IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. A.J.H.,[†] Appellant.	No. 40619-5-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A.J.H. appeals his Grays Harbor County juvenile adjudication of third degree malicious mischief.[1] He contends that his guilty plea was not knowing and voluntary because the record does not show that he understood all of the elements of the crime and he was misinformed about the maximum sentence for the crime. He also contends that the record does not support the manifest injustice disposition imposed. We affirm.

FACTS

A.J.H. entered his guilty plea on March 4, 2010, acknowledging in his written plea

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[†] Under RAP 3.4, this court changes the title of the case to the juvenile's initials. The opinion uses initials for the juvenile and his family to protect the juvenile's rights to confidentiality.

[1] A commissioner of this court considered the matter pursuant to RAP 18.12 and 18.13 and referred it to a panel of judges.

statement that on February 12, 2010, he had "punched a hole in the wall at [his] mothers [sic] house." Clerk's Papers (CP) at 17. The statement form identified the elements of the crime as "damage property of another." CP at 13. The plea form stated, "[T]he maximum punishment I can receive is commitment until I am 21 years old, but that I may be incarcerated for no longer than the adult maximum sentence for this offense." CP at 15.

The standard range for the crime was local sanctions. The State recommended 39 to 52 weeks, asserting that A.J.H. had seven prior offenses; community-based services had all been tried without success; and the presentence evaluator believed that counseling in a more structured setting might be beneficial. Defense counsel asked for local sanctions and a year of probation with counseling. The court agreed that community-based options had been exhausted. It imposed a disposition of 39 to 52 weeks. This appeal followed.

ANALYSIS

Due process requires that a guilty plea be knowing, intelligent, and voluntary. *In re Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). A plea is not knowing and intelligent unless the defendant knows the elements of the charged offense and understands that his alleged conduct satisfies those elements. *State v. R.L.D.*, 132 Wn. App. 699, 705, 133 P.3d 505 (2006).

A.J.H.'s plea statement did not inform him that a culpable mental state was required. However, it did indicate that he had received a copy of the information which alleged that he had "knowingly and maliciously cause[d] physical damage to the property of another." CP at 1. An information that notifies the defendant of the nature of the crime to which he pleads guilty creates a presumption that the plea was knowing, voluntary, and intelligent. *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993), *review denied*, 123 Wn.2d 1009 (1994).

There is nothing in the record that rebuts that presumption. Notably, A.J.H.'s criminal history further supports the presumption. He had three prior third degree malicious mischief convictions, all the result of guilty pleas, and there is good reason to assume that he was familiar with the elements of the crime.

A.J.H. next contends that his plea was not voluntary because he was not informed of the actual length of the maximum sentence and was misinformed that he could be held until he was 21. The defendant must be informed about the direct consequences of the plea. *Isadore*, 151 Wn.2d at 298. The maximum sentence is a direct consequence. *State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d 965 (2008). Misinformation about the maximum sentence renders the plea involuntary, even if the correct sentence is less than the term asserted. *See In re Pers. Restraint of Bradley*, 165 Wn.2d 934, 939, 205 P.3d 123 (2009).

The plea statement advised A.J.H. that he could be held until his 21st birthday but not longer than the adult maximum for the offense. The statement form did not include the actual duration of the statutory maximum. That is required information under CrR 4.2(g).

However, the statement of prosecuting attorney, filed the same day as the sentencing hearing, indicated that the statutory maximum was a year, and the deputy prosecutor also made that clear at the sentencing hearing in her opening comments to the court.[2] If a defendant is informed of the correct, less onerous sentence before he is sentenced, and he does not object or attempt to withdraw his plea, he waives the right to challenge the voluntariness of the plea. *See State v. Mendoza*, 157 Wn.2d 582, 591-92, 141 P.3d 49 (2006). A.J.H. did not make any

[2] Malicious mischief is a gross misdemeanor. RCW 9A.48.090(2). The maximum penalty for a gross misdemeanor is one year. RCW 9.92.020.

objection or ask to withdraw his plea after the prosecutor's comments. He has, therefore, waived this claim.

