8-30-2012

State v. Maxim Respondent's Brief Dckt. 39209

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39209
	)	
vs.	)	
	)	
PATTY ANN MAXIM,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

HONORABLE JOHN K. BUTLER
District Judge

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Nature Of The Case

Patty Ann Maxim appeals from the judgment entered upon her guilty plea to possession of methamphetamine. On appeal, Maxim argues the district court abused its discretion by denying her motion to withdraw her guilty plea.

Statement Of Facts And Course Of Proceedings

Maxim called her son's school one morning and repeatedly used profanities in speaking with school staff members. (R., pp.11-12.) Two of the staff members reported that Maxim was not making sense and "seemed possibly to be under the influence." (R., p.12.) When Maxim's conduct was reported to law enforcement, Officer Berny Marquez contacted Maxim's probation officer who asked Officer Marquez to conduct a welfare check on Maxim. (R., p.12.) When Officer Marquez arrived at Maxim's home, she "appeared to be under stress and stated that she was very emotional because her son . . . was in Snake River Detention Center." (R., p.12.) Maxim also showed Officer Marquez "various locations on the exterior of her house" she believed indicated people had "been breaking into her residence." (R., p.12.) Officer Marquez did not "see any evidence to support her allegations." (R., p.12.) Officer Marquez, however, did have reason to believe Maxim was under the influence. (R., p.12.) In addition to Maxim's unsupported beliefs that her house showed evidence of break-ins, her "pupils were very constricted," "she had a very bad 'cotton' or dry mouth," she "did not make much sense," and "could not stand still." (R., p.12.) When asked if she had ever used methamphetamine, Maxim acknowledged she

had, but claimed it was "90 days ago." (R., p.12.) Office Marquez reported his interaction to Maxim's probation officer who indicated he and a "court compliance officer would be on their way." (R., p.12.)

As Officer Marquez continued to talk to Maxim, she admitted she had been talking to school staff and said she "possibly" used profanity because that is how she "normally talks." (R., p.12.) Maxim continued to "rambl[e] on about various topics" until she told Officer Marquez to leave, which he did. (R., p.12.) Shortly thereafter, Officer Marquez returned at the request of Maxim's probation officer. (R., p.12.) When Officer Marquez returned, Maxim told her probation officer she was under the influence of a prescribed pain medication. (R., p.12.) Officer Marquez then assisted Maxim's probation officer in a search of Maxim's residence while the court compliance officer collected a urine sample from Maxim. (R., p.12.)

During the search of Maxim's residence, Officer Marquez noticed an "empty insulin syringe with a bent needle" on the nightstand in Maxim's bedroom. (R., p.12.) Officer Marquez asked Maxim about the syringe and whether she was diabetic; Maxim said she was not diabetic and claimed the syringe was "not there before" and accused the officers of "plant[ing]" it in her room. (R., p.12.) Officer Marquez collected the syringe and later tested it and got a "presumptive positive" result for the presence of methamphetamine or ecstasy. (R., p.13.) Maxim's urine sample also tested positive for methamphetamine. (R., p.13.)

Officer Marquez subsequently arrested Maxim for an outstanding warrant. (R., p.13.) Due to the arrest on the outstanding warrant and Maxim's positive

urinalysis, Officer Marquez declared Maxim's children in "imminent danger" and he contacted the Department of Health and Welfare and a social worker took custody of the children. (R., p.13.)

The state charged Maxim with possession of methamphetamine and an enhancement based upon a prior conviction for delivery of a controlled substance. (R., pp.9-10, 49-50, 67-70.) Maxim filed a "Motion to Determine Defendant's Fitness to Proceed Pursuant to I.C. §§ 18-210, 18-211 & 18-212," which the district court granted. (R., pp.26-27, 34-35.) An evaluator subsequently determined Maxim was competent to proceed, specifically noting:

> Ms. Maxim demonstrated no significant impairment in her rational understanding of the current proceedings. She clearly demonstrated that she would utilize a cost benefit analysis in conjunction with consultation with defense counsel in considering accepting a plea agreement or proceeding to a jury trial. She stated that while she feels she has been set up on the current charges, denying the syringe was hers or that she had used it, she acknowledged that she will likely be held responsible, stating "I feel like I am stuck no matter what. It was found in my house."

