IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES ANDREW MARCHESELLI, Appellant.	No. 37888-4-II consolidated with No. 37895-7-II No. 37898-1-II No. 37905-8-II UNPUBLISHED OPINION

Hunt, J. — James Marcheselli appeals his guilty plea convictions for nine counts of identity theft, three counts of theft, two counts of forgery, and one count of possession of a controlled substance. He acknowledges that as part of his guilty plea, he agreed not to appeal either the convictions or sentence. Nevertheless, he argues that his plea, including the agreement not to appeal, was not knowing, voluntary, and intelligent. We affirm.

FACTS

James Marcheselli committed numerous fraudulent transactions involving stolen credit cards and checks, beginning at least as early as December 2006. On June 20, 2007, the State filed its first information, charging him with two counts of first degree theft, one count of attempted first degree theft, and one count of unlawful use of drug paraphernalia (Pierce County Cause No. 07-1-03255-1).

A week later, the State filed four additional counts of second degree identity theft against

Marcheselli under a second cause number (Pierce County Cause No. 07-1-03405-8). A month and a half after that, the State amended that information to include a total of 39 counts, primarily for first and second degree identity theft, but also for forgery. The information listed more than 20 separate victims of the crimes and alleged that these crimes were "major economic offense[s]," an aggravating factor for the majority of the counts.

On September 25, 2007, the State filed charges under a third cause number (Pierce County Cause No. 07-1-05015-1). These charges were based on Marcheselli's attempt to cash forged checks at the Emerald Queen Casino.

In October 2007, police obtained consent to search the common areas of Marcheselli's house and found a stolen motorcycle. After obtaining and executing a search warrant, they found approximately 26 pages of banking and personal information belonging to several individuals and a baggie of methamphetamine. The State charged Marcheselli under a fourth cause number, (Pierce County Cause No. 07-1-05446-6), alleging second degree identity theft, first degree possession of stolen property, and unlawful possession of a controlled substance. Several months later, the State amended that information, adding four counts of second degree identity theft and changing the charge of possession of stolen property to possession of a stolen vehicle.

Thereafter, Marcheselli negotiated a plea agreement encompassing all four cause numbers. Under the agreement, the State dropped 37 of the 52 pending charges and removed the aggravating factor allegation of a major economic offense from all but one of the identity theft charges, count VI in Cause No. 07-1-03405-8. Marcheselli and the State agreed to recommend an exceptional sentence of 100 months[1] of confinement for count VI, with all other sentences to

[1] The standard range was 63 to 84 months of confinement.

run concurrently. Marcheselli (1) stipulated to the aggravating factor; (2) stipulated that he had discussed with his counsel and understood the legal ramifications of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) and *In re the Personal Restraint Petition of Breedlove*, 138 Wn.2d 298, 979 P.2d 417 (1999); and (3) waived his right to challenge the sentence on any grounds, either collaterally or by direct appeal.

In spite of his waiver of his right to appeal as part of his plea agreement with the State, Marcheselli appeals.

ANALYSIS

I. Knowing, Voluntary, and Intelligent Plea

Marcheselli asserts his guilty plea and waiver of his right to appeal were not knowing, voluntary, and intelligent because, with regard to the aggravating factor supporting his exceptional sentence, he did not possess an understanding of the law in relation to the facts. The record does not support Marcheselli's claim and, consequently, this argument fails.

To ensure a valid plea, a trial court must determine that the defendant is entering the plea competently and with an understanding of the nature of the charge and the consequences of the plea. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008); *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). The trial court followed this procedure on the record here.

The plea agreement indicated that the crime charged in count VI was a major economic offense, and it listed the criteria that the State could use to establish that aggravating factor. At the plea hearing, the State indicated that there were multiple victims and a large amount of money involved in the crimes, criteria listed in the plea agreement. The parties also presented a document entitled, "STIPULATION RELATING TO CRIMINAL HISTORY, OFFENDER

SCORE, STANDARD RANGE, AND EXCEPTIONAL SENTENCE." Clerk's Papers at 55. In that document, Marcheselli stipulated that the amended information to which he was pleading guilty incorporated all of the previously charged victims, that he was liable for restitution to all of these victims, and that there was a factual basis for the exceptional sentence. Marcheselli, his counsel, and the deputy prosecutor all signed this stipulation.

Contrary to this otherwise undisputed evidence, Marcheselli points only to the fact that the actual charge to which the aggravating factor was attached alleged only one victim and theft of an amount only $212.59 greater than the minimum amount to support the charge. *See* RCW 9.35.020(2). Against the backdrop of a clear record, Marcheselli's assertion fails to show that he did not understand the nature of the aggravating factor or that he was unaware of the evidence that supported it.

II. Sentencing Findings of Fact

Citing *Breedlove*, 138 Wn.2d at 300, Marcheselli next argues that the trial court erred by failing to enter findings of fact about his sentence's consistency with the goals of the Sentencing Reform Act of 1981.[2] This argument fails for two reasons.

First, because the record shows that Marcheselli intelligently and voluntarily entered his plea, he also voluntarily waived his right to appeal the sentence and to make this objection to the trial court's failure to enter written findings of fact. *Breedlove*, 138 Wn.2d at 312-13. Second, even if Marcheselli had not waived his right to appeal, the record does not support his argument. On the contrary, the record shows that the trial court did enter written findings explaining the reasons for the sentence, in compliance with *Breedlove*. 138 Wn.2d at 310-11.

[2] RCW 9.94A.535.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Armstrong, J.

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Van Deren, C.J.