IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 63672-3-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
MARTHA C. TORRES,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 26, 2010
	)	

Lau, J. — Martha Torres appeals the trial court's denial of her motion to withdraw her guilty plea to second degree theft. She contends her plea was not voluntary because the victims coerced her into pleading guilty by threatening her. She also argues her plea was not knowing and intelligent because her attorney failed to investigate these alleged threats. Finally, she contends her attorney's failure to investigate the threats constitutes ineffective assistance of counsel. But Torres fails to overcome the presumption that her plea was voluntary or demonstrate ineffective assistance. The trial court did not abuse its discretion by denying Torres's motion to withdraw her plea. We affirm.

FACTS

Torres's friend, Jacqueline Alvarez, owns a music store where customers can also arrange for wire transfers to Mexico. In October 2007, Alvarez noticed the store was missing money. She confirmed the store's cash register balance was correct and concluded the missing money was from wire transfers. She typically stored cash from wire transfers in an unsecured drawer behind the counter before moving it to a safe a few times per day. Miguel Alarcon, her boyfriend, installed a video surveillance system to see who was taking the money.

Torres frequently visited her friend's store to use the Internet. On June 16, 2008, a store clerk said she thought she saw Torres going through the cash drawer. Alarcon reviewed the surveillance tape and saw Torres open the drawer, remove something, and put it in her pocket. From wire transfer receipts, he determined there was a total of $11,688.99 in the drawer at the time.

Alvarez and Alarcon confronted Torres with pictures from the video. Torres admitted to stealing money, but claimed she took no more than $500. Nevertheless, she agreed to write a personal check for $11,370 to reimburse the store. When Alarcon attempted to cash the check, it was denied due to insufficient funds. Alvarez and Alarcon reported the theft to the police. They provided a copy of the security video and wire transfer receipts. King County Sheriff Detective Ben Miller interviewed Torres, and she admitted to him that she had stolen money from the store, though she claimed

it was no more than $500. In his report, Miller indicated that the victims had the ability to document a loss of $11,688.

In July 2008, the State charged Torres with one count of second degree theft. On January 6, 2009, she pleaded guilty as charged. At the plea hearing, Torres confirmed it was her signature on the plea form, her attorney had reviewed the form with her, and she had no questions. She also stated that no one had made any threats to induce her to plead guilty. Her attorney stated, "We have reviewed her options as well as the discovery in the case, and we reviewed the plea form together, and I think I have had an opportunity to answer her questions." Report of Proceedings (Jan. 6, 2009) (RP) at 7. The attorney informed the court that she believed Torres was making a knowing, intelligent, and voluntary decision to plead guilty. The court asked Torres if she agreed, and Torres replied that she did. The court stated, "I do find that you are entering into this plea knowingly, voluntarily and intelligently. . . . I find you guilty of the offense." RP at 7–8.

On January 27, 2009, Torres retained new counsel. On March 20, 2009, she filed a motion to withdraw her guilty plea. In her supporting affidavit, she stated that she had informed her prior attorney that Alvarez and Alarcon had been making threatening phone calls to her and her family. She also claimed that she provided her prior attorney with an audio recording of the threatening messages and contact information for her sister, who had received some of the threatening phone calls. She said she also provided the attorney with information about another individual whom

Alvarez and Alarcon threatened about another alleged debt. Torres stated that she did not believe her prior attorney investigated this information, and if she had known this, she would not have pleaded guilty and agreed to $11,370 in restitution.

The State responded that Torres's affidavit was insufficient to establish that her plea was involuntary or unknowing. It pointed out that Torres failed to present a transcript of the plea hearing to the court. It also noted that she signed the plea paperwork, which stated, "I make this plea feely and voluntarily. . . . No one has threatened harm of any kind to me or to any other person to cause me to make this plea." The State argued this was "prima facie verification of the plea's voluntariness." Additionally, the State argued that Torres failed to demonstrate ineffective assistance or prejudice given the strength of its evidence and the doubtful value of contacting the people allegedly threatened.

On May 22, 2009, the court denied her motion based on the parties' briefing and argument. It subsequently imposed a standard range sentence of 30 days' confinement, converted to 240 hours of community service. It also imposed the agreed restitution amount of $11,370. Torres appeals.

ANALYSIS

Torres contends the court erred in denying her motion to withdraw her guilty plea. We review the denial of a motion to withdraw a guilty plea for an abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on

untenable grounds or for untenable reasons. State v. Dixon, 159 Wn.2d 65, 75–76, 147 P.3d 991 (2006).

"Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent." In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). A court determines whether these criteria are satisfied based on the totality of the circumstances. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). CrR 4.2 provides procedural safeguards to ensure the defendant's constitutional rights are protected. Branch, 129 Wn.2d at 642. Under CrR 4.2(d), the court cannot accept a defendant's guilty plea without first determining that the defendant has entered into the plea voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. Additionally, the court must be satisfied that there is a factual basis for the plea. CrR 4.2(d). If the plea is part of an agreement with the prosecuting attorney, "[t]he nature of the agreement and the reasons for the agreement shall be made a part of the record . . . ." CrR 4.2(e). A written statement on a plea of guilty must also be filed. CrR 4.2(g).

