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McAmis v. State Respondent's Brief Dckt. 40417

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

GREGORY SCOTT MCAMIS)	
)	No. 40417
Petitioner-Appellant,)	
)	Adams Co. Case No.
vs.)	CV-2010-2655
)	
STATE OF IDAHO,)	
)	
Respondent.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

HONORABLE BRADLY S. FORD
District Judge

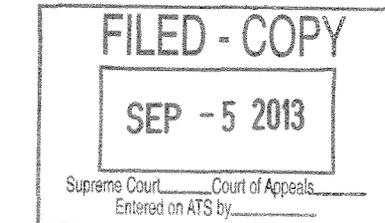
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STATEMENT OF THE CASE

Nature of the Case

Gregory Scott McAmis appeals from the order granting his petition for post-conviction relief.

Statement of the Facts and Course of the Proceedings

McAmis filed a petition for post-conviction relief from his conviction for grand theft. (R., pp. 6-9.) In the petition McAmis alleged that the state failed to follow the plea agreement in his underlying criminal case, and that his counsel was ineffective for failing to challenge the breach. (R., pp. 7-8, 10.) For relief McAmis requested, "Follow Plea agreement or 4 Years Fixed no IND or give Back Plea." (R., p. 8 (verbatim).) The district court appointed counsel to represent McAmis. (R., pp. 14, 16-17.) Thereafter McAmis filed a verified amended petition. (R., pp. 29-34.) He alleged that the prosecutor made recommendations contrary to those stipulated by the plea agreement, and counsel was ineffective for not objecting. (R., pp. 29-30.) The requested relief in the amended petition was to "vacate the conviction in the underlying criminal case and set the matter for a new [sic] trial." (R., p. 30.) The attachment to the affidavit still maintained that McAmis was seeking to have his plea "given back" or that the "plea agreement be followed." (R., p. 34.)

The state answered (R., pp. 35-36) and the case proceeded to an evidentiary hearing (R., pp. 49-50). At the conclusion of the hearing counsel asked for the remedy of the plea being withdrawn. (8/3/12 Tr., p. 102, L. 10 – p. 103, L. 2.) The trial court concluded that the prosecutor agreed to recommend

probation with an underlying sentence of five years with two years determinate but actually made a recommendation of incarceration pursuant to the recommendation of the PSI. (R., pp. 58-62.) The court further found that the defense attorney's failure to object to that breach was ineffective assistance of counsel. (R., pp. 62-63.) The court then decided that the "appropriate remedy" was "specific performance of the prosecuting attorneys [sic] plea bargained sentencing recommendations during a resentencing hearing." (R., p. 65.) McAmis appealed from the entry of judgment. (R., pp. 69, 73-75.¹)

¹ Because the judgment in this post-conviction case was not stayed, the underlying criminal case proceeded to resentencing where the court imposed a sentence of ten and one-half years with six years fixed, concurrent with a Canyon County grand theft sentence. (#40718 R., pp. 52-55.)

ISSUE

McAmis states the issue on appeal as:

Whether the district court erred when it ordered a resentencing as a remedy for the prosecutor's breach of plea agreement instead of withdrawal of the guilty plea.

(Appellant's brief, p. 2.)

The state rephrases the issue as:

Has McAmis failed to show clear error in the district court's determination that McAmis's evidence supported the remedy of a new sentencing and not withdrawal of the guilty plea?

ARGUMENT

McAmis Has Failed To Show That He Proved That Withdrawal Of His Plea Was The Proper Remedy For Violation Of The Right To Effective Assistance Of Counsel

A. Introduction

The district court concluded that the appropriate remedy for the breach of McAmis' Sixth Amendment right to effective assistance of counsel was to order a new sentencing where the prosecutor would make the recommendation included in the plea agreement. (R., pp. 62-65.) On appeal he asserts he was entitled to the remedy he requested—withdrawal of his guilty plea. (Appellant's brief, pp. 3-9.) Review of the record, however, shows that McAmis failed to present evidence showing he was entitled to this remedy.

B. Standard Of Review

A petitioner seeking post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations upon which his claim is based. Estes v. State, 111 Idaho 430, 436, 725 P.2d 135, 141 (1986); Clark v. State, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); I.C.R. 57(c). When the district court conducts an evidentiary hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the conclusions of law drawn by the district court from those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-730 (1998). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. Peterson v. State, 139 Idaho 95,

97, 73 P.3d 108, 110 (Ct. App. 2003). A trial court's decision that a post-conviction petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990).

C. McAmis Failed To Present Evidence Demonstrating That He Would Have Withdrawn His Plea But For The Deficient Performance Of Counsel

The Supreme Court of the United States has held that "remedies" for "Sixth Amendment violations" due to ineffective assistance of counsel "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." United States v. Morrison, 449 U.S. 361, 364 (1981). "Thus, a remedy must neutralize the taint of a constitutional violation, while at the same time not granting a windfall to the defendant or needlessly squander the considerable resources the State properly invested in the criminal prosecution." Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376, 1388-89 (2012) (internal citations and quotations omitted). The fact the prosecutor breached the plea agreement does not call the validity of the guilty plea into question. Puckett v. United States, 556 U.S. 129, 137 (2009) ("it is entirely clear that a breach [of the plea agreement] does not cause the guilty plea, when entered, to have been unknowing or involuntary"). Applying these principles shows that McAmis failed to prove by competent evidence that withdrawal of his guilty plea was an appropriate remedy.

