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## State v. Jones Respondent's Brief Dckt. 42701

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 42701
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2013-13638
	)	
JAKE WESLEY JONES,	)	
	)	
Defendant-Appellant.	)	

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BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE RICHARD D. GREENWOOD  
District Judge

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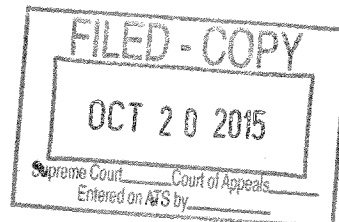
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## STATEMENT OF THE CASE

### Nature Of The Case

Jake Wesley Jones appeals from the judgment of conviction entered upon his guilty plea to possession of methamphetamine. Jones contends the district court abused its discretion by denying his motion to withdraw his guilty plea.

### Statement Of Facts And Course Of Proceedings

The state charged Jones with two counts of felony possession of a controlled substance, one count of misdemeanor possession of a controlled substance, and one count of possession of drug paraphernalia, with a sentencing enhancement for being a persistent violator. (R., pp.39-40, 60-62.) Jones filed a motion to suppress, arguing his arrest was the result of an illegal search and seizure. (R., pp.53-54, 66-72, 98-101.) The court conducted a hearing on the motion to suppress, but before it ruled on the motion Jones entered into a plea agreement and withdrew his motion. Jones entered into a global resolution with the state and pled guilty to possession of methamphetamine with the remaining counts dismissed in addition to the withdrawal of his motion to suppress. (7/22/14 Tr., p.14, L.15 – p.15, L.3; R., pp.107-114.) The persistent violator enhancement was withdrawn, and Jones also pled guilty to an unrelated felony with the recommendation of concurrent sentences. (7/22/14 Tr., p.15, Ls.4-12; R., pp.107-114.)

Prior to sentencing, Jones moved to withdraw his guilty plea. In his motion, Jones asserted he wanted to proceed with his suppression motion and exercise his right to a jury trial. (R., pp.117-123.) The court held an evidentiary hearing on

Jones' motion, after which it denied his request to withdraw his guilty plea. (10/28/01 Tr., p.77, Ls.12-15.)

The court imposed a unified five-year sentence with one and one half years fixed, concurrent with Jones' sentence in another case. (R., pp.130-134; 11/5/14 Tr., p.90, Ls.10-16.) Jones filed a timely notice of appeal. (R., pp.136-138.)

ISSUE

Jones states the issue on appeal as:

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

(Appellant's brief, p.3.)

The state rephrases the issue on appeal as:

Has Jones failed to establish an abuse of discretion in the denial of his motion for withdrawal of his guilty plea?



## ARGUMENT

### Jones Has Failed To Show The Court Abused Its Discretion In Denying His Motion To Withdraw His Guilty Plea

#### A. Introduction

Jones argues that the district court abused its discretion when it denied his motion to withdraw his guilty plea. (Appellant's brief, pp.4-7.) Jones has failed to show the district court abused its discretion by denying the motion. Application of the law to the record and the facts found by the district court supports the district court's determination that Jones failed to show he was entitled to withdraw his plea.

#### 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. Jones Has Failed To Show The District Court Abused Its Discretion In Denying His Motion To Withdraw His Guilty Plea

A motion to withdraw a guilty plea is governed by I.C.R. 33(c), which provides:

(c) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of

sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

Although a district court's discretion should be "liberally exercised" when ruling on a motion to withdraw a guilty plea made prior to the pronouncement of sentence, withdrawal of a guilty plea is not an automatic right. State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). Rather, "the defendant has the burden of showing a 'just reason' exists to withdraw the plea." Hanslovan, 147 Idaho at 535, 211 P.3d at 780 (citations omitted). Where, as in this case,<sup>1</sup> the defendant seeks to withdraw his guilty plea before sentencing but after he has "learned of the content of the PSI or has received other information about the probable sentence, the district court may temper its liberality by weighing the defendant's apparent motive." State v. Arthur, 145 Idaho 219, 222, 177 P.3d 966, 969 (2008) (citing State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004)). Failure to present and support a just or plausible reason, even absent prejudice to the prosecution, will weigh against granting withdrawal. Mayer, 139 Idaho at 647, 84 P.3d at 583. "[T]he good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide." Hanslovan, 147 Idaho at 537, 211 P.3d at 782 (citations omitted).

"The first step in analyzing a motion to withdraw a guilty plea is to determine whether the plea was knowingly, intelligently, and voluntarily made." Hanslovan,

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<sup>1</sup> Jones' motion to withdraw his guilty plea was filed October 21, 2014. (R., p.117.) His PSI, utilized for the global resolution of Jones' pending cases, was delivered on September 3, 2014. (PSI, p.1.)

