1-22-2015

State v. Karsten Respondent's Brief Dckt. 42154

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. SAMANTHA JO KARSTEN aka, SAMANTHA JO SISTRUNK, Defendant-Appellant.	)	No. 42154 Twin Falls Co. Case No. CR-2008-6923

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature of the Case

Karsten appeals from the district court's order reducing her felony conviction to a misdemeanor pursuant to Idaho Code § 19-2604(3). On appeal, Karsten argues the district court erred when it did not set aside her guilty plea and dismiss her judgment of conviction pursuant to Idaho Code § 19-2604(1).

Statement of Facts and Course of Proceedings

Karsten drove Mr. Ferguson and Mr. Schmitz to the hotel room of Mr. Weir, so they could collect a debt from Mr. Weir. (R., pp. 26-31.) She parked three blocks away and waited for them to return. (Id.) In Mr. Weir's hotel room, Mr. Ferguson pulled a gun and demanded Mr. Weir repay the debt. (Id.) Mr. Ferguson repeatedly punched Mr. Weir and threatened Mr. Weir with a knife and a set of homemade brass knuckles. (Id.) Mr. Ferguson instructed Mr. Schmitz to rip the phones out of the wall and take everything of value as a collateral. (Id.) They took Mr. Weir's cell phone and wallet. (Id.) Later, during police questioning, Karsten admitted that she knew she was driving Mr. Ferguson and Mr. Schmitz to collect a debt from Mr. Weir. (Id.) The state charged Karsten with Aiding and Abetting Robbery. (R., pp. 48-50.)

Karsten pled guilty to an amended charge of Aiding and Abetting Aggravated Assault. (R., pp. 54-64, 67-69.) In October 2008, the district court entered judgment and sentenced Karsten to five years with three years fixed. (R., pp. 79-82.) The district court suspended the sentence and placed Karsten on probation for three years. (Id.) In November 2011, the deputy clerk reported

that Karsten had failed to pay the ordered fines and restitution. (R., p. 90.) The district court then entered an amended judgment, but did not make any findings that Karsten violated her probation. (R., pp. 91-95.)

In February 2014, Karsten filed a Motion to Set Aside Guilty Plea and Enter Dismissal Pursuant to I.C. § 19-2604. (R., pp. 98-100.) The state agreed that Karsten turned her life around and did not have any probation violations. (Tr., p. 3, Ls. 17-23.) However, the state argued that because Karsten's probation had expired, the district court could only grant relief under Idaho Code § 19-2604(3) and reduce her felony conviction to a misdemeanor. (Tr., p. 3, L. 17 – p. 4, L. 5.) The district court agreed and held it could not set aside Karsten's conviction under I.C. § 19-2604(1), but could reduce Karsten's conviction to a misdemeanor under I.C. § 19-2604(3). (Tr., p. 7, L. 17 – p. 8, L. 23.) The district court determined it was bound by the Idaho Supreme Court's interpretation of subsection (1) which only allowed relief if the motion was made while the defendant was still on probation. (Id. (citing State v. Guess, 154 Idaho 521, 300 P. 3d 53 (2013).)

> THE COURT: Okay. Here's the problem. I have ruled on this issue. I hope I am wrong with my ruling. I'll say that to you. I said that when I made the ruling. I'll say it again and again and again. This is the most ludicrous statute that I've ever seen, but here's the problem. Earlier this last year the Idaho Supreme Court decided State versus Guess, and in a lengthy footnote Justice Eismann pointed out that the language of 19-2604 (1) seems to say on its face that when the legislature used the language "the Court may, if convinced by a showing made there is no longer cause for continuing the period of probation," that you have to make that motion before probation expires. Makes no sense to me whatsoever. Logically judicially, fairness, but that's the way -- that's what that Court said. It was dicta. I admit it's dicta. The supreme court has never ruled on it. I have issued two opinions from this

> Court saying that if that's what the statute says, it's not my prerogative to amend it. I invited people to appeal. I invite you to appeal this case because I think the ruling I'm about to make makes no sense. But sometimes that's the way it goes.
>
> My interpretation is that probation has expired in this case; therefore, subsection (1) doesn't apply, subsection (3) does. State stipulated to a misdemeanor, I'll certainly grant that relief, but I can't grant the other relief. And again, please take this up. Can I say it any more forcefully? Because I think we need get an interpretation of the statute. It may very well be that there is a case, I think the public defender's office sometimes listens to me, sometime they don't.

(Tr., p. 7, L. 17 – p. 8, L. 23.) The district court entered a written order, which stated, in part:

> Should the opinion of the court be overturned by subsequent appellate court decision or action of the Idaho Legislature, the defendant shall be allowed to motion the court for relief other than reduction of the charge to a misdemeanor without being prejudiced by the fact that the court granted partial relief through this order.

(R., pp. 108-109.) Karsten timely appealed. (R., pp. 107-113.) After Karsten filed her appeal, Idaho Code § 19-2604 was amended effective July 1, 2014, pursuant to S.L. 2014 ch. 283 §1.