Once the court accepts the guilty plea, it must allow the defendant to withdraw the guilty plea if withdrawal appears necessary to correct a "manifest injustice." CrR 4.2(f). "A manifest injustice exists where (1) the plea was not ratified by the defendant; (2) the plea was not voluntary; (3) effective counsel was denied; or (4) the plea agreement was not kept." Marshall, 144 Wn.2d at 281. The defendant has the burden of showing that a manifest injustice has occurred. State v. Turley, 149 Wn.2d 395, 398,

69 P.3d 338 (2003). To be manifest, the injustice must be "obvious, directly observable, overt, not obscure." Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). This is a "demanding standard," justified by the safeguards that protect the defendant at the point the guilty plea was entered. Taylor, 83 Wn.2d at 597. The written plea statement is prima facie evidence of a plea's voluntariness when the defendant acknowledged reading and understanding the statement and the truth of its contents. In re Det. of Scott, 150 Wn. App. 414, 427, 208 P.3d 1211 (2009). And when the court went on to orally inquire of the defendant and satisfy itself on the record that the plea was valid, "the presumption of voluntariness is well nigh irrefutable." State v. Perez, 33 Wn. App. 258, 262, 654 P.2d 708 (1982). Where the defendant stated during the plea hearing that the guilty plea was not coerced, the mere allegation of coercion in a subsequent affidavit is insufficient to overcome the presumption of voluntariness. State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984).

Here, Torres asserts that her plea was involuntary because Alvarez and Alarcon made threatening phone calls to her and her sister. But at the plea hearing, she told the trial court that no one had threatened her. She also signed a written plea form stating, "I make this plea freely and voluntarily . . . No one has threatened harm of any kind to me or to any other person to cause me to make this plea." Such a denial in open court is highly persuasive evidence that a plea is voluntary. Osborne, 102 Wn.2d at 87. Moreover, when Torres moved to withdraw her guilty plea, she did not produce any evidence to corroborate the existence or nature of the threats other than the bare

assertion in her affidavit. Notably, she claimed to have audio recordings of the alleged threats, but she failed to produce them to support her withdrawal motion. Torres's self-serving and uncorroborated allegation that she was coerced is insufficient to overcome the presumption that her plea was voluntary.

Torres also asserts that her guilty plea was not knowing and intelligent because she did not fully comprehend the nature of her case. But the record indicates that Torres did understand the case and chose to plead guilty based on that understanding. Torres knew the State possessed surveillance evidence showing her removing something from the store's cash drawer. She knew there were wire transfer receipts establishing the amount of missing cash. She knew that Alvarez, Alarcon, and Detective Miller would testify about her admission to them that she stole money from the store. And she knew they would testify that she wrote a check for $11,370 to reimburse the store, though she did not have sufficient funds to cover the check. She also knew the State could charge her with first degree theft rather than second degree theft if she did not plead guilty.[1] And she knew the consequences of pleading guilty.[2] She now claims she did not realize her attorney failed to interview her sister and another person about threats that she alleged Alvarez and Alarcon made and that had she known about this lack of investigation, she would not have pleaded guilty. But she

[1] A person commits first degree theft if the property stolen exceeds $1,500. RCW 9A.56.030(1)(a).

[2] Torres does not dispute that she was informed of all the direct consequences of her plea, including the statutory maximum sentence, the standard sentencing range, mandatory community placement, and restitution.

fails to allege that these witnesses actually had any exculpatory information regarding the fact of the thefts or the amount stolen. Under these circumstances, Torres fails to show that her guilty plea was not knowing and intelligent.

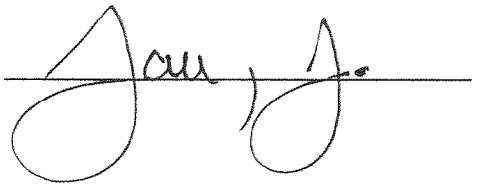
Finally, Torres argues that she was denied effective assistance of counsel because her attorney did not investigate her allegations about Alvarez and Alarcon's threatening behavior. To establish ineffective assistance of counsel, Torres must show both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Counsel's performance is deficient if it falls below an objective standard of reasonableness based on a consideration of all the circumstances. State v. Stenson, 132 Wn.2d 668, 705–06, 940 P.2d 1239 (1997). There is a strong presumption of effective representation. State v. McFarland, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995). To prove prejudice, Torres must show that but for counsel's deficient performance, there is a reasonable probability the outcome of the proceedings would have been different. McFarland, 127 Wn.2d at 335. To challenge a guilty plea, prejudice is analyzed in terms of whether the attorney's performance affected the outcome of the plea process. State v. Garcia, 57 Wn. App. 927, 932–33, 791 P.2d 244 (1990).

Here, Torres fails to show deficient performance or prejudice. Her attorney reviewed the State's evidence with her and discussed her options. They reviewed the plea form together, and the attorney answered Torres's questions. Based on the strength of the State's evidence, the possibility that the State would amend its charges

to first degree theft, and the lack of evidence that Torres's witnesses had any exculpatory information, Torres does not show that her attorney's decision not to contact the witnesses was objectively unreasonable. Even if the attorney's performance were deficient, Torres fails to show that it affected her decision to plead guilty. Her affidavit does not show the witnesses had exculpatory information that an attorney's investigation would have uncovered. And Torres knew about the alleged threats before she pleaded guilty because the threats were purportedly made to her, her sister, and another person whom she knew. Torres fails to establish a manifest injustice based on ineffective assistance.

Because the trial court acted within its discretion in denying Torres's motion to withdraw her guilty plea, we affirm.

Affirmed.



WE CONCUR: