State v. Vasquez

122 Wash.App. 1008 (2004) | Cited 0 times | Court of Appeals of Washington | June 22, 2004

Concurring: John a Schultheis, Stephen M Brown

UNPUBLISHED OPINION

Alberto Ramos Vasquez appeals his convictions for first degree kidnapping and four counts of second degree child molestation. He contends his Alford [1] pleas were not knowing, intelligent, and voluntary. We affirm.

Mr. Vasquez was charged originally with first degree kidnapping with sexual motivation, second degree child rape, and three counts of second degree child molestation. Pursuant to a plea agreement, the State amended the information to charge first degree kidnapping and four counts of second degree child molestation.

Mr. Vasquez initialed several paragraphs of and signed a written statement of defendant on plea of guilty, which contained the typewritten statement: 'I do not admit guilt but believe I would be convicted if this case went to trial. I plead guilty to avoid the possibility of a more severe result after trial and plead guilty to accept a favorable plea bargain.' Clerk's Papers at 35. An interpreter certified that he had translated the entire statement into Spanish, which Mr. Vasquez understood and acknowledged. At the plea hearing, Mr. Vasquez' attorney told the court:

Mr. Vasquez . . . is prepared at this time to enter pleas of guilty to those five counts now as amended. He and I went over the statement of defendant on plea of guilty on Wednesday, the 13th of November. It was read to him in Spanish by Mr. Chavez. We had some questions and some answers and a fairly extensive conversation about the charges and about this plea of guilty.

Mr. Vasquez does understand that this is commonly called an Alford plea. Mr. Vasquez does not admit every single one of the elements but certainly based upon a review that we have conducted of the police reports, there is a significant chance, in fact a likely chance, that if the matter did proceed to trial, we believe that he would be convicted of potentially all these charges or potentially more serious charges, and for that reason, Mr. Vasquez is entering this plea of guilty.

Report of Proceedings (Nov. 15, 2002) at 2-3.

The court then asked Mr. Vasquez a series of yes-or-no questions regarding his understanding of the charges, his plea, and its consequences. Mr. Vasquez answered all of the questions in the affirmative,

the prosecutor recited the facts supporting the State's allegations, and the court accepted Mr. Vasquez's guilty pleas.

Mr. Vasquez later told a presentence investigator the victim had initiated the contact. The court entered an exceptional sentence of 180 months.

'Due process requires that a guilty plea be knowing, intelligent and voluntary.' In re Pers. Restraint of Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987). To satisfy this requirement, the defendant must understand 'the nature of the offense and the consequences of pleading guilty.' In re Pers. Restraint of Keene, 95 Wn.2d 203, 207, 622 P.2d 360 (1980); see CrR 4.2(d). A plea is presumptively voluntary when the defendant completes and admits to reading, understanding, and signing a plea statement. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). Even if a defendant denies facts upon which the plea is based, a plea is valid if he 'intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.' North Carolina v. Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Mr. Vasquez appears to contend in part that the court's yes-or-no questions failed to establish the factual basis for the pleas. He relies on United States v. Fountain, 777 F.2d 351, 356 (7th Cir. 1985), cert. denied sub nom. Granger v. United States, 475 U.S. 1029 (1986), in which the court set aside a guilty plea, noting that '{s}imple affirmative or negative answers or responses' generally do not provide the necessary factual basis for a plea. The court noted, however, that a court may find a factual basis for a plea from anything in the record, and a colloquy with the defendant is not the only acceptable source. Fountain, 777 F.2d at 356. Here, the prosecutor provided the factual basis for the plea, and Fountain is thus distinguishable.

Mr. Vasquez similarly relies on State v. S.M., 100 Wn. App. 401, 414-15, 996 P.2d 1111 (2000), in which the court held a court had failed to establish a juvenile understood 'the law in relation to the facts' when the juvenile answered affirmatively when asked if he knew the meaning of sexual intercourse. But the prosecutor's statement provided the factual basis for Mr. Vasquez's guilty pleas, and his one-word answers do not establish a lack of support in the record.

Finally, without citation to authority, Mr. Vasquez offers several additional reasons why he contends his pleas were not knowing, intelligent, and voluntary. First, he points out he was not 'operating in his native language of Spanish.' Br. of Appellant at 15. However, the record shows that both the guilty-plea statement and the proceedings were translated from English to Spanish by a certified interpreter. There is no factual basis for his contention he failed to understand the proceedings or his pleas because of a language barrier.

Second, Mr. Vasquez points out that he entered Alford pleas and later told the presentence investigator he did not commit the crimes. He apparently contends these facts are inconsistent with a guilty plea. But an Alford plea is inherently equivocal, and that equivocation alone does not make

the plea invalid. Montoya, 109 Wn.2d at 280. Mr. Vasquez's later statements to the investigator were consistent with the Alford pleas and do not establish their invalidity.

Third, Mr. Vasquez points out that as part of the pleas he essentially stipulated to an exceptional sentence. It is unclear how this fact bears on the issue here. To the extent he contends the plea agreement was unreasonable (and thus apparently unknowing or unintelligent), the record shows the agreement provided for a reduction of the charges against him, which is a rational reason for accepting the pleas.

Mr. Vasquez initialed the statement in several places and signed it. In addition to the court's lengthy colloquy, the record shows Mr. Vasquez discussed the pleas and their consequences extensively with his attorney. He has failed to establish the pleas were not knowing, intelligent, and voluntary.

The convictions are affirmed.

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.

Kato, C.J.

WE CONCUR:

Schultheis, J.

Brown, J.

1. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).