IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ROBERT DEAN PITKIN, Appellant.	No. 42254-9-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Robert D. Pitkin seeks to withdraw his guilty plea to second degree burglary (37 counts), attempted second degree burglary (4 counts), residential burglary (2 counts), first degree theft (2 counts), theft of a firearm (1 count), second degree theft (6 counts), and third degree theft (13 counts). Pitkin argues that his guilty plea was involuntary because he was never informed of the statutory maximum penalties for the crimes to which he pleaded guilty. We agree that his plea was involuntary and remand to the trial court where Pitkin may seek withdrawal of his plea or specific performance of the plea agreement.

Facts

Pitkin pleaded guilty to 65 counts of burglary and theft associated with a string of offenses he committed in Longview. With the assistance of counsel, he negotiated a plea agreement that required him to plead guilty to all counts in the second amended information and to agree to an exceptional sentence of 18 years in prison. In consideration of this plea, the State dismissed the greater charge of first degree burglary.

The plea statement that Pitkin signed did not set forth the statutory maximum penalties for any of his offenses. The prosecutor's plea offer, which was attached to the guilty plea form, also did not refer to the maximum penalty for any of the crimes to which Pitkin agreed to plead guilty.

During the plea colloquy, the trial court explained the standard ranges for each offense, but the only maximum sentence the court mentioned was for third degree theft.[1] The State informed the trial court that Pitkin had an offender score of 142 on the burglary counts and 80 on the theft counts, and it asked the court to impose the recommended exceptional sentence of 18 years. Pitkin also requested an exceptional sentence of 18 years. The trial court decided instead to impose an exceptional sentence of 20 years in prison.

Pitkin's judgment and sentence lists the maximum term for each count as "Class B," "Class C," or "365 days." Clerk's Papers at 57-60. There is no other reference to the maximum term for his current offenses.

Pitkin now appeals, arguing that he is entitled to withdraw his plea because he was not advised of the statutory maximum penalty for his crimes.

Discussion

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *State v. Weyrich*, 163 Wn.2d 554, 556, 182 P.3d 965 (2008). This standard is reflected in CrR 4.2(d), which mandates that the trial court "shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." Under this rule, once a guilty plea is accepted, the trial court must allow withdrawal of the plea "to correct a manifest injustice." CrR 4.2(f). An

[1] The court did not mention the statutory maximum fine for this offense. *See* RCW 9A.56.050; RCW 9A.20.021(2).

involuntary plea constitutes a manifest injustice, and a defendant may raise this claim of error for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 6-8, 17 P.3d 591 (2001); *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

A defendant must understand the sentencing consequences for a guilty plea to be valid. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988), *overruled on other grounds by State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011). Both the statutory maximum sentence determined by the legislature and the applicable standard sentence range are direct consequences of a guilty plea about which a defendant must be informed to satisfy due process requirements. *Weyrich*, 163 Wn.2d at 557; *State v. Kennar*, 135 Wn. App. 68, 74-75, 143 P.3d 326 (2006), *review denied*, 161 Wn.2d 1013 (2007).

The State acknowledges that neither the trial court nor the plea documents advised Pitkin of the maximum penalties for his crimes. *See In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001) (knowledge of the direct consequences of a guilty plea can be satisfied by the plea documents). The State argues that this lack of information did not affect Pitkin's decision to plead guilty, but a defendant need not establish a causal link between deficient information regarding direct sentencing consequences and his decision to plead guilty. *Weyrich*, 163 Wn.2d at 557 (citing *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004)).

We therefore are compelled to conclude that Pitkin's plea was involuntary because he was not advised of the maximum sentence for each of his offenses. Although Pitkin seeks to withdraw his plea, the State challenges this remedy and requests instead that we remand for specific performance of the plea agreement.

Where a plea agreement is based on misinformation, the defendant generally may choose specific performance of the agreement or withdrawal of the guilty plea. *Walsh*, 143 Wn.2d at 8-9. The defendant's choice of remedy does not control, however, if there are compelling reasons not to allow that remedy. *Walsh*, 143 Wn.2d at 9. If the State would be prejudiced in presenting its case by the passage of time, or if it otherwise demonstrates that withdrawal of the plea would be unjust, the State can request that the defendant's remedy be limited to specific performance. *State v. Turley*, 149 Wn.2d 395, 401, 69 P.3d 338 (2003); *Walsh*, 143 Wn.2d at 9.

The State asks us to find that there are compelling reasons to limit the remedy in this case to specific performance. But a trial court and not an appellate court is the appropriate place for such a decision. *Turley*, 149 Wn.2d at 401 (trial court ordinarily determines whether State's reasons are compelling and defendant's choice of remedy is unjust). Accordingly, we vacate the judgment and sentence and remand to the trial court for further proceedings consistent with this opinion.

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 in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

WORSWICK, C.J.