IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28529-4-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JACQUELINE A. WORTHAM,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — Jacqueline A. Wortham appeals her 2009 Spokane County conviction upon plea of guilty to first degree murder. She contends she was not competent to enter a guilty plea.

The trial court had broad discretion to determine Ms. Wortham's mental condition. The court observed her and considered her responses to thorough questioning. We conclude the trial court did not err by determining she was competent and that she knowingly, voluntarily, and intelligently pleaded guilty. We affirm the conviction.

FACTS

Jacqueline A. Wortham confessed to murdering her father, Daniel A. Wortham, on March 21, 2008. She was 16 years old at the time of the murder. Ms. Wortham and her codefendant, Edmund Washington, waited for Mr. Wortham to come home from work and then murdered him using a knife, sword, wrench, and baseball bat.

The State charged Ms. Wortham as an adult with first degree murder with a deadly weapon enhancement. Over the next year, she appeared with counsel at four separate pretrial conferences.

At the plea hearing on July 29, 2009, Ms. Wortham, then age 18, entered a signed statement on plea of guilty. The parties stipulated that the investigating officer's affidavit of facts and Detective T.H. Madsen's police report could be used as the factual basis for the guilty plea. The affidavit of facts described the brutality of the murder and Ms. Wortham's actions. After the murder, Ms. Wortham and her codefendant ate pizza while the victim's body was in the next room.

Ms. Wortham acknowledged, in writing and orally, that she understood her written statement and that she was entering her guilty plea freely and voluntarily. During an on-the-record colloquy, the court continually emphasized the importance of Ms. Wortham

understanding the guilty plea.

After engaging in the colloquy with Ms. Wortham, the court accepted her plea as knowing, voluntary, intelligent, and supported by a factual basis. Defense counsel did not raise any question about Ms. Wortham's competence to enter her guilty plea. Ms. Wortham also acknowledged that she understood that she could not appeal a standard range sentence if she pleaded guilty.

At the sentencing hearing on September 16, the court listened to comments from the victim's family. Ms. Wortham then exercised her right to allocution. After considering Ms. Wortham's comments and reviewing a presentence investigation report—and the defense's response to that report—the court imposed the parties' jointly recommended low-end sentence of 240 months plus a 24-month deadly weapon enhancement for a total sentence of 264 months.

Ms. Wortham filed a pro se notice of appeal. Thereafter, counsel was appointed for her. She challenges the validity of her guilty plea by claiming that she was not competent.

ANALYSIS

Due process requires that a guilty plea be knowing, voluntary, and intelligent. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). The court considers the totality of the circumstances to determine if a defendant's guilty plea was knowing, voluntary, and intelligent. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). CrR 4.2(d) reflects this standard by mandating 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." In addition, a defendant is required to file a written statement on plea of guilty in substantially the same form as prescribed in CrR 4.2(g).

> When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea's voluntariness. When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.

State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982) (citations omitted).

Here, Ms. Wortham executed her signed statement on plea of guilty in compliance with CrR 4.2(g). She acknowledged, in writing and orally, that she had read her written

statement and fully understood it after reviewing it with counsel. After engaging in an on-the-record colloquy with Ms. Wortham concerning her written statement, the court was satisfied that her guilty plea was knowing, voluntary, and intelligent. Thus, the court accepted Ms. Wortham's guilty plea and found her guilty of first degree murder.

Once the court accepts the defendant's guilty plea, the defendant may withdraw the guilty plea under CrR 4.2(f) only where it is necessary to correct a manifest injustice; that is, "'an injustice that is obvious, directly observable, overt, not obscure.'" *Branch*, 129 Wn.2d at 641 (quoting *State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)). An involuntary plea is an indication of a manifest injustice warranting plea withdrawal. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A defendant may challenge the voluntariness of a plea for the first time on appeal because a defendant's failure to understand the sentencing consequences of a guilty plea constitutes a manifest error affecting a constitutional right. *Id.* at 589.