McAmis's trial counsel rendered deficient performance when he noted on the record but failed to object when the prosecutor made a sentencing recommendation contrary to the recommendation required by the plea

agreement. (R., pp. 62-63.) Had trial counsel made a timely objection, McAmis would have been entitled to one of two remedies for the prosecution's breach: withdrawal of the guilty plea or a new sentencing hearing before a different judge in which the prosecution made the recommendation required by the plea agreement. Santobello v. New York, 404 U.S. 257, 262-63 (1971). Which of these two remedies to grant is left to "the discretion of the state court, which is in a better position to decide." Id. See also Puckett, 556 U.S. 137-38 (there are two remedies available for breach of the plea agreement and which remedy applies is a decision made by the court). In the general context of ineffective assistance of counsel affecting the plea, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58 (1985) (footnote and citations omitted). "Moreover, to obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010) (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000)).

In this post-conviction case McAmis failed to demonstrate that withdrawal of his plea was the remedy to which he was entitled. When asked what remedy he wanted in the post-conviction case McAmis prevaricated between wanting a specific sentence and wanting to withdraw his plea. (8/3/12 Tr., p. 60, L. 22 – p. 65, L. 14.) He presented no evidence of what remedy he would have *requested* in relation to a timely objection, much less what remedy would have been granted in the trial court had counsel made the proper and timely objection.

Because there is no evidence that McAmis would in fact have made the choice to forgo the benefits of the plea agreement and instead insist on his previously waived right to a trial, McAmis failed to prove by a preponderance of the evidence that but for the violation of his Sixth Amendment rights he would have withdrawn his plea and gone to trial.

On appeal McAmis does not claim that he presented any evidence supporting his requested remedy, but instead claims the district court misunderstood the law. (Appellant's brief, pp. 6-9.) Specifically, he argues that because the only factor specifically mentioned by the trial court is that the plea was voluntarily entered the court abused its discretion. (Id. at p. 7.) This argument fails because it is not supported by the record.

The district court specifically recognized that there were two potential remedies for breach of the plea agreement, "either specific performance, or the court may allow the defendant to withdraw his guilty plea." (R., p. 6.) In addressing which of these was the appropriate remedy the district court stated:

This court finds no basis to set aside the Defendant's guilty plea in this case. The guilty plea was validly entered. The appropriate remedy in this case is to provide McAmis specific performance of the prosecuting attorney[']s plea bargained sentencing recommendations during a resentencing hearing.

(R., p. 65.) Although the validity of the plea was certainly a factor considered by the court, the court also stated there was "no basis" to set aside the plea and that specific performance was the "appropriate remedy." McAmis' claim that the validity of the plea was the sole basis for choosing the remedy of specific performance over withdrawal of the plea is not supported by the record.

Even if the district court applied an incorrect legal standard, the error was harmless. I.R.C.P. 61. McAmis presented no evidence that raising a timely objection to the prosecutor's breach of the plea agreement would have resulted in withdrawal of the plea agreement. Although McAmis indicated that withdrawal of his guilty plea was a remedy he might want *now* (and was even equivocal in that respect), McAmis presented no evidence that he was dissatisfied with the plea agreement or would have rejected it *at the time of the alleged breach*. Generally a defendant must prove that he would have rejected the plea agreement and rationally decided on a trial. Padilla, 559 U.S. at 372 (petitioner must show he would have rationally rejected plea offer but for misinformation about deportation); Flores-Ortega, 528 U.S. at 470 (petitioner must show he would have rationally wanted to appeal had counsel consulted with him); Lockhart, 474 U.S. at 58 (petitioner must establish he would have insisted on trial but for error in advice to take plea agreement). McAmis presented no evidence that he would have rejected the plea agreement he had previously made or even that there were circumstances where such a rejection and choice to go to trial would have been rational. Because he failed to put forth any evidence whatever that withdrawal of the plea was the remedy he would have sought but for counsel's failure to timely object, he has failed to show that the trial court could have found it the proper remedy in post-conviction. Because McAmis never presented any evidence supporting a finding that he would have sought and obtained withdrawal of his guilty plea, any misapprehension of the law by the

district court in the determination that he was not entitled to that remedy was necessarily harmless.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order and judgment granting post-conviction relief.

DATED this 5th day of September, 2013.

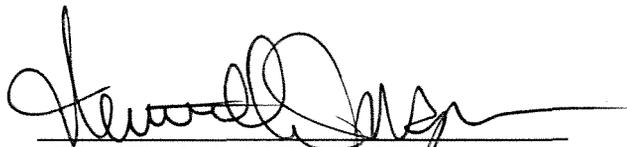


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of September, 2013, 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:

GREG S. SILVEY
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KKJ/km