(PSI, pp.125-126.)

Following plea negotiations, Maxim agreed to enter an Alford[1] plea to the possession charge and the state agreed to recommend mental health court. (6/6/2011 Tr., p.5, Ls.12-17.) At the plea colloquy, the court asked Maxim if there was anything "going on in [her] life . . . that would affect [her] ability to make a reasoned or informed decision," to which Maxim responded:

> Yes, sir. . . . My children are being held from me contingent on mental health court. The guardian ad litem came to my house for the first time last Thursday and told me that she -- she told my

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

son the reason he can't come home is because I needed to do mental health court."

(6/6/2011 Tr., p.7, Ls.15-25.) At that time, the court advised Maxim that "the real purpose" in its question was "whether or not those issues" prevented Maxim from understanding what she was doing and asked her whether she was still able to make decisions in her best interest. (6/6/2011 Tr., p.8, Ls.6-14.) Maxim told the court she was able to do so. (6/6/2011 Tr., p.8, L.15.) Maxim also told the court she understood the rights she was waiving by pleading guilty. (6/6/2011 Tr., p.10, L.4 – p.13, L.18.) The court and Maxim then engaged in the following colloquy:

THE COURT: And did somebody tell you you had to take this agreement?

THE DEFENDANT: Except for health and welfare telling me I have to have mental health court to have my kids back, no.

THE COURT: So if mental health court -- if health and welfare had not spoken to you, would you be going to trial?

THE DEFENDANT: I don't know that answer for sure right now, sir.

THE COURT: Well, what I'm trying to understand is, because I have to make sure that your decision to accept this agreement is your decision and your decision alone.

THE DEFENDANT: It is my decision.

THE COURT: And that I don't want to know -- or I do want to know if someone is forcing you to do this beyond your own desires?

THE DEFENDANT: My desire is to have my kids back.

[Discussion of the record between counsel and defendant pursuant to request from defense counsel.]

THE COURT: Okay. Again, my last question to you is as to whether somebody has told you that you have to accept this agreement?

THE DEFENDANT: Not that I have to, no.

THE COURT: But health and welfare has indicated to you that mental health court would be a condition of return of your children?

THE DEFENDANT: Yes, sir.

THE COURT: And is that a factor that you were taking into account in deciding whether or not to accept this agreement?

THE DEFENDANT: Yes, sir.

THE COURT: The question for me, though, is it still your decision and your decision alone?

THE DEFENDANT: Yes, sir.

THE COURT: And is there any other outside influences that are causing you to take this agreement?

THE DEFENDANT: No, sir.

THE COURT: And the question then, again, that I have for you is if health and welfare were not involved in this case, or not in this case, but if health and welfare were not involved in your life and the life of your children, would you be taking this deal?

(Discussion off the record between counsel and defendant.)

THE DEFENDANT: Sir, from my understanding, because I do own that home and because this was supposedly found in my home, no matter fingerprints or otherwise, then I'm guilty no matter what. Did I know what was it? No. But from what I understand, it was found in my -- this empty needle was found in my home and I'm --

THE COURT: Okay. That kind of goes beyond the question I'm asking right now. What I'm asking is, is that would you not be -- Well, the fact that health and welfare are involved in your life and your children's lives, in part, arises out of this case, correct?

THE DEFENDANT: It completely arises out of this.

THE COURT: And have you discussed this plea agreement with health and welfare?

THE DEFENDANT: Yes, sir.

THE COURT: And was that before or after health and welfare said unless you go to mental health court, you won't get your kids back?

THE DEFENDANT: After.

(6/6/2011 Tr., p.15, L.21 – p.20.)

