IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 67175-8-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
ARISTOTLE NAPOLEON MARR,	)	
	)	
Appellant.	)	FILED: September 10, 2012

Schindler, J. — Aristotle Marr filed a personal restraint petition seeking to withdraw his guilty plea, alleging that the State breached the plea agreement by recommending an exceptional sentence and asking for community placement beyond the statutory maximum. The Washington Supreme Court considered and rejected Marr's argument that the State breached the plea agreement. On the remand to superior court to amend the judgment and sentence, Marr filed a motion to withdraw his guilty plea, arguing the State breached the plea agreement. We affirm the superior court's decision to deny the motion.

FACTS

In 2000, Marr was charged with robbery in the first degree, Count I; assault in the first degree with a firearm, Count II; attempted robbery in the second degree, Count III; burglary in the first degree with a deadly weapon, Count IV; and two counts of

kidnapping in the first degree with a deadly weapon, Count V and Count VI. All of the counts except for attempted robbery in the second degree carried firearm or deadly weapon enhancements.

Marr agreed to plead guilty to robbery in the first degree, Count I; assault in the first degree, Count II; attempted robbery in the second degree, Count III; burglary in the first degree, Count IV; and two counts of unlawful imprisonment, Count V and Count VI. The plea agreement sets forth the standard range for each of the charges as follows:

Count I:	108-144 months
Count II:	209-277 months
Count III:	39.75-52.5 months
Count IV:	77-102 months
Count V:	17-22 months
Count VI:	17-22 months

In the plea agreement, the State agreed to make the following sentencing recommendation: 144 months on Count I, 277 months on Count II, 70 months on Count III, 102 months on Count IV, 22 months on Count V, and 22 months on Count VI. In an appendix to the plea agreement, the parties stipulate that "[t]he agreed-upon range of 209-277 months has been negotiated by both sides and is the basis for the plea agreement," and "[b]oth the State and the defendant agree not to seek or argue for an exceptional sentence outside the agreed-upon sentencing range of 209-277 months."

At sentencing, the State made its agreed-upon recommendation of 277 months on Count II. The court imposed a 277-month sentence on Count II with the sentence for the other counts to run concurrent to Count II. The judgment and sentence reflects the

following:

Count I:	44 months
Count II:	277 months
Count III:	70 months
Count IV:	102 months
Count V:	22 months
Count VI:	22 months

The court also imposed 24 months of community placement on any "serious violent offense" as defined by former RCW 9.94A.030(36) (2000).

Marr appealed and sought to withdraw his guilty plea as to Count II only. Marr argued that a lack of factual basis for Count II made his plea involuntary. We affirmed his conviction. State v. Marr, 119 Wn App. 1073, 2004 WL 49852. The Washington Supreme Court denied Marr's petition for review. State v. Marr, 152 Wn.2d 1015, 101 P.3d 108 (2004).

Marr then filed a motion in the trial court to withdraw his guilty plea as to Count II pursuant to CrR 7.8, alleging a lack of factual basis. Marr's motion was transferred to this court for consideration as a personal restraint petition (PRP). We dismissed the PRP, noting that Marr's argument was virtually identical to the argument we rejected in his appeal. The Washington Supreme Court denied Marr's motion for discretionary review and motion to modify. The federal court denied Marr's habeas petition. Marr v. Stewart, 2008 WL 1927315 (W.D. Wash. April 25, 2008).

In 2010, Marr filed a second PRP with the Washington Supreme Court. For the first time, Marr argued that the plea was facially invalid because the court sentenced

him to an exceptional sentence downward of 44 months on Count I and an exceptional sentence upward of 70 months on Count III. Marr also asserted that community placement exceeded the statutory maximum. Marr claimed that these facial defects required that his judgment and sentence be vacated and the case remanded to superior court with instructions to allow him to withdraw his guilty plea in its entirety.

In response to the PRP, the State conceded the sentence imposed on Count I and Count III was outside the standard range, and there was no indication the court intended to impose an exceptional sentence. As to Count I, the State noted that the court's imposition of 44 months was likely a scrivener's error as the top of the standard range was 144 months. As to Count III, the State asserted that while its recommendation of 70 months for robbery in the second degree was consistent with the other high-end sentence recommendations, because Marr pled to attempted robbery in the second degree, the top of the standard range was 52.5 months. The State also argued that the court properly imposed a term of 24 months of community placement on Count II as required by former RCW 9.94A.120(9) (2000). The State recommended remand to resentence Marr on Count I and Count III.

In his reply, Marr argued that he was entitled to withdraw his guilty plea because the State breached the plea agreement by recommending an exceptional sentence. Marr claimed that the State did not " 'keep its bargain' " regarding the sentence for Count III, and that the request for an exceptional sentence "was a fundamental breach

of the plea agreement" and violated the terms of the agreement.

