

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 67609-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
JASON WALDON DAVIS,)	
)	
Appellant.)	FILED: November 19, 2012

Schindler, J. — Jason Waldon Davis claimed that because he was motivated by the victim’s death threats against him and his friends, his plea was involuntary. Following an evidentiary hearing, the court issued a 10-page order rejecting Davis’s motion to withdraw his plea. Davis argues the court’s findings do not justify the decision to deny his motion to withdraw his plea. We disagree, and affirm.

FACTS

Jason Waldon Davis and Stacy Hill were involved in a dating relationship and lived together for a number of years. By early 2010, their romantic relationship had ended. Davis moved out of Hill’s house over the weekend of April 3 and 4.

Late in the evening of April 5, Hill and Chad Andrews were in her bedroom with the door locked. Davis entered the house uninvited and with a knife. Davis broke down Hill’s bedroom door and attacked Andrews in the back with the knife, stabbing

him between 11 and 14 times.

On April 8, the State charged Davis with assault in the first degree with a deadly weapon and burglary in the first degree. The court entered an order prohibiting Davis from having contact with either Andrews or Hill.

On March 18, 2011, the State filed an amended information to add a charge of attempted murder in the second degree with a deadly weapon, as well as a deadly weapon enhancement to the burglary charge.

On April 22, Davis entered an Alford¹ plea to the charge of assault in the first degree with a deadly weapon. During the plea hearing, the prosecutor and the court asked Davis twice whether he had been threatened or coerced into pleading guilty. In response, Davis twice unequivocally denied that he was being threatened. After accepting the plea as knowingly, intelligently, and voluntarily made, the court lifted the no-contact order with Hill.

On June 10, Davis filed a motion to withdraw his guilty plea. Davis claimed his plea was not voluntary because Andrews repeatedly made threats to kill him and harm his friends. The court held an evidentiary hearing. Stacy Hill, Davis's mother Kim Myhre, and Davis testified. The court admitted into evidence transcripts of telephone calls Davis made from the jail to Hill, Myhre, and Hill's mother.

Hill testified that Andrews repeatedly threatened to kill Davis and that she told Davis's mother about the threats.

Myhre testified that when she came to Hill's house to remove Davis's belongings, Andrews told her, "[Y]ou better hope he goes to prison for a long time

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

because he's safer in there than he is on the streets because me and my posse are going to take care of him." Myhre also testified that she told Davis about the threat she heard from Andrews as well as those reported to her by Hill.

Davis testified that he pleaded guilty for a number of reasons. Specifically, Davis said he wanted the case to end, his attorneys told him he had no defense, he wanted to see Hill's son, and he knew the protection order would be lifted if he pleaded guilty. Davis testified that he believed Andrews would try to kill him if he got out of jail. Davis testified that he feared Hill, her son, and his friend John Mayfield would be in danger if Hill testified at trial. Davis testified that he pleaded guilty to placate Andrews and that he would not have pleaded guilty if Andrews had not threatened him.

Davis also introduced into evidence transcripts of several telephone calls he made from the jail to Myhre and Hill. In a telephone call to his mother on April 6, Davis referred to "death threats" by "this guy who wants to kill me," saying that "if that's his position and he wants to do that . . . I'm kind of okay with that . . . in the sense that . . . let me get out, . . . get a No-Contact Order and then if he gets anywhere near me then . . . I'll just call the police." After entering the plea, Davis explained his decision to plead to Myhre, noting "other things we can't talk about," and then saying, "[T]he only reason I took it was because . . . the other option . . . was to go in to trial with literally no defense."

In a telephone call to Hill on May 8, 2011, Davis told Hill that her "version of the truth was maybe not as close to reality as would have been helpful or as I would have liked," and "I can understand why you may have been confused about some things." Davis also told Hill she could help him "if this all goes to trial."

The court issued a detailed, 10-page written order denying Davis's motion to withdraw his plea. The court found that Davis's "explanation of how the threats caused him to plead guilty makes no sense" and was "not credible." The court found that Davis did not fear danger to himself from Andrews' threats but feared that Andrews would not testify truthfully. The court also found that Davis's "assertion that he pled guilty to protect Stacy Hill, her son [R.H.], and John May[field] is not credible." The court concluded:

[T]he true motivation for defendant's motion to withdraw his plea is that after the no contact order was lifted and he attempted to tamper with Ms. Hill's testimony, he came to believe he could win his case with a claim of self-defense.

The court also states that the plea bargain substantially reduced Davis's standard-range sentence. The court determined that Davis was not coerced into pleading guilty by Andrews' threats and denied the motion to withdraw the guilty plea.

ANALYSIS

We will not reverse a trial court's denial of a motion to withdraw a guilty plea absent an abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). "To hold that a trial court has abused its discretion, the record must show that the discretion exercised by the court was predicated upon grounds clearly untenable or manifestly unreasonable." State v. Olmsted, 70 Wn.2d 116, 119, 422 P.2d 312 (1966).