The court then asked the prosecutor for input, and the prosecutor informed the court that he was unaware of what conversations Maxim had been having with the Department of Health and Welfare but was aware that a child protection case was initiated as a result of Maxim's criminal charges and noted the mental health court offer was made in February, which was four months prior to the change of plea hearing. (6/6/2011, p.18, L.21 – p.19, L.5.) After hearing the prosecutor's comments, the court asked Maxim if she still wanted to proceed with her change of plea, and Maxim stated she did. (6/6/2011 Tr., p.19, Ls.22-24.) Maxim also told the court that, "besides the money part," the plea agreement was "satisfactory" to her and denied that anyone had "actually pressured" her into accepting the plea agreement. (6/6/2011 Tr., p.19, L.25 – p.20, L.4, p.8-10; see also p.22, Ls.13-19.) Maxim also acknowledged there was no guarantee she would be accepted into mental health court. (6/6/2011 Tr., p.22, Ls.2-5.) After further questioning to ensure Maxim's desire to plead guilty, the court accepted her plea. (See generally 6/6/2011 Tr., pp.22-30.)

Approximately two months later, on the day set for sentencing, Maxim advised the court she wished to withdraw her guilty plea. (8/8/2011 Tr., p.34,

Ls.13-19.) The court therefore declined to sentence Maxim at that time and, four days later, Maxim filed a written motion to withdraw her guilty plea, arguing "[s]he entered her plea due to coercion on the part of the Department of Health and Welfare" and claiming it was "her belief, at the time of her entry of plea, that she would not be able to complete her case plan and have her children returned to her care if she did not enter a plea to the felony charge in this case." (R., p.107.)

The court conducted a hearing on Maxim's motion, and, after taking the matter under advisement, denied Maxim's request to withdraw her guilty plea. (See generally 8/22/2011 Tr.; 8/24/2011 Tr., p.41, L.12 – p.50, L.15.) The court subsequently imposed a unified five-year sentence with one year fixed, but suspended the sentence and placed Maxim on probation.[2] (R., pp.118-123.) Maxim filed a timely notice of appeal from her judgment of conviction. (R., pp.159-161.)

[2] One week after the court entered judgment, the Idaho Department of Correction submitted a Report of Probation Violation alleging Maxim violated her probation by failing to comply with the admittance requirements for mental health court. (R., p.151.) According to the report, Maxim stated she was planning to withdraw her guilty plea and proceed to trial. (R., p.151; see also pp.153-154.) The court subsequently amended the terms of Maxim's probation to eliminate the requirement that she attend mental health court. (R., p.171.)

ISSUE

Maxim states the issue on appeal as:

> Did the district court abuse is discretion by denying Ms. Maxim's motion to withdraw her guilty plea as she presented a "just reason" and the State would not have been prejudiced if Ms. Maxim had been allowed to withdraw her guilty plea?

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Has Maxim failed to establish the district court abused its discretion by denying Maxim's motion to withdraw her plea?

ARGUMENT

Maxim Has Failed To Establish An Abuse Of Discretion In The Denial Of Her Motion To Withdraw Her Guilty Plea

A. Introduction

Maxim contends the district court abused its discretion by denying her pre-sentencing motion to withdraw her guilty plea. (Appellant's Brief, pp.5-9.) Specifically, she argues "that she was told by Health and Welfare that if she did not plead guilty and enter mental health court she would not get her children back" and that his constitutes a "just reason" to withdraw her plea. (Appellant's Brief, p.5.) Maxim's argument fails. A review of the record and the applicable law supports the district court's determination that Maxim failed to carry her burden of establishing either that her plea was involuntary or that there existed any other just reason entitling him withdraw her plea. Maxim has failed to establish an abuse of discretion.

B. Standard Of Review

"Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action." State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); Gabourie v. State, 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).

C. Maxim Failed To Show Either That Her Plea Was Involuntary Or That There Existed Any Other Just Reason For Withdrawing Her Plea

A motion to withdraw a guilty plea may be made before sentence is imposed. I.C.R. 33(c). The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). The defendant bears the burden of proving, in the district court, that the plea should be withdrawn. Hanslovan, 147 Idaho at 535, 211 P.3d at 780; Griffith v. State, 121 Idaho 371, 374-75, 825 P.2d 94, 97-98 (Ct. App. 1992).