A.J.H. also challenges the exceptional disposition imposed, contending that the record does not support a finding of manifest injustice. In order to uphold a disposition outside the standard range, we must find that the reasons supplied by the disposition judge are supported by the record and those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice. RCW 13.40.230(2).

The juvenile court found three aggravating factors: (1) A.J.H. has a recent criminal history or has failed to comply with conditions of a recent dispositional order, (2) the standard range is too lenient considering the seriousness of A.J.H.'s prior adjudications, and (3) available treatment options have been exhausted and further treatment is needed.

As to the first finding, A.J.H. was 16 at the time of this disposition and his probation officer testified that he had seven prior convictions and five probation violations. She said that he would not follow court orders, or house or school rules. The prosecutor's statement also listed the crimes and the dates of conviction. It showed that A.J.H. had two convictions in 2007, third degree malicious mischief and fourth degree assault; four convictions in 2008, two counts of third degree malicious mischief and two counts of fourth degree assault; and a mid-2009 conviction of third degree theft. A.J.H. did not object to this evidence and it is adequate to prove his criminal history. *See State v. J.A.B.*, 98 Wn. App. 662, 666-67, 991 P.2d 98, *review denied*, 141 Wn.2d 1020 (2000). In addition, the evidence showed that he had committed the current crime less than six months after the 2009 crime and less than three months after he was released from detention.[3]

[3] Another 30 days had been imposed in November 2009, because of a probation violation.

That is sufficient to establish a recent criminal history.

A.J.H. appears to argue that this is not enough without a finding by the trial court specifically listing the crimes it relied upon. This argument fails for two reasons. First, the trial court indicated that it agreed with the prosecutor's statement which set out A.J.H.'s criminal history. Second, the sentencing judge was very familiar with A.J.H. The sentencing judge noted that A.J.H. always asserted that he was going to be better, but "lately you haven't been gone from here long enough for your bed to cool down before you're back." Report of Proceedings at 11. There is sufficient evidence that the court was well aware of the circumstances of this case.

A.J.H. makes the same argument with regard to the second finding, asserting that the failure to identify the crimes precludes a finding on seriousness. This argument fails under the same reasoning provided above. A.J.H. also points to the failure to make a specific evaluation of seriousness. The record showed that there were three acts of malicious mischief and three assaults and they had all occurred in the past thirty months. That consistent repetition makes the conduct serious. In any case, the trial court was primarily concerned with A.J.H.'s rapid recidivism and unamenability to treatment in the community and there is no reason to believe the disposition would be different if the court had not found the crimes to be serious. *See State v. T.E.C.*, 122 Wn. App. 9, 24, 92 P.3d 263, *review denied*, 152 Wn.2d 1012 (2004); *State v. S.H.*, 75 Wn. App. 1, 12, 877 P.2d 205 (1994), *review denied*, 125 Wn.2d 1016 (1995); *see also State v. J.V.*, 132 Wn. App. 533, 545, 132 P.3d 1116 (2006).

As to the third finding, A.J.H. points to RCW 13.40.150(5), which states that a manifest injustice disposition cannot be based on the lack of facilities in the community. The disposition was not based on the lack of community treatment facilities but on A.J.H.'s failure to benefit from

them. The psychologist who evaluated him indicated that A.J.H. needed

> to fit into a clear structure which requires his participation and which monitors his acquisition of the principles of personal responsibility that are so dramatically lacking at present. This would most likely best transpire in an institutional setting or in a boot camp where his tendency to manipulate would be confronted, and where his propensity toward avoiding responsibility would be interrupted.

CP at 23. A.J.H. argues that there is no evidence that the court considered this report. It was not filed and thus did not become a part of the record. However, defense counsel received a copy of the report and presumably the court had also received a copy. In any case, the court was provided the statement of the prosecuting attorney which contained the excerpt from the psychologist's report quoted above. The third finding is both proper and supported by the record.

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.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

WORSWICK, A.C.J.