to indicate the sentence enhancements on the plea agreement was a harmless scrivener's error, and we agree. See State v. Adcock, 36 Wn. App. 699, 701-02, 676 P.2d 1040 (1984) (holding that when the State left the standard

sentencing range blank on one form, but defendant's counsel provided the standard sentencing range on numerous other occasions, the failure to indicate the sentencing range was a technical error and did not require reversal).

In short, the record affirmatively demonstrates that Curtis understood that the sentence enhancements would be served consecutively to one another because he understood the potential length of his sentence. Based on the numerous written references, Curtis' oral confirmation of his understanding, and the trial court's characterization of Curtis' demeanor during the hearing, the totality of the circumstances establishes that Curtis made the plea knowingly, intelligently, and with an understanding of the direct consequences of his plea. Accordingly, the trial court did not abuse its discretion in denying Curtis' motion to withdraw his guilty plea.

Curtis disagrees and contends that his question, "What'd you say? Can you repeat that?," demonstrated that he did not understand the sentence enhancements or the direct consequences of his plea. However, as discussed above, both the State's sentence recommendation and Curtis' statement on his guilty plea specified the correct sentencing range, and Curtis confirmed both orally and through his signature that he read and understood the plea documents. Therefore, we are not persuaded. Cf. State v. Walsh, 143 Wn.2d 1, 4, 8-9, 17 P.3d 591 (2001) (holding that where the State and the plea agreement specified an incorrect standard range for the defendant's sentence, the defendant entered into the plea involuntarily and without full knowledge of the consequence of his plea).

Additionally, Curtis cites Mendoza for his proposition that the State's failure to check the box on the plea agreement adjacent to the sentence enhancement evinces that he misunderstood the sentencing consequences of his plea. But Mendoza is distinguishable. There, the State erred in calculating Hector Mendoza's offender score, which provided the standard sentencing range that the State used in Mendoza's plea agreement. Mendoza, 157 Wn.2d at 584-85. Mendoza agreed to the plea agreement with the incorrect standard range. Mendoza, 157 Wn.2d at 584. And during the sentencing proceeding, the State acknowledged that it erred. Mendoza, 157 Wn.2d at 584-85. Mendoza did not withdraw his plea at the hearing but attempted to withdraw his plea later. Mendoza, 157 Wn.2d at 585. Our Supreme Court noted that "[w]hen a guilty plea is based on misinformation . . . the defendant may move to withdraw the plea based on involuntariness." Mendoza, 157 Wn.2d at 592. However, the court concluded that Mendoza could not withdraw his guilty plea because he failed to move for a withdrawal prior to sentencing. Mendoza, 157 Wn.2d at 592.

Here, unlike Mendoza, the State did not misinform Curtis of his standard sentencing range. And the failure to check the sentence enhancement box was a clerical error on the plea agreement form. Thus, Curtis' reliance on Mendoza is misplaced.

Community Supervision Fees

Curtis asserts that because the trial court found him indigent, the court erred when it ordered him to pay community supervision fees. The State concedes that the court erred. Because community supervision fees are

discretionary and because the court found Curtis indigent, we accept the State's concession.

We affirm the trial court's denial of Curtis' motion to withdraw his guilty plea. But we remand to the trial court to strike the community supervision fees.

WE CONCUR: