3-19-2015

State v. Valencia Appellant's Reply Brief Dckt. 41796

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 41796
	)	
v.	)	CANYON COUNTY NO. CR 2013-2874
	)	
JULIAN MARTIN VALENCIA,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

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

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Julian Martin Valencia pleaded guilty to battery with the intent to commit a serious felony (rape). Mr. Valencia later filed a motion to withdraw his guilty plea, which the district court denied. The district court imposed a unified sentence of ten years, with four years fixed. On appeal, Mr. Valencia asserts the district court abused its discretion when it denied his motion to withdraw his guilty plea.

In his Appellant's Brief, Mr. Valencia asserted that he presented a just reason to withdraw his guilty plea because he was misinformed about whether he could be charged as a persistent violator. Therefore, his plea was not knowing, intelligent, and voluntary. He also asserted that the district's court's finding that granting the motion would prejudice the State was incorrect, and that the district court applied the wrong standard in evaluating his motion.

The State argues that Mr. Valencia did not present a just reason to withdraw his guilty plea because if he had not entered a guilty plea, the State could have filed a persistent violator enhancement. The State asserts that Mr. Valencia's argument to the contrary fails because it is based on a factual error. While the Appellant's Brief does contain a factual error (the charges that were dismissed pursuant to the plea agreement were charged in a separate case, not in the same indictment as stated in the Appellant's Brief), that fact is not relevant to his argument, so the error is immaterial. The same law and analysis still applies. In other words, Mr. Valencia's argument did not hinge on the erroneous factual statement; the correct facts support the same argument. The State overlooks this. The State also fails to meaningfully address the issue of the district

court's misguided understanding of the issue of prejudice to the State. Therefore, the State's arguments fail.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Valencia's Appellant's Brief. However, because some of the facts were unintentionally misstated, the facts relevant to the misstatement are repeated here, and the necessary correction is summarized.

On the night Mr. Valencia allegedly committed the battery against Ms. Negrete, he was with Ms. Negrete and his girlfriend (Ms. Munoz) at Ms. Munoz's home. (R., p.6.) There were three no-contact orders between Mr. Valencia and Ms. Munoz. (R., p.7.) As a result, Mr. Valencia was originally charged, in Case No. CR 2013-2874-C (*hereinafter*, first case), with battery with intent to commit a serious felony to wit: rape, and felony violation of a no-contact order. (*See* Complaint: R., pp.8-10.) He was also charged, by separate information, in Case No. CR 2013-5380-C (*hereinafter*, second case), with three counts of felony violation of no-contact orders. (*See* Idaho Data Repository, Canyon County Case No. CR 2013-5380.)

Before the preliminary hearing, the State filed a Superceding Indictment in the first case: the violation of a no-contact order was included in that indictment, but it was stricken.[1] (R., pp.20-21.) Mr. Valencia was offered two plea agreement options: (1) a binding Rule 11 agreement for both cases or (2) an offer to plead guilty to the battery charge, in the first case only, and have the second case dismissed. (Tr. 7/11/13, p.5,

[1] It is not clear when or how that charge was stricken from the indictment. The change of plea hearing transcript does not bear this out.

Ls.10-18.) He chose the latter. (Tr. 7/11/13, p.5, Ls.19-25.) Therefore, in July of 2013, Mr. Valencia entered an *Alford*[2] plea to the charge of battery with intent to commit a serious felony, and the State agreed to dismiss the second case and recommend four years fixed with the indeterminate portion of the sentence to remain open for argument. (Tr. 7/11/13, p.7, L.19 – p.10, L.4.)

In the Respondent's Brief, the State correctly points out that there is a factual error in the Appellant's Brief. (Resp. Br., pp.13-14.) The brief mistakenly stated that the two felony charges (battery with intent to commit a serious felony and violation of a no-contact order) were part of the same indictment, and, by pleading guilty to the battery charge, the State would dismiss the no-contact order charge. (App. Br., pp.10-11.) In fact, the charges for violations of no-contact orders were part of the second case that was dismissed pursuant to the plea agreement. (*See* Tr. 7/11/13, p.4, L.4 – p.8, L.2.) The State points out that the Superceding Indictment did not ultimately include the violation of a no-contact order charge. (Resp. Br., pp.13-14.) That charge was included in the Complaint and the Superceding Indictment, but it was ultimately stricken from the Superceding Indictment. (*See* R., pp.8-10, 20-21.)

