

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JASON M. CHRISTEN, aka MALACHI
EZEKIEL MacGREGOR-REIGN,

Appellant.

No. 40048-1-II

UNPUBLISHED OPINION

Johanson, J. — Jason M. Christen appeals the trial court’s denial of his motion to vacate his 2000 guilty plea.¹ He argues that his conviction should be reversed because the court commissioner who accepted his guilty plea to one count of attempted second degree murder was not authorized to accept the plea. We disagree.

FACTS

On August 21, 2000, Jason M. Christen, now known as Malachi McGregor-Reign,² entered an *Alford*³ plea to one count of attempted second degree murder. A Pacific County court

¹ Christen titled his motion below as a “motion to vacate sentence,” Clerk’s Papers at 39, but it was, in substance, a motion to vacate his guilty plea.

² Christen has filed numerous motions and appeals related to this case that have been captioned with his original name. For continuity, although we acknowledge that he has changed his name, we refer to the appellant as Christen throughout this opinion. We intend no disrespect.

commissioner accepted the guilty plea. On September 8, a superior court judge entered the judgment and sentenced Christen.

Nine years later, Christen filed a pro se motion to vacate with the superior court, arguing that the court commissioner lacked the authority to accept his guilty plea under the local court rules, statute, or the Washington State Constitution. He also argued that this error rendered his judgment and sentence facially invalid. Following a hearing, the trial court denied Christen's motion. Christen appeals.

ANALYSIS

As he did below, Christen argues that the Washington State Constitution and RCW 2.24.040 did not authorize the commissioner to accept his guilty plea.⁴ We disagree.

The Washington State Constitution grants court commissioners broad powers, stating:

There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, *who shall have authority to perform like duties as a judge of the superior court at chambers*, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

³ *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (a defendant may plead guilty while disputing the facts alleged by the prosecution); *see also State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

⁴ Christen also argues that the commissioner was not authorized to accept his plea under the local court rules. Any potential limit on the commissioner's authority to accept guilty pleas on class A felonies created by Pacific County Local Criminal Rule 5 is irrelevant here because it was not effective until September 1, 2000, after the plea at issue in this case.

In addition, in a pro se Statement of Additional Grounds, RAP 10.10, Christen argues that we must look to federal law to determine the scope of the commissioner's authority. Federal law is not relevant to whether our state constitution authorizes commissioners to accept guilty pleas in criminal cases.

Wash. Const. art. IV, § 23 (emphasis added). Washington courts have interpreted the phrase, “duties as a judge of the superior court at chambers” to include all “matters not requiring a trial by jury.”⁵ *State v. Goss*, 78 Wn. App. 58, 60, 895 P.2d 861 (1995) (commissioner is constitutionally authorized to issue search warrant in criminal matter) (quoting Code of 1881, § 2138, at 368, and citing *State ex rel. Lockhart v. Claypool*, 132 Wash. 374, 375, 232 P. 351 (1925)⁶; *Peterson v. Dillon*, 27 Wash. 78, 84, 67 P. 397 (1901); *State ex rel. Henderson v. Woods*, 72 Wn. App. 544, 548-49, 865 P.2d 33 (1994)); see also *State v. Karas*, 108 Wn. App. 692, 701-02, 32 P.3d 1016 (2001) (commissioner is authorized to issue a permanent protection order under the Domestic Abuse Prevention Act).

Acceptance of a guilty plea is not a matter requiring a jury trial; thus, the court commissioner was constitutionally authorized to accept Christen’s guilty plea. Additionally, although RCW 2.24.040,⁷ suggests some limitation of this authority, the legislature may not limit

⁵ This authority is, however, subject to revision by a superior court judge. *State v. Goss*, 78 Wn. App. 58, 60, 895 P.2d 861 (1995). Christen does not assert that the commissioner’s decision was not subject to revision by a superior court judge.

⁶ Christen relies on *State v. Philip*, 44 Wash. 615, 87 P. 955 (1906). But *Lockhart* abrogated *Philip*. Christen is correct that *Philip* was a criminal case analyzing a commissioner’s authority to accept a guilty plea on a felony offense and that *Lockhart* was not, but *Philip* relied on an interpretation of the phrase “duties as a judge of the superior court at chambers” that *Lockhart* clearly disavowed. See *Lockhart*, 132 Wash. at 375. The language at issue in *Lockhart* and *Philip* does not distinguish between criminal and civil proceedings, nor can the analysis in *Philip* be distinguished from that in *Lockhart* based on any distinction between criminal and civil law. Furthermore, *Lockhart* expressly disavows *Philip*’s reliance on legislation passed after the state constitution was adopted. See *Lockhart*, 132 Wash. at 377; *Philip*, 44 Wash. at 617-18. Accordingly, *Lockhart* applies here.

⁷ RCW 2.24.040 provides in part:

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

the court's constitutional powers. *Karas*, 108 Wn. App. at 701-02 (quoting *Henderson*, 72 Wn. App. at 549); *In re Habeas Corpus of Olson*, 12 Wn. App. 682, 531 P.2d 508, review denied, 85 Wn.2d 1010 (1975).

Furthermore, nothing in the record shows that Christen did not consent to the commissioner acting in this matter, nor does it show that he objected until nine years after the commissioner accepted his guilty plea. Thus, Christen has also waived any potential error. *See State v. Wenatchee Valley Holding Co.*, 169 Wash. 535, 540-41, 14 P.2d 51 (1932) (parties waived objection to commissioner's authority to preside over selection and swearing of jury where all parties consented and defendant did not object until after the jury rendered its verdict).

Because Christen does not show that the commissioner lacked the authority to accept his guilty plea, Christen also fails to show that his judgment and sentence was facially invalid. Furthermore, a superior court judge and not the commissioner entered the judgment and sentence. Therefore, on its face, the judgment and sentence is facially valid. Accordingly, Christen's motion was also untimely under RCW 10.73.090(1).

.....
(15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333 or 9.94B.040; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

The legislature amended subsection (15) in 2009, but the amendment is not relevant here. *See* Laws of 2009, ch. 28, § 1.

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Accordingly, the trial court did not err in denying Christen's motion to vacate and we affirm.

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.

Johanson, J.

We concur:

Armstrong, P.J.

Quinn-Brintnall, J.