In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. State v. Mauro, 121 Idaho 178, 180, 824 P.2d 109, 111 (1991); Hanslovan, 121 Idaho at 536, 211 P.3d at 781; State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990). If the plea was voluntary, in the constitutional sense, then the court must determine whether other reasons exist to allow the defendant to withdraw the plea. Id. When the motion is made prior to sentencing, the defendant must present a just reason for withdrawing the plea. Hanslovan, 121 Idaho at 535, 211 P.3d at 780; State v. McFarland, 130 Idaho 358, 361, 941 P.2d 330, 333 (Ct. App. 1997). The decision to grant or deny a motion to withdraw a guilty plea lies in the discretion of the district court. Id. However, where, as here, the defendant moves to withdraw his guilty plea before the imposition of sentence "but after [she] has read [her] presentence report or received other information about [her] probable sentence, the court is to exercise broad discretion, but may temper its liberality

by weighing the defendant's apparent motive." State v. Johnson, 120 Idaho 408, 411, 816 P.2d 364, 366 (Ct. App. 1991) (citation omitted). The failure of a defendant to present and support a plausible reason, even in the absence of prejudice to the state, will dictate against granting withdrawal. State v. Ward, 135 Idaho 68, 72, 14 P.3d 388, 392 (Ct. App. 2000) (citing State v. Dopp, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993); McFarland, 130 Idaho at 362, 941 P.2d at 334)).

Maxim moved to withdraw her guilty plea on the asserted basis that her plea was coerced by Health and Welfare and her belief that she had to attend mental health court in order to regain custody of her son and that she no longer wanted to "stand on that plea." (8/22/2011 Tr., p.4, L.12 – p.7, L.13.) The district court ultimately rejected this claim as a basis to allow Maxim to withdraw her plea. In reaching this decision, the district court recognized the applicable legal standards, the discretionary nature of its decision, and ultimately concluded Maxim failed to demonstrate she should be allowed to withdraw her guilty plea. (8/24/2011 Tr., pp.41-50.) The court noted that principles of finality relating to guilty pleas weighed against withdrawal and, having reviewed the plea colloquy in considering Maxim's motion, reiterated its prior determination that Maxim's plea was knowing and voluntary, and that the court went to great lengths to be sure of such at the time Maxim entered her plea, particularly with respect to Health and Welfare's role in Maxim's decision to plead guilty. (8/24/2011 Tr., p.45, L.1 – p.48, L.3, p.48, Ls.20-23.) The court, citing Mata v. State, 124 Idaho 588, 861 P.2d 1253 (Ct. App. 1993), also noted that Maxim "made a choice to

sacrifice [herself] for the sake of [her] kids and that is a choice that should be respected by th[e] court." (8/24/2011 Tr., p.48, Ls.17-19.) The court concluded:

> You testified that it was your decision to accept the state's offer and your decision alone. You deny that you were pressured or coerced. We discussed in detail the involvement of the Department of Health and Welfare in your decision-making, and it was clear from your testimony under oath that the decision you did was your decision, that it was free and that it was voluntary, even considering the involvement of the Department of Health and Welfare.

(8/24/2011 Tr., p.49, Ls.11-20.)

Maxim claims the district court abused its discretion in rejecting her request to withdraw her guilty plea, arguing the district court's reliance on Mata "was misplaced." (Appellant's Brief, p.7.) According to Maxim, her case is "distinguishable from *Mata*" because she "was under the impression that the Department of Health and Welfare had some control over her case and the ability to prevent her from seeing her children if she did not follow the directive of pleading guilty and getting into mental health court." (Appellant's Brief, p.8.) "Certainly," Maxim argues, "a mother's fear of losing her children and her belief that pleading guilty and getting into mental health court was her only option is sufficient coercion as to produce an involuntary guilty plea." (Appellant's Brief, p.8.) Maxim also distinguishes Mata on the grounds that Mata "retained the benefit of his wife not having charges filed against her in exchange for his guilty plea" whereas the "custody of her children was not a term or requirement of her guilty plea." (Appellant's Brief, p.8.) Maxim's attempt to demonstrate an abuse of discretion by distinguishing the facts of Mata is unpersuasive.

