

5-8-2013

## Fisher v. State Appellant's Brief Dckt. 40473

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IN THE SUPREME COURT OF THE STATE OF IDAHO

\*\*\*\*\*

STANLEY G. FISHER )  
 )  
Petitioner-Appellant )  
vs. )  
 )  
STATE OF IDAHO )  
Respondent. )  
----- )

CASE NO. 40473-2012

APPELLANTS BRIEF

Appeal from the District Court of the Sixth Judicial  
District of the State of Idaho, in and for the  
County of Bannock

Before Honorable David C. Nye, District Judge

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Petitioner-Appellant

Respondent

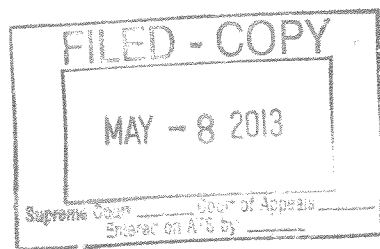


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## ISSUES

### Question of Law

Rule 11; that if a defendant agrees to a certain settlement agreement, and the court is not held to that agreement, then if the rule 11 is reached prior to the hearing and such defendant only makes this agreement if the terms are met, then such plea stands, however if the court chooses to not conform to the agreement, then the plea should be immediately withdrawn, and the court should not accept the plea.

### Question of Fact

How should the rule 11 be taken, If the defendant agrees to the rule 11 prior to the hearing, then should it be in writing, or can such move to this agreement in open court? If this agreement is made prior to the hearing, then is it a bindable agreement?

### INTRODUCTION

On July 9, 2012, the Petitioner filed a pro se Petition and Affidavit for Post Conviction Relief. Originally Petitioner was charged with a felony DUI, and pleaded guilty only on the terms of a Rule 11. The agreement was to reduce the felony to a misdemeanor in exchange to plead guilty.

Petitioner's grounds for relief are:

- a.) Ineffective assistance of counsel by his court appointed attorney not defending petitioner adequately. This is shown by a foiled Rule 11 agreement, and in turn did not insist that the agreement should be withdrawn when the court chose not to abide with such agreement.
- b.) The Judge and the court appointed attorney were on first name basis, and relationship between counsel and judge was more than professional.
- c.) There were several different and continually changing assistant prosecuting attorneys, and none of them filed a Notice of Appearance.

### ARGUMENT

Together with petitioner's attorney and the prosecuting attorney, a Rule 11 was reached in agreement to reduce the felony to a lesser charge was in agreement, however a violation of this agreement had not been accepted by the court. Such was the court bound to this agreement? and if such court is not bound by the agreement, then should the plea be automatically withdrawn? Then what relief is offered to the defendant when and if the agreement is not fulfilled? Santobello v. New York, 404 U.S. 257 (1971).

Such a guilty plea was obtained without a full understanding and its consequences. Boykin v. Alabama, 395 U.S. 238 (1965).

Of course the Court will say that there was not a personal relationship with the attorneys. They work in the same courtroom hour after hour, and day by day. In the manner how this could prejudice the Petitioner is that this appointed public defender had set from the beginning to just cut a deal. This attorney had no intent to represent the petitioner in a defensive, by showing that he was prepared to investigate the allegations, but to coerce the petitioner into pleading guilty at all costs. Petitioner was coerced into entering a plea of guilty by the lingering charge of persistent violator. Petitioner was not shown at any time that his attorney was assertively building a defense for the Petitioner, that he just wanted to deal out. Wiggins v. Smith, 123 S.Ct 2527 (2003).

With that in mind where the appointed attorney was mind set, and such a relationship with the judge; that the hearing was pre-orchestrated on the outcome.

Petitioners right to counsel on appeal was denied. Douglas v California 372 U.S. 353 (1963). And the petitioners sentence was excessive, based on multiple punishment for the same criminal act. Benton v. Maryland, 395 U.S. 784 (1969).

#### INEFFECTIVE Assistance of Counsel

Because petitioner's counsel was ineffective his rights guaranteed him were lost. Wiggins v. Smith, 123 S. Ct. 2527

(2003). Petitioners appointed attorney refused to investigate these charges at all; that But for his attorneys performance Petitioner entered a plea that was coerced. Rogers v. Richmond, 365 U.S. 534 (1961); and see also Ashcraft v Tennessee, 322 U.S. 143 (1944).

**RELIEF SOUGHT**

Wherefore, Were Petitioners plea agreement was not honored, the court is bound to ask defense if he wanted to change his plea, coupled with his attorneys ineffective assistance, the petitioner pleads with this court to remand this case back to district and withdraw the charge with the prosecutor able to re-file the appropriate misdemeanor.

Respectfully submitted this 30 day of April, 2013.

Stanley B. Fisk  
Petitioner-Appellant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the \_\_\_\_\_ day of April, 2013, I mailed a true and correct copy of the **APPELLANTS BRIEF** via the mail system for processing to the United States mail system to:

Deputy Attorney General  
Criminal Division  
P.O. Box 83720-0010

Stanley B. Fisk  
Appellant