

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 64815-2-I
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
SYLVESTER LEE NEAL,)	
)	
Appellant.)	FILED: October 31, 2011

Grosse, J. — A defendant’s statement on a plea of guilty that lacks sufficient facts to establish the elements of the charged crime does not implicate the due process requirement that the plea must be voluntary, when, as here, the defendant does not dispute that he was notified of the essential elements of the crime and the facts supporting the charge, that he acknowledged receipt of the information which contained the necessary elements of the charge and supporting facts, and that he admitted on the record that he understood the elements of the charge. At most, such a deficiency amounts to a violation of CrR 4.2(d), which in itself is not an error of constitutional magnitude that may be raised for the first time on appeal. Accordingly, we affirm.

FACTS

In early 2007, Sylvester Neal Sr. reported to the police that his credit card account was being used without his authorization. He reported that the address on his Discover Card had been changed and that three unauthorized checks had been written on his Discover Card account. He further reported that three unauthorized checks had been written on his Bank of America credit card account.

Neal Sr. suspected that his son, Sylvester Neal, was the person responsible for the unauthorized use of his accounts. One of the checks had been deposited into a U.S. Bank account that had been opened by Neal and surveillance photographs showed Neal accessing this account at a U.S. Bank branch. The signatures on the checks also matched Neal's signature, not his father's. Additionally, the changed address on the Discover Card account matched Neal's address. The total losses to Neal Sr. from the fraudulent use of his accounts amounted to \$6,757.81.

The State charged Neal with one count of first degree identity theft and three counts of forgery. After failing to appear for his first scheduled arraignment on August 29, 2007, Neal was finally arraigned on January 22, 2008 and released on his personal recognizance. Neal then failed to appear for additional court hearings and a bench warrant was issued in each instance.

On December 16, 2009, the State filed an amended information, charging Neal with one count of unlawful possession of payment instruments and bailing jumping. The information alleged that he committed the crime of bail jumping as follows:

That the defendant SYLVESTER LEE NEAL in King County, Washington, on or about August 1, 2008, being charged with a Class C felony and having been released by court order and with knowledge of the requirement of a subsequent personal appearance before the court, did fail to appear.

Neal entered a guilty plea to both charges. In his statement on plea of guilty, he acknowledged that he received and reviewed the amended information, and stated that he pleaded guilty to both crimes as charged in the information. He also gave the following statement of guilt in his own words:

On or about August 1, 2008, in King County, Washington I had been released by order of the order of the court after having been charged with a class c felony

and I did fail to appear.

Additionally, he acknowledged orally on the record that he had reviewed the amended information and understood the elements of the charges.

The court accepted the plea and entered a judgment and sentence on December 21, 2009. Neal was sentenced to 8 months confinement with credit for 291 days served. Neal appeals his conviction for bail jumping, challenging the validity of his plea.

ANALYSIS

We first address the State's contention that the appeal must be dismissed because the notice of appeal was not timely. Since the filing of the State's brief, this court has granted a motion to enlarge time for filing the notice of appeal. Accordingly, the appeal is properly before us.

Neal seeks to vacate his conviction for bail jumping, claiming that because his admission in the plea statement did not include an essential element of the crime, his plea was not voluntarily entered and is therefore invalid. The State notes that Neal did not raise this issue below by moving to withdraw his guilty plea under CrR 4.2 or CrR 7.8 and contends that he may not now assert this claim on appeal because he has failed to demonstrate a manifest error affecting a constitutional right.¹ We agree.

Due process requires that a plea be knowingly, intelligently, and voluntarily entered.² "[A] plea is not voluntary within due process requirements unless the

¹ See RAP 2.5(a)(3); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

² U.S. Const. amends. V, XIV; Wash. Const. art. I, §§ 3, 22; Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1079, 23 L. Ed. 2d 274 (1969); In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297-98, 88 P.3d 390 (2004).

defendant understands the requisite elements of and necessary facts supporting the charge to which he pleads.”³ Neal contends that because his admission in the plea statement lacks an essential element of the crime of bail jumping, i.e., knowledge of his obligation to appear, he did not understand the elements of the charge. Thus, he claims that his plea was not voluntary and violated due process.

The elements of bail jumping as defined in RCW 9A.76.170 are as follows: (1) that the defendant was charged with a particular crime, (2) that he was released by court order or admitted to bail, (3) that he had knowledge that a subsequent appearance was required, and (4) that he failed to appear as required. While Neal is correct that his plea statement lacks facts establishing the knowledge element, he does not contest that he was in fact correctly informed of the essential elements of the charge, admitted in his plea statement that he was pleading guilty as charged and orally acknowledged on the record that he understood the elements of the charge. As noted above, the information correctly set forth the elements of the crime and contained the necessary facts supporting the charge. Neal acknowledged receipt of the information and stated that he reviewed it with his lawyer. He further stated that he agreed to plead guilty to the crime charged and understood the elements of the crime.

Thus, there is no basis for Neal’s claim that that he did not understand the elements of the crime and his plea was involuntary on that basis.⁴ He has therefore

³ In re Pers. Restraint of Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987).

⁴ Neal’s reliance on Henderson v. Morgan, 426 U.S. 637 96, S. Ct. 2253, 49 L. Ed. 2d 108 (1976) and State v. R.L.D., 132 Wn. App. 699, 133 P.3d 505 (2006) is misplaced. In Henderson, the defendant was neither informed of nor admitted to an essential element of the crime. In R.L.D., there was no indication that the defendant was in fact notified of all of the essential elements of the charge and affirmatively acknowledged that notice, that he was pleading guilty as charged, and that he understood the

failed to establish a manifest error affecting a constitutional right that may be raised for the first time on appeal. At most, his claim is simply a challenge to the factual basis for the plea, which is not in itself an error of constitutional dimension.

The requirement that a trial judge determine whether there existed a factual basis for a plea is found in CrR 4.2(d):

The court shall not accept a plea of guilty without first determining that it is made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

“[S]trict adherence to the rule is not a constitutionally mandated procedure.”⁵ “The duty imposed by court rule that the judge must be satisfied of the plea’s factual basis should not be confused with the constitutional requirement that the accused have an understanding of the nature of the charge.”⁶ Thus, an alleged violation of CrR 4.2(d) is not by itself an issue of constitutional magnitude that may be raised for the first time on appeal.⁷ Rather, it “is constitutionally significant only insofar as it relates to the defendant’s understanding of his or her plea.”⁸ As discussed above, there is no basis in the record for Neal’s claim that he did not understand his plea and he fails to otherwise demonstrate that the lack of facts in his plea statement is a manifest error affecting a constitutional right that he may raise for the first time on appeal.

We affirm the judgment and sentence.

elements of the charge.

⁵ In re Pers. Restraint of Hilyard, 39 Wn. App. 723, 727, 695 P.2d 596 (1985) (internal quotation marks omitted) (citation omitted).

⁶ Hilyard, 39 Wn. App. at 727.

⁷ See State v. Zumwalt, 79 Wn. App. 124, 129, 901 P.2d 319 (1995) (challenge to factual basis of plea appealable only because raised in the trial court).

⁸ Hews, 108 Wn.2d at 591-92.

Grosse, J

WE CONCUR:

Leach, a.c.f.

Appelwick, J