ISSUE

Karsten states the issue on appeal as:

> Did the district court abuse its discretion when it failed to set aside Ms. Karsten's guilty plea and dismiss her judgment of conviction?

(Appellant's brief, p. 5)

The state rephrases the issue as:

Has Karsten failed to show the district court abused its discretion when it applied Idaho Code § 19-2604 in accord with Idaho Supreme Court precedent?

ARGUMENT

Karsten Failed To Show The District Court Abused Its Discretion

A. Introduction

On appeal, Karsten argues that the following language of the previous version of Idaho Code § 19-2604(1) is ambiguous: "if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest..." (Appellant's brief, p. 6.) Karsten argues the comma followed by the word "and" create two separate clauses that are applicable under two different circumstances. (Id.) The first clause is applicable when a defendant is on probation and the second is available to the defendant after probation has expired. (Id.)

Karsten's appeal is moot because the legislature amended Idaho Code §19-2604(1) and the district court ruled that if the legislature amended § 19-2604(1) it would entertain a second motion under Idaho Code § 19-2604. (R., pp. 108-109.) Karsten has potential relief available to her in the district court under the amended statute and this appeal will have no practical effect on the outcome.

If the merits of Karsten's claim are reached, her interpretation is contrary to repeated and binding Idaho precedent interpreting Idaho Code § 19-2604(1). See Guess, 154 Idaho at 524, 300 P. 3d at 56; State v. Allen, 156 Idaho 332, 335, 325 P.3d 673, 676 (Ct. App. 2014); State v. Glenn, 156 Idaho 22, 25, 319 P.3d 1191, 1194 (2014). The Idaho appellate courts do not read the comma followed by an "and" to create two separate clauses. Id. Instead, the Idaho

Appellate Courts repeatedly interpreted the previous version of Idaho Code § 19-2604(1) to create four requirements that must be present for a defendant to be permitted to withdraw his or her guilty plea. Id. Karsten's interpretation is contrary to established Idaho law and should be rejected.

B. Standard Of Review

It is within the discretion of the trial court whether to grant relief under Idaho Code § 19-2604. See State v. Shock, 133 Idaho 753, 992 P.2d 202 (Ct. App. 1999) (citing State v. Wiedmeier, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992); Housley v. State, 119 Idaho 885, 887, 811 P.2d 495, 497 (Ct. App. 1991)). "When a trial court's discretionary decision in a criminal case is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason." Id. (citing State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)).

The question of statutory interpretation is a question of law over which the appellate courts exercise free review. State v. Schall, 157 Idaho 488, ___, 337 P.3d 647, 651 (2014) (citing State v. Montgomery, 135 Idaho 348, 349-350, 17 P.3d 292, 293-294 (2001)). "Where the language of a statute is plain and unambiguous, [the appellate court] must give effect to the statute as written, without engaging in statutory construction." Id. (citing State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999)).

C. Karsten's Appeal Is Moot

Karsten's appeal is moot because after the district court entered it's order the legislature amended the very language in Idaho Code § 19-2604(1) under which the district court denied relief. The appellate courts can dismiss an appeal when the case involves only a moot question. State v. Long, 153 Idaho 168, 170, 280 P.3d 195, 197 (Ct. App. 2012). "A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome." Id. (quoting State v. Manzanares, 152 Idaho 410, 419, 272 P.3d 382, 391 (2012)). "Actions which challenge the validity or the manner of implementation of a statute or regulation are often mooted because the provision has been repealed, amended or revised." Idaho Schools for Equal Educational Opportunity By and Through Eikum v. Idaho State Bd. of Educ. By and Through Mossman, 128 Idaho 276, 282, 912 P.2d 644, 650 (1996); see also Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 434, n. 5, 546 P.2d 382, 389, n. 5 (1976); Cenarrusa v. Peterson, 95 Idaho 395, 396, 509 P.2d 1316, 1317 (1973).

Any decision on appeal will have no practical effect on the outcome of this case because the district court ruled that if Idaho Code § 19-2604 were amended the district court would entertain a second motion from Karsten for relief. (R., pp. 108-109.)

> Should the opinion of the court be overturned by subsequent appellate court decision **or action of the Idaho Legislature**, the defendant shall be allowed to motion the court for relief other than reduction of the charge to a misdemeanor without being prejudiced by the fact that the court granted partial relief through this order.

(Id.)(emphasis added.) The district court entered the order on March 11, 2014. (R., p. 107.) Idaho Code § 19-2604 was amended effective July 1, 2014, pursuant to S.L. 2014 ch. 283 §1. Idaho Code § 19-2604(1) now states, in relevant part:

> the court, if convinced by the showing made that there is no longer cause for continuing the period of probation should the defendant be on probation at the time of the application, and that there is good cause for granting the requested relief, may terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant...

