FILED
FEBRUARY 13, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Appellant, v. EDUARDO * IBARRA VALENCIA, Respondent.	)))))))))	No. 36492-5-III UNPUBLISHED OPINION

SIDDOWAY, J. — The State appeals a trial court order permitting Eduardo Ibarra Valencia to withdraw a guilty plea under CrR 4.2(f). It argues CrR 4.2(f) does not apply because Mr. Ibarra Valencia's motion to withdraw his plea was made after sentencing. The State contends that once sentenced, Mr. Ibarra Valencia could seek relief only under CrR 7.8, whose more stringent showing he was unable to make.

The veteran trial judge recognized that Mr. Ibarra Valencia's motion was made in an unusual context. While a sentencing had taken place, errors in the sentence were immediately recognized and the State had made an unopposed, pending motion to amend the judgment and sentence. On these facts, whether the judgment was final for purposes of CrR 4.2(f) and 7.8(b) is ambiguous.

We reject the proposition that *any* judgment that proves to be invalid is not final for purposes of those rules. Here, however, because the parties immediately recognized that the original judgment and sentence did not settle the matters it addressed and moved to amend it, the trial court did not abuse its discretion in applying the standard provided by CrR 4.2(f).

FACTS AND PROCEDURAL BACKGROUND

In November 2015, the State charged Mr. Ibarra Valencia with first degree murder and attempted first degree murder after he shot two of his coworkers, killing one of them.

In November 2017, the court allowed the State to amend the charges to one count of second degree murder and one count of attempted second degree murder, both with firearm enhancements. On the same day, Mr. Ibarra Valencia entered guilty pleas pursuant to a plea agreement that listed his offender score as two, resulting in a standard range of 144-244 months of imprisonment for the first count and 108-183 months for the second, to be increased by 60-month firearm enhancements in each case. The State agreed to recommend exceptional mitigated sentences of only 80 months and 40 months respectively, plus the 60-month firearm enhancements for each count, resulting in a total sentence of 240 months. The trial court accepted Mr. Ibarra Valencia's guilty plea.

The court sentenced Mr. Ibarra Valencia on January 22, 2018. Instead of the mutually recommended exceptional sentences, the court imposed mid-range sentences of 194 months and 145.5 months, respectively, which it increased in error by 120-month

firearm enhancements in each case. The result was a period of total confinement of 579.5 months.

Within two weeks of sentencing, an amended presentence investigation report filed by the Department of Corrections brought to the attention of the parties that Mr. Ibarra Valencia's offender score should have been zero, not two, resulting in sentencing ranges of 123-220 months and 92.25-165 months. It also highlighted the trial court's error in imposing 120-month firearm enhancements. The State responded on February 16, 2018, by filing a note for hearing of an unopposed motion to amend the judgment and sentence.

On April 5, 2018, with the State's motion to amend the judgment and sentence still pending, Mr. Ibarra Valencia moved to withdraw his guilty plea under CrR 4.2 and 7.8. He supported his motion by an affidavit stating that he entered the plea based on the erroneous offender score. The State opposed the motion, arguing that Mr. Ibarra Valencia's motion was a postjudgment collateral attack, requiring him to show not only that his plea was involuntary, but also actual and substantial prejudice. Pointing out that the State's evidence of the murders included surveillance videotapes and eyewitnesses, it argued he could not show that a reasonable person facing first degree murder charges would have gone to trial upon learning that the maximum sentences faced had been overstated by less than nine percent.

The trial court requested additional briefing on whether CrR 4.2 or 7.8 governed Mr. Ibarra Valencia's motion and whether the original judgment and sentence could be considered a "final judgment." After receiving briefing and hearing the arguments of counsel, the trial court explained that it was unwilling to deny the motion under CrR 7.8(b) and "take the chance" that CrR 4.2(f) applied. Clerk's Papers (CP) at 523. Treating Mr. Ibarra Valencia's motion as one under CrR 4.2(f), the court granted it. The State appeals.

ANALYSIS

Under CrR 4.2(f), the court must allow a defendant to withdraw his guilty plea if it is necessary to correct a manifest injustice. Enforcing a plea agreement that was not entered knowingly, voluntarily, and intelligently violates due process and results in a manifest injustice. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). "[A] guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated." *Id.* at 591.

CrR 4.2(f) provides, "If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8." CrR 7.8(b) authorizes trial courts to relieve a party from a "final judgment, order or proceeding" for the reasons identified by the rule, including mistake. CrR 7.8(b)(1).

A motion to withdraw a plea after judgment has been entered is a collateral attack. *State v. Buckman*, 190 Wn.2d 51, 60, 409 P.3d 193 (2018). "On collateral review, when the claimed error is 'a misstatement of sentencing consequences,' we require the petitioner to show 'actual and substantial prejudice.'" *Id.* (quoting *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 598, 316 P.3d 1007 (2014)). For a defendant seeking to withdraw a guilty plea, that means showing "that a rational person in his situation would more likely than not have insisted on proceeding to trial." *Id.* at 71. In orally announcing its decision to grant Mr. Ibarra Valencia's motion, the trial court stated that if Mr. Ibarra Valencia's motion was one under CrR 7.8, it "would have to be denied." CP at 523.

"A trial court's order on a motion to withdraw a guilty plea or vacate a judgment is reviewed for abuse of discretion." *State v. Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012). "A trial court abuses its discretion if its decision 'is manifestly unreasonable or based upon untenable grounds or reasons.'" *Id.* (quoting *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)). A decision "'is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.'" *Id.* (quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)).

The trial court's request for additional briefing and its statement that it would not "take the chance" of denying Mr. Ibarra Valencia's motion reveal that on these facts, it viewed the rules as ambiguous. "A court rule is ambiguous if 'it is susceptible to more

than one reasonable meaning.'" *State v. Hamilton*, 121 Wn. App. 633, 639, 90 P.3d 69 (2004) (quoting *State v. Wachter*, 71 Wn. App. 80, 83, 856 P.2d 732 (1993) (internal citation omitted)). "'If a rule is ambiguous, the rule of lenity requires it be strictly and liberally construed in favor of the defendant.'" *Id.* (quoting *Wachter*, 71 Wn. App. at 83).

In *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 491-92, 200 P.3d 683 (2009), our Supreme Court dealt with the meaning in a statute of the undefined term "final judgment." In the absence of a statutory definition, it stated it would "'give the term its plain and ordinary meaning.'" *Id.* at 492 (quoting *State v. Watson*, 146 Wn.2d 947, 954, 53 P.3d 66 (2002)). It observed that "[i]n ordinary usage, a 'final judgment' is '[a] court's last action that settles the rights of the parties and disposes of all issues in controversy.'" *Id.* (second alteration in original) (quoting BLACK'S LAW DICTIONARY 859 (8th ed. 2004)). Applying that meaning, a final judgment does not have to settle rights and dispose of issues *correctly* to be final. But in the unusual circumstances present here, where problems with the judgment were immediately recognized and correction was promptly sought by both parties, it can be fair to say that no one viewed the judgment as settling the parties' rights and disposing of their issues. It is reasonable to say the judgment was nonfinal such that Mr. Ibarra Valencia's motion is more akin to CrR 4.2(f) than it is to a collateral attack brought under CrR 7.8. Speaking for this court, if informed of the prompt, unopposed, pending motion to correct the January 22, 2018

judgment, it would not have been viewed as final for purposes of RAP 2.2(a)(1). An appeal from it would have been deemed premature.

On these facts, we find no abuse of discretion by the trial court. We affirm.

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

Siddoway, J.

WE CONCUR:

Korsmo, J.

Pennell, A.C.J.