IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TERRY LYNN CROSS, Appellant.	No. 39506-1-II UNPUBLISHED OPINION

Armstrong, J. — Terry Cross appeals from a judgment entered pursuant to his guilty pleas to two counts of first degree child molestation. Cross contends that (1) as to one of the counts, his plea was not knowing and voluntary; (2) he was not competent when he entered his pleas; and (3) his trial counsel ineffectively represented him in the plea process. We affirm.

The State alleged that Cross committed count I between December 1, 2007, and April 4, 2008[1] and count II on April 5, 2008. Cross pleaded guilty to both counts. Section 4 of Cross's statement on plea of guilty incorrectly stated that counts I and II "occurred during 12/1/07 to 4/4/08." Clerk's Papers (CP) at 7. Section 11 of the statement reported that "between 12/1/07

[1] At the plea colloquy, the State corrected a scrivener's error that listed the beginning date for count I as December 1, 2008.

[and] 4/5/08 I twice had unlawful sexual contact with G.P., who I was more than 36 mo[nth]s older than [and] who is less than 12 y[ea]rs old and I am not married to." CP at 14-15. In the plea colloquy, the court recited the correct dates, and Cross confirmed that section 11 accurately stated what he had done. The trial court accepted Cross's pleas "as knowingly, intelligently and voluntarily given." Report of Proceedings at 8. The court later rejected Cross's request for a special sex offender sentencing alternative (SSOSA) sentence and imposed a standard range sentence.

Cross argues that his pleas were not knowing, voluntary, and intelligent because the trial court misinformed him of the elements of count II by accepting the incorrect dates contained in section 4 of the statement on plea of guilty. *Bousley v. United States*, 523 U.S. 614, 618, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998); *State v. R.L.D.*, 132 Wn. App. 699, 705, 133 P.3d 505 (2006). But the information contained the correct dates. And, in section 11 of the statement, Cross twice acknowledged that he molested the victim between December 1, 2007, and April 5, 2008. He reaffirmed that statement in the plea colloquy. And he stated that he had read and understood his statement on plea of guilty, creating a strong presumption that his pleas were knowing, voluntary, and intelligent. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). The trial court did not err in finding that his pleas were knowing and voluntary.

Cross argues that his counsel ineffectively represented him during the plea process. To prevail on a claim of ineffective assistance, he must show: (1) that his counsel's representation fell below an objective standard of reasonableness and (2) the deficient performance prejudiced him. To demonstrate prejudice Cross must show that but for counsel's deficient representation, the result probably would have been different. *Strickland v. Washington*, 466 U.S. 668, 688-89,

104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-355, 899 P.2d 1251 (1995).

First, Cross contends that his counsel coerced him into pleading guilty by "pressuring and exploiting [his] naivete." Statement of Additional Grounds for Review at 4. But in both his statement on plea of guilty and during colloquy with the court, Cross stated that "[n]o one has threatened harm of any kind to me . . . to cause me to make this plea" and that "[n]o person has made promises of any kind to cause me to enter this plea." CP at 14. His claim of coercion fails.

Second, Cross faults his counsel for not informing him that he would be subject to conditions of community custody for the rest of his life and that violating one of those conditions could result in being incarcerated for life. But his statement on plea of guilty informed him of that lifetime period of community custody and the consequences of violating the conditions of community custody.[2] He does not demonstrate that he was misinformed as to the consequences of his plea.

Third, Cross contends that his counsel did not advise him of the rights he was giving up by pleading guilty. Again, however, his statement on plea of guilty clearly states those rights and both his counsel and the judge confirmed that he understood that by pleading guilty he was waiving those rights.

Fourth, Cross criticizes his counsel for mentioning that he had taken a polygraph.[3] But this disclosure was a necessary part of Cross's request for a SSOSA sentence, which the court

[2] That statement also informed him that he would be subject to 60 days of confinement for the first two violations of the community custody conditions and would be subject to reincarceration, for up to life, for a third violation.

[3] There were apparently two polygraph tests, the first was not completed and the second indicated no deception.

later rejected. His counsel was not ineffective for mentioning the polygraph.

Fifth, Cross argues that his counsel should have had him evaluated for competency because he had had a traumatic brain injury. But defense counsel must request a competency determination only if he has reason to doubt the defendant's competency. *City of Seattle v. Gordon,* 39 Wn. App. 437, 441, 693 P.2d 741 (1985). And that doubt arises if counsel has reason to question whether the defendant: (1) understands the charge and consequences of conviction; (2) understands the facts giving rise to the charge; and (3) is able to relate the facts to his attorney to help prepare the defense. *Gordon*, 39 Wn. App. at 442. During his plea colloquy, Cross said that he understood the charges, understood the consequences of conviction, and understood the underlying facts. Thus, he has not shown that counsel had reason to doubt his competency such that he should have requested a competency determination.

Finally, Cross maintains that he did not understand the consequences of his pleas. But as discussed above, his signed statement on a plea of guilty creates a strong presumption that his pleas were knowing, voluntary and intelligent. He points to no evidence that would overcome that presumption.

The trial court did not err in accepting Cross's pleas of guilty. We affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record. RCW 2.06.040.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.