In Mata, the defendant and his wife were charged with grand theft. 124 Idaho at 590, 861 P.2d at 1255. "[P]ursuant to a negotiated plea agreement," Mata pled guilty and "the prosecutor agreed to dismiss the charges against Mata's wife." Id. Mata later moved to withdraw his plea, claiming his plea was "involuntary because it was prompted by 'extreme pressure'" resulting "from concern that his children were in foster care in Nebraska" and "he felt compelled to plead guilty in exchange for the release of his wife so that she would be able to retrieve the children." Id. at 594, 861 P.2d at 1259. The district court denied Mata's request to withdraw his guilty plea and the Idaho Court of Appeals affirmed, stating: "Even assuming that concern for the fate of his wife and children is what prompted Mata to plead guilty, the anxiety and pressure generated by his family situation does not constitute impermissible coercion rendering his guilty plea involuntary." Id. at 595, 861 P.2d at 1260.

Regardless of any factual differences between Maxim's case and Mata, the guiding principle from Mata, relied upon by the district, still controls – "the anxiety and pressure generated by [the defendant's] family situation does not constitute impermissible coercion rendering [the defendant's] guilty plea involuntary." Mata, 124 Idaho at 595, 861 P.2d at 1260. This principle has been reaffirmed in other cases. See, e.g., Hanslovan, 147 Idaho at 537-538, 211 P.3d at 782-783 ("anxiety and pressure from the defendant's family situation do not constitute impermissible coercion"); State v. Nath, 141 Idaho 584, 596, 114 P.3d 142, 144 (Ct. App. 2005) (external family pressures contributing to guilty plea not attributable to state do not render plea coerced); Amerson v. State, 119 Idaho

994, 997, 812 P.2d 301, 304 (Ct. App. 1991) (defendant's plea not involuntary because it was entered in consideration of the "stress and anxiety" his girlfriend would experience if she had to testify at trial).

While a district court has an obligation to "insure that the plea was in fact entered voluntarily and was not the product of coercion, [the court] must respect the defendant's choice and if an accused elects to sacrifice [herself] for such motives, that is [her] choice." Mata, 124 Idaho at 595, 861 P.2d at 1260 (quoting Mosier v. Murphy, 790 F.2d 62, 66 (10th Cir. 1986)) (original alterations and quotations omitted). The district court satisfied that requirement in this case, ensuring that Maxim, although feeling pressure to plead guilty due to her desire to regain custody of her children, nevertheless desired to plead guilty in order achieve that end. As aptly noted by the district court, the fact that Health and Welfare may have played a role in Maxim's decision, does not mean her decision was the product of coercion. (8/24/2011 Tr., p.4-9.) It was not an abuse of discretion for the district to "respect [Maxim's] choice" – one Maxim undoubtedly made after she engaged in the "cost benefit analysis" she referred to during her competency evaluation.

Further, that the prosecutor in Maxim's criminal case ultimately had no control over Health and Welfare's decision whether to reunite Maxim with her children does not render Maxim's guilty plea involuntary. Indeed, as Maxim acknowledges in relation to her argument that the facts of Mata are distinguishable, "custody of her children was not a term or requirement of her guilty plea." (Appellant's Brief, p.8.) It is disingenuous for Maxim to argue that

her plea was involuntary because the benefit she sought was not an actual term of her plea agreement, which she knew at the time she entered her plea. That Maxim may regret pleading guilty is not a just reason to withdraw a knowing, voluntary, and intelligent plea, the reasons for which were fully explored at the time the plea was entered. Compare Hanslovan, 147 Idaho at 536, 211 P.3d at 781 (affirming district court's decision that "while Hanslovan may have wanted to withdraw his plea out of resentment that Dehl got a better bargain than he, this reason did not rise to the level of just cause").

The record supports the district court's determination that Maxim failed to carry her burden of establishing either that her plea was involuntary or that there existed any other just cause for withdrawal of the plea. Maxim has failed to show an abuse of discretion by the trial court in denying her motion to withdraw her guilty plea.

CONCLUSION

The state respectfully requests that this Court affirm the judgment and the court's order denying Maxim's motion to withdraw his guilty plea.

DATED this 30th day of August 2012.

For JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of August, 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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JML/pm