The Washington Supreme Court Commissioner accepted the State's concessions of error for the sentence imposed on Count I and Count III. The Commissioner agreed that the clear intent of the trial court was to impose a sentence at the top of the standard range on all counts. The Commissioner's ruling states that the sentence of 44 months on Count I likely reflected a scrivener's or transcription error, and the sentence of 70 months on Count III was due to the parties overlooking the fact that Marr pleaded guilty to an attempted crime instead of a completed crime. The Commissioner also ruled that the court properly imposed 24 months of community placement on Count II under former RCW 9.94A.120(9). The Commissioner addressed Marr's argument that the State breached the plea agreement. The Commissioner ruled that Marr was not entitled to withdraw his plea because he was accurately informed of the State's recommendations and possible sentencing consequences. The Commissioner dismissed the PRP subject to the superior court entering an amended judgment and sentence within 60 days imposing a standard-range sentence on Count I and Count III.

Marr filed a motion to modify the Commissioner's ruling. Marr again argued that the State had breached the plea agreement by recommending an exceptional sentence and imposing 24 months of community placement on Count II. A panel of five justices considered and rejected Marr's arguments, and denied the motion to modify.

On remand, the superior court scheduled a sentencing hearing to comply with the Commissioner's ruling. Prior to the hearing, Marr filed a motion to withdraw his plea on the grounds that the State breached the plea agreement by recommending an exceptional sentence. In order to comply with the Washington Supreme Court's directive on remand, the court amended the judgment and sentence on Count I and Count III. The court proceeded with the hearing on remand but scheduled Marr's motion for a later date. The court sentenced Marr to 144 months on Count I and to 52.5 months on Count III, the top of the standard range.

At the hearing on Marr's motion to withdraw his plea, the State argued that because the same argument had been considered and rejected by the Washington Supreme Court, it was barred by the "law of the case" doctrine. The court agreed and denied Marr's motion.

ANALYSIS

The sole issue on appeal is whether the court erred in denying Marr's motion to vacate his guilty plea on the grounds that it was barred by the "law of the case" doctrine. The law of the case doctrine refers to the " 'binding effect of determinations made by the appellate court on further proceedings in the trial court on remand.' " State v. Harrison, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003)[1] (quoting 15 Lewis H. Orland & Karl B. Tegland, Washington Practice: Judgments § 380, at 55 (4th ed.1986)). Once an appellate court has ruled on an issue, the court's decision becomes the "law of the

[1] (Internal quotation marks and citation omitted.)

case" and a trial court is bound by the appellate court's determination. State v. Strauss, 119 Wn.2d 401, 412, 832 P.2d 78 (1992). The doctrine is applied in order " 'to avoid indefinite relitigation of the same issue, to obtain consistent results in the same litigation, to afford one opportunity for argument and decision of the matter at issue, and to assure the obedience of lower courts to the decisions of appellate courts.' " Harrison, 148 Wn.2d at 562 (quoting 5 Am. Jur. 2d Appellate Review § 605 (1995)[2]).

The record is clear that in both the PRP filed in the Washington Supreme Court and in his motion to modify the Commissioner's ruling, Marr argued that he was entitled to withdraw his guilty plea because the State breached the plea agreement by recommending an exceptional sentence. The Commissioner ruled that although the plea agreement contained a mistake, the State's recommendation did not breach the agreement.

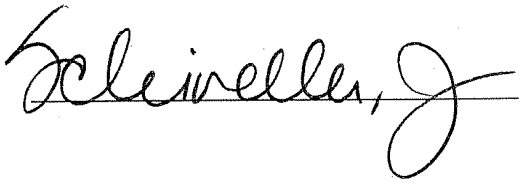
> Mr. Marr does not demonstrate the existence of any defects in the plea that would render it misinformed or involuntary. . . . The one defect in the written plea statement and in the plea agreement is a representation that the State would recommend a sentence of 70 months for the attempted second degree robbery, contrary to the undisputed true agreement of the parties that the State would not recommend any exceptional sentence. . . . But Mr. Marr in any event was not misinformed of possible sentencing consequences. As indicated, the forms otherwise set forth the correct standard range for the crime, and nothing except the mistaken reference to 70 months suggested that the State intended to recommend an exceptional sentence or that Mr. Marr understood that the State would do so.

In the motion to modify the Commissioner's ruling, Marr again argued that he was

[2] (Footnotes omitted.)

entitled to withdraw his plea based on the State's breach of the plea agreement. A panel of five justices considered and rejected Marr's argument and denied the motion to modify. We conclude the court did not err in denying Marr's motion to withdraw his plea.

Affirmed.



WE CONCUR: