IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TONIE MARIE WILLIAMS-IRBY, Appellant.	No. 42443-6-II UNPUBLISHED OPINION

Johanson, A.C.J. — Tonie Williams-Irby appeals from her pleas of guilty to second degree murder and first degree robbery, contending that her pleas were involuntary because she was misinformed of one of the consequences of her pleas. We affirm.[1]

The State charged Williams-Irby with aggravated first degree murder, first degree murder, first degree assault, first degree robbery and conspiracy to commit first degree robbery. As part of a plea agreement, the State amended its charges to second degree murder and first degree robbery. In her Statement on Plea of Guilty, Williams-Irby's counsel informed her that the community custody ranges were 24 to 48 months on the murder charge and 18 to 36 months on the robbery charge.

During her change of plea colloquy, the trial court also told Williams-Irby that the community custody ranges were 24 to 48 months on the murder charge and 18 to 36 months on

[1] A commissioner of this court initially considered Williams-Irby's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

the robbery charge. Williams-Irby acknowledged that she was entering *Newton*[2] pleas of guilty freely and voluntarily and without anyone making any promises or threats. The court accepted Williams-Irby's pleas of guilty and scheduled a sentencing hearing for April 15, 2011.

At the beginning of the April 15 sentencing hearing, the parties informed the court that they had been mistaken as to the community custody terms applicable to Williams-Irby's crimes. RCW 9.94A.701 had been amended to eliminate ranges of terms of community custody and replace them with fixed terms of community custody. Laws of 2009, ch. 375, § 5. As a result of that amendment, the correct community custody terms were 36 months for the second degree murder and 18 months for the first degree robbery. RCW 9.94A.701(1) and (2). The prosecutor informed the court as follows:

> I've discussed this with [Williams-Irby's attorney], and I know he's discussed this with his client. And I would ask the Court to inquire whether or not they wish to proceed forward today with that sentencing, understanding the correct community custody range.

Verbatim Report of Proceedings (VRP) (April 15, 2011) at 3. Williams-Irby's attorney replied:

> Your honor, we're ready to proceed. We understand that that was wrong. I gave Ms. Williams-Irby wrong advice in the plea form with respect to the community custody; that I told her that that would actually be a basis for her to ask the Court to withdraw her plea. She's aware of that. She is not interested in doing that and wants to proceed to sentencing.

VRP (April 15, 2011) at 4.

When the trial court asked Williams-Irby if that was correct, she said "[y]es." VRP (April 15, 2011) at 4. At the request of the parties, the court continued the sentencing hearing to June 17. After

[2] *State v. Newton*, 87 Wn.2d 363, 373, 552 P.2d 682 (1976). *See also North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

that hearing, the court imposed high-end standard range sentences of 244 months for the murder and 54 months for the robbery. It imposed 36 months of community custody for the murder and 18 months of community custody for the robbery.

Williams-Irby argues on appeal that during the plea colloquy, the court misinformed her of a consequence of her pleas, namely the duration of her terms of community custody. As a result, she contends that her pleas were involuntary, such that she is entitled to withdraw those pleas. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). The State responds that because the erroneous information about the terms of community custody was corrected before sentencing, and because Williams-Irby was advised that she had the opportunity to move to withdraw her pleas before sentencing, she has not shown a manifest injustice sufficient to withdraw her pleas under CrR 4.2. *State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). Williams-Irby replies that the trial court did not "exercise extreme care" that her *Newton* pleas "satisfie[d] constitutional requirements," as required by *In re Personal Restraint of Montoya*, 109 Wn.2d 270, 277-78, 744 P.2d 340 (1987).

While the trial court incorrectly advised Williams-Irby of one of the consequences of her pleas, she was advised of that error, and was given the correct information, before being sentenced. She was expressly advised of her right to move to withdraw her pleas on the basis of that error. She elected not to do so and proceeded to sentencing. She does not meet her burden of showing that she suffered actual prejudice that would allow her to withdraw her pleas on the grounds that they were involuntary. *State v. Walsh*, 143 Wn.2d 1, 6-8, 17 P.3d 591 (2001).

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 in accordance with RCW 2.06.040, it is so ordered.

Johanson, A.C.J.

We concur:

Quinn-Brintnall, J.

Penoyar, J.