Under CrR 4.2(f), a court must allow withdrawal of a guilty plea if "necessary to correct a manifest injustice." A manifest injustice is " 'obvious, directly observable, overt, not obscure.' " State v. Branch, 129 Wn.2d 635, 641, 919 P.2d 1228 (1996) (quoting State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)). An involuntary plea is

a manifest injustice. State v. Wakefield, 130 Wn.2d 464, 474-75, 925 P.2d 183 (1996).

“[C]oercion may render a guilty plea involuntary, irrespective of the State’s involvement.” State v. Frederick, 100 Wn.2d 550, 556, 674 P.2d 136 (1983), overruled on other grounds by Thompson v. Dep’t of Licensing, 138 Wn.2d 783, 982 P.2d 601 (1999). However, if a defendant denies improper influence at a plea colloquy and later seeks to retract his admission of voluntariness, he bears “a heavy burden in trying to convince a court . . . that his admission in open court was coerced.” Frederick, 100 Wn.2d at 558. “The task will be especially difficult where there are other apparent reasons for pleading guilty, such as a generous plea bargain or virtually incontestable evidence of guilt.” Frederick, 100 Wn.2d at 557.

Davis first argues that the court erred in finding that the plea bargain “substantially reduced his standard range sentence.” Davis compares the standard range for attempted second degree murder, 92 to 165 months, with the standard range for first degree assault, 93 to 123 months, based on an offender score of 0. See RCW 9.94A.510. But as the State points out, Davis was also charged with first degree burglary with a deadly weapon enhancement. If Davis had been convicted as charged, and the attempted murder and first degree assault merged, he faced a total standard range of 156 to 231 months, based on an offender score of 2 and including two deadly weapon enhancements. See RCW 9.94A.510; RCW 9.94A.525(6), (9); RCW 9.94A.030(45)(iii), (v), (54)(i); RCW 9A.52.020(2); RCW 9.94A.533(4)(a). The court correctly described the total standard range Davis faced as a result of the plea bargain, 117 to 147 months, as a substantial reduction to the standard range he faced had he been convicted as charged after trial.

Davis next challenges the finding that he “did not perceive danger to himself” from the threats. Davis also contends that the court improperly “dismissed the notion that Davis pled guilty not only to protect himself from Andrews but also to protect Hill, her son and others.” Davis claims there was no evidence to support the finding that Davis believed he could protect himself and the others if he had been released. Davis also claims that he “did not suddenly believe he could show he acted in self-defense after talking to Hill,” but believed he could legitimately argue self-defense “all along.”

To refute the court’s findings, Davis refers to his testimony at the evidentiary hearing. Davis testified that he was afraid that if he got out of jail, Andrews would try to kill him; but if he pleaded guilty, his friends would be safe. Davis contends the court failed to understand that Davis only felt safe in custody and believed that Hill, Hill’s son, and Davis’s friend Mayfield would only be safe if he stayed in custody without a trial. Davis argues that his beliefs were reasonable and the court’s findings are unreasonable and not supported by the evidence.

The written order demonstrates that the court understood and considered Davis’s testimony. In the order, the court lists Davis’s “numerous and extensive” claimed fears:

- He was afraid that everything about the trial was setting off Chad and that a plea would mollify him
- He was afraid for himself
- If Chad didn’t testify, the State’s case would be weaker and defendant might be released
- He was afraid of the trial itself and its effect on Chad
- Chad might hear Stacy’s testimony and this would put Stacy at risk
- He was afraid of the trial’s effect on his friend John
- He wasn’t afraid of a longer sentence after trial.

But the court specifically found that Davis’s explanations about his motivations

for entering into the guilty plea were not credible, and credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).


Based on an evaluation of testimony and evidence at the hearing, including the statements he made in recorded telephone conversations both before and after the plea, the court ruled that Davis failed to carry his burden of showing his plea was involuntary and coerced. The findings are supported by the record, including the findings that Davis had no defense, that his attorneys provided sound advice, and that

the true motivation for defendant's motion to withdraw his plea is that after the no contact order was lifted and he attempted to tamper with Ms. Hill's testimony, he came to believe he could win his case with a claim of self-defense [and t]he defendant simply had second thoughts about his chances at trial.

The court did not abuse its discretion in denying the motion to withdraw the guilty plea.

In a "Statement of Additional Grounds for Review," Davis challenges the court's consideration of the telephone calls he made from the jail and provides his interpretations of the calls and additional explanations for statements he made during the calls. Davis also challenges the court's reference to his calls to Hill as an attempt to tamper with her testimony, claiming that he was only pleading with her to tell the truth. Finally, Davis repeats his claimed motivations for pleading guilty and criticizes the court's findings, reasoning, and conclusions. Davis obviously disagrees with the court's findings. Because this court defers to the court on issues of credibility of witnesses and persuasiveness of evidence, we reject Davis's arguments.

Affirmed.

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WE CONCUR:

Leach, C. J.

Becker, J.