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

ISSUE

Did the district court abuse its discretion when it denied Mr. Valencia's motion to withdraw his guilty plea?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Valencia's Motion To Withdraw His Guilty Plea

A. Introduction

Mr. Valencia asserts the district court abused its discretion when it denied his motion to withdraw his guilty plea because he presented a just reason to withdraw his guilty plea, and there would have been no prejudice to the State if the district court granted his motion. Mr. Valencia presented a just reason to withdraw his plea because, based on the inaccurate representations of counsel as to whether he could be charged as a persistent violator, he did not understand his options, and, therefore, his plea was not knowing, intelligent, and voluntary. Also, allowing Mr. Valencia to withdraw his plea would not have prejudiced the State; exercising a constitutional right to a jury trial, and requiring the State to prove its case beyond a reasonable doubt – even if it requires the victim to undergo the experience of testifying or being uncertain of the outcome – does not amount to "prejudice."

The State fails to meaningfully address the prejudice issue in its Respondent's Brief. Instead, the State argues that Mr. Valencia could have been charged as a persistent violator, and, therefore, he did not demonstrate a just reason to withdraw his guilty plea. The State's argument fails because the persistent violator enhancement could not have applied to Mr. Valencia.

B. The State's Argument That Mr. Valencia Failed to Meet His Burden Of Demonstrating A Just Reason To Withdraw His Guilty Plea Fails Because Mr. Valencia Could Not Have Been Charged As A Persistent Violator

In his Appellant's Brief, Mr. Valencia argued that he had a just reason to withdraw his guilty plea because his original counsel told him he could be charged as a persistent violator, when in fact he could not. (App. Br., pp.10-11.) As explained above, in its response, the State correctly points out that there is a factual error in the Appellant's Brief. (Resp. Br., pp.13-14.)

The State argues that, because the second case alleged felony violations of no-contact orders, Mr. Valencia could have been charged as a persistent violator. (Resp. Br., p.14.) But this argument overlooks the rule that convictions resulting from the same course of conduct do not count towards establishing persistent violator status. *State v. Harrington*, 133 Idaho 563, 565 (Ct. App. 1999). And the no-contact order case that the State relies on was not a result of conduct that took place on a different day or in a different place. Indeed, the no-contact order violations arose because Mr. Valencia was at his girlfriend's apartment, where the battery allegedly occurred. (R., p.6.) Therefore, despite the fact that the charges were not part of the same information or indictment, under the rule in *Harrington*, because they arose out of the same incident, they could not be used to establish persistent violator status.

The *Harrington* Court explained the "general rule" as follows: "convictions entered the same day or charged in the same information should count as a single conviction for purposes of establishing habitual offender status." *Id.* (quoting *State v. Brandt,* 110 Idaho 341, 344 (Ct. App. 1986)). In *Harrington*, the Court of Appeals affirmed the district court's holding that the persistent violator enhancement did not

apply to Harrington, even though he "admitted that he conspired to burglarize an Arkansas Piggly Wiggly and did burglarize the *same* store ten days prior." *Id.* (emphasis in original) (footnote omitted). It went on to say that "Harrington's convictions were basically separate parts of a common plan or scheme and *obviously could have been charged in one information* thus placing him squarely within the general rule articulated in *Brandt*." *Id.* (emphasis added). Clearly, the same is true here. In fact, before the count was stricken, the Superceding Indictment in this case *did* charge Mr. Valencia with felony violation of a no-contact order. (R., pp.20-21.)

Therefore, even if Mr. Valencia had gone to trial in each case, and convictions were subsequently entered on different days, by different judges, the rationale behind the general rule would still have applied. That rationale is to allow "a defendant a chance to rehabilitate himself between convictions" and assure that a defendant who commits "multiple felonies in one course of conduct, is not unfairly sentenced as a persistent violator." *Id.*

That rationale was not applicable where the Court of Appeals first discussed this rule. *See Brandt*, 110 Idaho at 344. There, Mr. Brandt escaped while awaiting sentencing for three felony offenses. *Id.* at 342-43. He was soon apprehended and later convicted of escape, injury to jail property, assault, and robbery as a result of his escape. *Id.* Because he was a persistent violator, he was sentenced to twenty years for the escape. *Id.* at 343. On appeal, he argued that he should not have been charged as a persistent violator because his "three previous felony convictions had been entered in a single proceeding all on the same day." *Id.* at 344. The Court of Appeals held that the district court did not err when it found that Mr. Brandt was a persistent violator

because the three previous offenses "were charged in three separate informations and each charge represented a separate crime occurring in a separate location with a separate victim. One of the crimes took place in February, 1984, and the other two crimes in January, 1984." *Id.* In other words, the crimes were not the result of one course of conduct. Thus the persistent violator charge was proper.