Idaho Code § 19-2604(1) (2014). Therefore, regardless of the ruling of this appellate court, Karsten is able to re-petition the district court for relief under the amended Idaho Code § 19-2604(1). As a result, an appellate judicial determination will have no practical effect upon the outcome of this case.

This appeal is therefore moot and none of the exceptions to the mootness doctrine apply. There are three exceptions to the mootness doctrine:

> (1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest.

Long, 153 Idaho at 170, 280 P.3d at 197 (citing Koch v. Canyon Cnty., 145 Idaho 158, 163, 177 P.3d 372, 377 (2008)). There is no possibility of collateral legal consequences imposed on Karsten because she can re-petition the district court. The challenge to the statute is not capable of repetition because the statute has been amended. Finally there are no concerns of a substantial public interest because the statute has been amended and future challenges to Idaho Code §

19-2604 will be brought under the new version and not the old. There is no exception to the mootness doctrine and this court should dismiss this appeal and Karsten can seek her remedy in the district court.

D. The District Court Did Not Abuse It's Discretion When It Denied Karsten's Motion To Set Aside Her Guilty Plea

Karsten argues that the district court abused its discretion when it ruled that it did not have the discretion under the previous version of Idaho Code § 19-2604(1) to set aside her guilty plea because her probation had expired. (Appellant's brief, p. 8.)[1] Karsten's interpretation of Idaho Code § 19-2604(1) is contrary to binding Idaho precedent.

The version of Idaho Code § 19-2604(1) in effect when the district court ruled stated:

> (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:
>
> (a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or
>
> (b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have

[1] On appeal, Karsten does not challenge the analysis contained footnote three of Guess, which determined that the "continuing probation" language required the I.C. § 19-2604(1) motion be made before the period of probation has expired. (See Guess, 154 Idaho at 527, n.3, 300 P. 3d at 59, n.3.)) Since she did not raise the interpretation of this clause in her brief it should not be considered on appeal. See State v. Harris, 130 Idaho 444, 448, n.1, 942 P.2d 568, 572, n. 1 (Ct. App. 1997) (Idaho Court of Appeal will not consider issue not raised in appellant's brief); State v. Raudebaugh, 124 Idaho 758, 763, 864 P.2d 596, 601 (1993) (Idaho Supreme Court will not consider an issue not raised in appellant's brief).

> been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;
>
> the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, **and** if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

I.C. § 19-2604(1)(2013)(emphasis added).

Karsten argues that the underlined language "sets forth two circumstances under which relief is available because the use of a comma before the word 'and' indicates that the two clauses function independently of each other. The first clause applies if the movant is currently on probation. The second clause applies if the movant's probation has expired." (Appellant's brief, p. 9.) Karsten's interpretation is contrary to Idaho Supreme Court precedent interpreting this statute.

The Idaho Supreme Court explained that this statute creates four requirements that much be present in order for a defendant to be permitted to withdraw his or her guilty plea.

> In order for a defendant to be permitted to withdraw his or her guilty plea: (a) the defendant must have at all times complied with the terms and conditions of probation; (b) the court must be convinced, by the showing made, that there is no longer cause for continuing

> the period of probation; (c) the court must find that such relief is compatible with the public interest; and (d) the court, in its discretion, must decide to grant such relief. Complying with the terms and conditions of probation is only one of the four requirements for obtaining relief under the statute

Guess, 154 Idaho at 524, 300 P. 3d at 56. The Idaho appellate courts have reiterated this four part requirement. See Allen, 156 Idaho at 335, 325 P.3d at 676; Glenn, 156 Idaho at 25, 319 P.3d at 1194. Karsten's interpretation of this version of Idaho Code § 19-2604(1) would create only three requirements. Under Karsten's interpretation, a movant would be subject to requirements (a) and (d) but only one of either (b) or (c). Karsten's brief ignores the cases interpreting Idaho Code § 19-2604(1). Karsten's interpretation is contrary to repeated and binding precedent.

The district court did not err when it held it was bound by the terms of this statute. (Tr., p. 7, L. 17 – p. 8, L. 23.). "A court does not have the inherent power to permit a defendant to withdraw his or her guilty plea and have the charge dismissed upon successful completion of probation." Guess, 154 Idaho at 523-524, 300 P. 3d at 55-56 (citing State v. Funk, 123 Idaho 967, 969, 855 P.2d 52, 54 (1993)). "The power of a court to permit a defendant to withdraw his or her guilty plea and have the charge dismissed is controlled by Idaho Code section 19–2604(1)." Id., 154 Idaho at 524, 300 P. 3d at 56. The district court interpreted the applicable version of Idaho Code § 19-2604(1) and applied precedent. The district court did not err.

CONCLUSION

The state respectfully requests this Court dismiss this appeal as moot or in the alternative affirm the decision of the district court.

DATED this 22nd day of January, 2015.

TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of January, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

TED S. TOLLEFSON
Deputy Attorney General

TST/pm