

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 29477-3-III

Respondent,

v.

**JOSE FLORES,
also known as ABEL ROCHA JR.,**

Appellant.

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Division Three

UNPUBLISHED OPINION

Kulik, C.J. — Jose Flores moved to withdraw his guilty pleas to several robbery charges. The court denied the motion, finding no basis for the withdrawal. Mr. Flores contends the superior court did not comply with CrR 7.8(c)(2) in deciding his motion. We disagree and, therefore, affirm the trial court’s denial of Mr. Flores’s motion to withdraw his guilty pleas.

FACTS

On October 12, 2009, Mr. Flores pleaded guilty to and was sentenced for first degree robbery with a deadly weapon, first degree robbery, first degree burglary, attempted first degree robbery, and second degree robbery.

During November 2009, Mr. Flores stated that he mailed a motion to the court seeking to withdraw his guilty pleas. However, the court has no record of receiving this motion.

On February 8, 2010, Mr. Flores inquired about the status of his motion with the court. The court acknowledged this letter from Mr. Flores and inquired whether he would need a public defender, hire his own attorney, or proceed pro se. Mr. Flores requested a public defender.

The court initially appointed Mr. Flores trial counsel for this motion, but counsel withdrew from the case after stating that he did not plan to have Mr. Flores's motion heard. The court then appointed attorney John Nollette to assist Mr. Flores with the withdrawal of his guilty pleas.

On September 15, 2010, the court held a hearing on Mr. Nollette's withdrawal as Mr. Flores's attorney. Mr. Flores participated by telephone from the Clallam Bay Corrections Center. Mr. Nollette reviewed the transcript of the sentencing hearing and spoke to both the prosecutor and Mr. Flores's trial counsel. He found no basis for a motion to withdraw the guilty pleas. As a result, Mr. Nollette moved the court to withdraw as Mr. Flores's counsel so that Mr. Flores could proceed with a personal restraint petition (PRP) on his own within the one-year time frame.

The court invited comments from Mr. Flores. Mr. Flores stated that he had a right to counsel and would like to be represented. However, the court noted that Mr. Nollette had already investigated the case and could “find no legal basis to file a Motion to Withdraw based on the transcripts and the paperwork that was presented to him.” Report of Proceedings at 42-43. The court indicated that if Mr. Flores wanted counsel, he would have to hire his own.

The court signed an order allowing Mr. Nollette to withdraw, noting that he “exercised due diligence in attempting to assist defendant in his motion to withdraw his guilty pleas . . . and [his actions support] a finding that the client-attorney relationship should be terminated between Mr. Flores and counsel.” Clerk’s Papers at 60.

On September 15, 2010, Mr. Flores mailed a letter to the Spokane County Superior Court Clerk asking about the status of his motion to withdraw his pleas. He also indicated that he intended to proceed pro se. On October 4, 2010, Mr. Flores asked the court for a 90-day extension to file his motion to withdraw his pleas.

On October 7, the court denied Mr. Flores’s motion to withdraw his guilty pleas. The court stated that there was no basis for the motion to withdraw the pleas.

Even though the court had ruled on Mr. Flores’s motion on October 7, another judge on October 22 transferred the case to the Court of Appeals for consideration as a

PRP. On November 9, we declined this transfer pursuant to RAP 16.4(d), which provides that “[t]he appellate court will only grant relief by a personal restraint petition if other remedies . . . are inadequate.”

Mr. Flores now appeals from the order denying his motion to withdraw his guilty pleas.

ANALYSIS

This court reviews a ruling on a CrR 7.8 motion for an abuse of discretion. *State v. Gomez-Florencio*, 88 Wn. App. 254, 258, 945 P.2d 228 (1997). An abuse of discretion occurs where the trial court exercises discretion in a manner that is manifestly unreasonable, based upon untenable grounds, or where the court bases its decision on an incorrect legal standard. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008); *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001).

A motion to vacate a judgment is transferred from the superior court to the Court of Appeals for consideration as a PRP, unless certain exceptions apply. *State v. Smith*, 144 Wn. App. 860, 184 P.3d 666 (2008). The superior court decides the motion only if the motion is timely and either “the defendant has made a substantial showing that he or she is entitled to relief or . . . resolution of the motion will require a factual hearing.” CrR 7.8(c)(2). The court followed the rule here and then denied Mr. Flores’s motion to

withdraw his pleas.

We conclude that the trial court did not abuse its discretion and, therefore, affirm the denial of Mr. Flores's motion to withdraw his pleas.

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.

Kulik, C.J.

WE CONCUR:

Brown, J.

Siddoway, J.