As a threshold matter, based on *Mendoza*, Ms. Wortham overcomes the State's contention that she may not challenge the voluntariness of her guilty plea for the first time on appeal because she argues that she did not understand the sentencing consequences of her guilty plea due to her lack of competence.

Ms. Wortham contends that a manifest injustice warranting plea withdrawal occurred because her lack of competence made her guilty plea involuntary. Overcoming the presumption of voluntariness by showing a manifest injustice is a demanding standard for a defendant to meet. *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). A defendant's mental condition is sufficient to permit a voluntary plea if he or she is capable of freely, understandingly, and competently entering the plea. *State v. Ashley*, 16 Wn. App. 413, 416, 558 P.2d 302 (1976).

The trial court has broad discretion to assess the mental condition of the defendant and may consider all relevant circumstances, including "'the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports, and the statements of counsel.'" *State v. Osborne*, 102 Wn.2d 87, 98, 684 P.2d 683 (1984) (quoting *State v. Loux*, 24 Wn. App. 545, 548, 604 P.2d 177 (1979)). The critical time period for determining the mental condition of the defendant is when the guilty plea is entered. *Osborne*, 102 Wn.2d at 98 (quoting *Ashley*, 16 Wn. App. at 416).

In *Osborne*, the trial court specifically found that Mary Osborne voluntarily entered her guilty plea. *Id.* On appeal, Ms. Osborne claimed that her guilty plea was involuntary because she was not competent to enter it. *Id.* at 97-98. The Supreme Court gave deference to the trial court's finding that Ms. Osborne appeared to be competent

enough to voluntarily enter her guilty plea. The trial court had ample opportunity to observe her conduct, appearance, and demeanor. She displayed no evidence of incompetence during the plea proceedings. She responded intelligently to thorough questioning regarding her guilty plea. She indicated that she entered her guilty plea voluntarily. Her plea was made after she consulted with counsel about a lowered sentencing recommendation. The Supreme Court found no manifest injustice warranting withdrawal of her guilty plea. *Id.* at 98-99.

Similar to *Osborne*, the trial court here specifically found that Ms. Wortham voluntarily entered her guilty plea. The court had ample opportunity to observe Ms. Wortham's conduct, appearance, and demeanor. The record provides no indication that she lacked competence during the plea proceedings. She responded intelligently to thorough questioning regarding her guilty plea. She indicated that she entered her guilty plea freely and voluntarily. Her plea was made after she consulted with counsel about a low-end sentencing recommendation. She appeared competent during the plea proceedings.

Ms. Wortham relies on *State v. Angevine* to contend that the court did not meaningfully address the question of her competence. *State v. Angevine*, 62 Wn.2d 980, 986, 385 P.2d 329 (1963) (competence of a minor to waive counsel is a question of fact

"depending upon the individual offender's education, experience, and intelligence"). She suggests that because of her youth, limited education, and the nature of the murder, the court should have inquired further. In particular, she points out that she was only 16 with a 10th grade education when the crime was committed. Ms. Wortham further argues she lacked competence to enter the plea, as evidenced by filing a pro se notice of appeal even after acknowledging that her guilty plea would preclude an appeal.

This case is distinguishable from *Angevine* because it involves Ms. Wortham's competence to enter her guilty plea, and she was 18 when she entered it. Nevertheless, contrary to Ms. Wortham's argument, the record indicates that the court was mindful of the competency concerns expressed in *Angevine* and *Osborne* when assessing Ms. Wortham's demeanor and determining that her plea was knowing, voluntary, and intelligent. The State correctly argues that there is nothing in the record to support the claim that Ms. Wortham was not competent to enter her plea. And the filing of an appeal does not reflect on Ms. Wortham's competence when she entered the plea.

Ms. Wortham has not shown any manifest injustice that would allow her to withdraw her guilty plea under CrR 4.2(f). Accordingly, we affirm the conviction for first degree murder.

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.

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Kulik, C.J.

WE CONCUR:

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Brown, J. Siddoway, J.