Here, the State argues that because Mr. Valencia's charges were not entered in the same indictment, had different case numbers, and were before different judges, Mr. Valencia could have been charged as a persistent violator. (Resp. Br., pp.13-14.) While it is true that the Appellant's Brief mistakenly asserted that the charges were entered in the same indictment, it is not true that Mr. Valencia's "entire argument" depends on this mistake. (*See* Resp. Br., p.13.) The fact that the two cases were in front of different judges and had different case numbers is not dispositive. Indeed, the two cases originated from the same course of conduct and certainly could have been charged in one information or indictment, just as in *Harrington*. As the Court of Appeals stated in *Harrington*, "Admittedly, the charges have separate case numbers and separate informations, although filed simultaneously, but we cannot allow the state of Idaho to circumvent the general rule of *Brandt* simply because an Arkansas prosecutor declined to consolidate these cases." 133 Idaho at 566.

Here, the State points out that the district court "noted that it appeared 'there was never any threat by the State to file the persistent violator because that was not part of the plea agreement[,] and the prosecutor agreed, stating '[i]t was not part of the plea agreement.'" (Resp. Br., p.6.) In fact, the transcript for the Change of Plea hearing shows that agreeing not to charge Mr. Valencia as a persistent violator *was* part of the

plea agreement. When the district court asked Mr. Valencia if any other promises had been made to him, he said "Just the fact that the persistent violator won't be filed." The district court then said "Okay. Is that part of the agreement," and the prosecutor replied "Yes, Judge." (Tr. 7/11/13, p.15, Ls.4-9.)

In sum, Mr. Valencia's original counsel advised him to plead guilty to avoid persistent violator status. But it is clear that Mr. Valencia was never at risk of that. Therefore, his plea was not knowing, intelligent, and voluntary, and he presented a just reason to withdraw his plea.

C. The State Fails To Meaningfully Address The District Court's Misunderstanding Of The Principle Of Prejudice To The State And The Argument That The District Court Disregarded The Fact That Mr. Valencia Tried To File His Motion To Withdraw His Plea Before He Saw The PSI

The State acknowledges that the district court never found that Mr. Valencia failed to show a just reason to withdraw his plea but argues that "such a finding is implicit in the denial of Valencia's motion to withdraw his plea." (Resp. Br., p.11, n.6.) This is belied by the district court's findings at the hearing. The State also admits that the district court "did not explicitly address" the argument made by Mr. Valencia's counsel that *Harrington* applied to this situation. (Resp. Br., p.10.) The absence of any discussion of these issues, and the district court's reliance on the timing of Mr. Valencia's motion, as well as its finding that granting the motion would prejudice the State actually implies, if it implies anything, that the district court *did* believe that Valencia had presented a just reason to withdraw his plea. Otherwise, it could have simply denied the motion based on a finding that he had not met his burden of presenting a just reason.

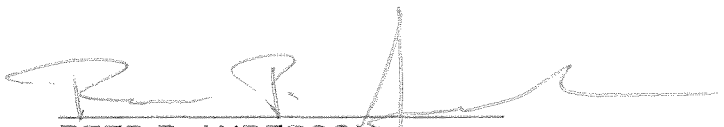
As covered in detail in the Appellant's Brief, the district court either forgot or ignored the fact that Mr. Valencia had tried to file his motion to withdraw his plea several times before the PSI was ever available. (*See* App. Br., pp.11-14.) The only reason he had to file the motion after the PSI was available was because he had trouble communicating with his original attorney. Indeed, his handwritten motion to withdraw his plea was dated September 21, 2013, and he could not have seen his PSI until September 27, 2013. (App. Br., p.12.)

Finally, the district court's belief that Mr. Valencia had presented a just reason to withdraw his plea is also supported by the fact that the district court focused on the idea that there would be prejudice to the state if it granted the motion. This finding allowed the district court to deny the motion even though Mr. Valencia had met his burden of presenting a just reason to withdraw his plea. *See Dunlap v. State*, 141 Idaho 50, 61 (2004) (holding that if the state can show prejudice as a result of the withdrawal, a motion to withdraw the plea will be denied). In its Respondent's Brief, the State makes no attempt to rebut the argument that the district court erred when it found there would be prejudice to the State if the motion was granted because the victim would have to testify. (*See* App. Br., pp.14-16.) Instead, the State simply relies on the district court's statements about the issue. (Resp. Br., p.15, n.7.) The calling of witnesses does not prejudice the State and does not overcome Mr. Valencia's right to a trial and to confront the witnesses against him.

CONCLUSION

Mr. Valencia respectfully requests that this Court vacate his judgment of conviction and remand his case to the district court with direction to grant his motion to withdraw his guilty plea.

DATED this 19th day of March, 2015.



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of March, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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