IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TREVOR DENTON, Appellant.	No. 38788-3-II UNPUBLISHED OPINION

Armstrong, J. — Trevor Denton pleaded guilty to second degree assault of a child with sexual motivation. The Pierce County Superior Court imposed a standard range sentence of 31 months, plus an 18-month enhancement based on the sexual motivation. The court also imposed community custody for the portion of the 10-year statutory maximum sentence not served in incarceration. Denton challenges a condition of his community custody that prohibits the consumption of alcohol. He has also filed a statement of additional grounds (SAG) in which he contends that his guilty plea was coerced and the court erred in denying his motion to withdraw it. We affirm.[1]

FACTS

The State initially charged Denton with two counts of first degree child molestation, arising out of two 2008 incidents involving his niece. Pursuant to the plea agreement, it amended the information to charge a single count of second degree assault of a child with sexual motivation, alleging two additional victims.

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

By the time of the plea hearing, however, Denton was reluctant to go forward with the plea. He told the court that his attorney

> hasn't really believed anything that I have said so, therefore, you know, telling me that I need to take this plea when I am not guilty, I don't see that it -- you know, I don't see taking a plea saying I am guilty. You know, and with him not wanting to represent me, telling me that if you take it to trial that I am going to lose, well, if he's not willing to represent me correctly, then, you know, then it's no use.

Report of Proceedings (RP) (Nov. 14, 2008) at 3-4. The court told Denton that no one could force him to plead guilty, and that the matter would remain set for trial.

After a recess, the parties again appeared before the court. Defense counsel told the court that Denton had changed his mind. Counsel explained:

> It's my advice that he takes this offer, but it's obviously his choice, and he doesn't have to follow my advice. I am prepared to try his case and I have interviewed, as I indicated earlier, most of the witnesses and would accomplish the rest of the interviews early next week.
>
> I have spent a lot of time with this case and with Mr. Denton and I feel very comfortable in representing him and going to trial, if that's what he wants to do. But I want to make sure he's proceeding today, you know, voluntarily, that he understands that, you know, he doesn't have to do this. So before we go any further, I want to make sure this is what Mr. Denton wants to do.

RP (Nov. 14, 2008) at 5-6. Counsel also explained to the court that Denton had told him that:

> [A]lthough he does not admit doing these things, that he does wish to eliminate the risk of going to trial, being convicted of a Class A sex offense, being subject to the indeterminate sentencing review board for life and all the other penalties that go along with a Class A sex offense.

RP (Nov. 14, 2008) at 7-8. The court's colloquy with Denton indicated that Denton was aware that he was pleading guilty to second degree assault of a child with sexual motivation and that he understood the standard range for his plea would be a minimum range of 49 to 59 months and a maximum up to 10 years. The court also ascertained that Denton understood that the sentence

would include community custody for any of the 10-year maximum that he did not spend in custody, and that state law would require him to register as a sex offender after he was released from prison.

By the time of sentencing, Denton had changed his mind again. He asked the court to let him fire his attorney and withdraw his plea, claiming that defense counsel had coerced the plea. The judge denied Denton's motion, noting that there had been no indication of coercion or misunderstanding at the time of pleading, and that Denton had elected to plead guilty in order to take advantage of a substantial reduction in charges.

ANALYSIS

Denton first challenges the condition prohibiting the consumption of alcohol. We rejected that argument almost seven years ago in *State v. Jones*, 118 Wn. App. 199, 76 P.3d 258 (2003), based on the language in former RCW 9.94A.700(5) (2003), the same statute that applied to Denton's sentence.[2] Former RCW 9.94A.700(5) provided for the imposition of various conditions of community placement. Those conditions included crime-related treatment and counseling services, the prohibition against alcohol consumption, and crime-related prohibitions. As we explained in *Jones*, because the legislature listed the prohibition on alcohol separately from crime-related prohibitions, it manifested its intent that the courts be permitted to impose the alcohol prohibition regardless of whether alcohol had contributed to the offense. *Jones*, 118 Wn.

[2] RCW 9.94A.700 has been replaced by RCW 9.94A.703 for crimes committed after July 2000. *See* Laws of 2008, ch. 231, § 9. RCW 9.94A.703 became effective August 1, 2009, after Denton was sentenced. Its subsection .703(3), contains the same language as former RCW 9.94A.700(5).

App. at 206. The trial court acted within its authority.[3]

Likewise, without merit is Denton's pro se claim that the court should have allowed him to withdraw his guilty plea. He maintains here, as he did below, that trial counsel coerced the plea by repeatedly telling him that he was going to lose at trial. Constitutional due process requires that a defendant's guilty plea be knowing, intelligent, and voluntary. *State v. Codiga*, 162 Wn.2d 912, 175 P.3d 1082 (2008). An involuntary plea constitutes a manifest injustice, and a defendant must be allowed to withdraw such a plea. *State Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996); CrR 4.2(f).

However, there is nothing in this record suggesting coercion. Defense counsel's advice against going to trial is clearly not enough. Effective representation includes discussing the strengths and weaknesses of the defendant's case. *See State v. James*, 48 Wn. App. 353, 362, 739 P.2d 1161 (1987). And Denton's attorney and the trial judge made it abundantly clear that he was free to reject the plea offer. Counsel said that he was prepared and willing to go to trial. As the extensive colloquy with the court demonstrated, Denton made an informed choice about his options and decided to take advantage of the offer of a lesser charge. There is no injustice in holding him to his bargain.

[3] Denton cites *State v. Julian*, 102 Wn. App. 296, 305, 9 P.3d 851 (2000), a Division Three case that overturned an alcohol prohibition as not crime-related. And the State acknowledges that Division One reached the same conclusion in *State v. McKee*, 141 Wn. App. 22, 34, 167 P.3d 575, *review denied*, 163 Wn.2d 1049 (2008). We note that in both instances, the State conceded error. We adhere to *Jones*.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Hunt, J.

Penoyar, A.C.J.