147 Idaho at 536, 211 P.3d at 781 (citing State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990)). “If the plea is constitutionally valid, the court must then determine whether there are any other just reasons for withdrawal of the plea.” Hanslovan, 147 Idaho at 536, 211 P.3d at 781 (citing State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990)). Jones does not assert a constitutional defect in the entry of his plea; instead he claims that he “showed a just and plausible reason to withdraw his plea because he believed his rights were violated during the traffic stop, and the search of his backpack” and, as such, “he wanted to follow through with the suppression motion because he did not want another conviction on his record.” (Appellant’s brief, p.5 (citation omitted).)

At the hearing on his motion to withdraw his guilty plea, Jones’ argument for withdrawal appeared to be one based on regret:

[T]his court has heard and, ..., gave a very thorough examination when Mr. Jones tendered his guilty plea. However, I don’t think there is any question Mr. Jones is sincere and genuine. He’s not – he’s not trying to game the court or the prosecutor’s office. I think this is a moral stance of his own that he feels that he should not have tendered a guilty plea when that motion to suppress was hanging out there. It’s something that’s bothered him, and I think that’s ultimately what he wanted to communicate with the court here today. And I think it’s genuine.

(10/28/14 Tr., p.74, Ls.5-16.) Contrary to Jones’ assertions, the district court correctly concluded that the fact Jones ultimately regretted having withdrawn his suppression motion to take advantage of a favorable plea agreement was not a “just” reason entitling Jones to withdraw his guilty plea.

At the change of plea hearing, Jones expressly acknowledged that he was giving up his right to pursue his previously filed suppression motion:

THE COURT: I know where I was headed with that motion to suppress, but no one but me and my law clerk will ever know where that was because I'm not going to conclude it. And I have had occasions where, in the very late stages of deciding a case, I've changed my mind, and I go back and look at something for the final time.

What I want to make sure from you, Mr. Jones, is you understand that you are giving up forever the opportunity to go back and revisit the legality of the search that led to your arrest in the first case. That's part of the deal here. And I am not trying to signal that I was going to decide in your favor, by the way.

THE DEFENDANT: No, I fully understand that, Your Honor.

THE COURT: I – when I said I changed my mind, I was just saying that as a general matter.

THE DEFENDANT: I understand fully, Your Honor.

THE COURT: What it amounts to is that is – there is an old Robert Frost poem. What is it? *The Road Not Taken*?

THE DEFENDANT: Yeah, I know that.

THE COURT: And so I just want to make sure that you are comfortable with that decision so that later – it's behind you. If you are not comfortable with it, now is the time to say so before we go through everything else in these guilty pleas.

THE DEFENDANT: Your Honor, there is. I am comfortable about pleading these cases, or I've over – with the suppression, I overlooked me.

THE COURT: Pardon?

THE DEFENDANT: I overlooked me and what I need to do with my life. I was so focused on the suppression that I brought a new case back. And so I am willing to give up that suppression and continue to look at what I need for me.

(7/22/14 Tr., p.19, L.17 – p.21, L.5.) Having entered his plea knowingly and voluntarily and with the understanding that he would not be able to “revisit” his

suppression motion, the mere fact that Jones had reconsidered his decision was not a just reason entitling him to withdraw his plea.

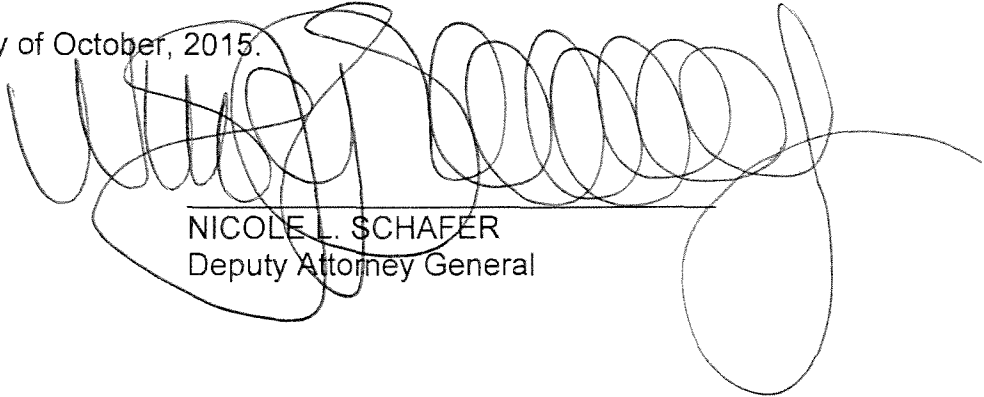
On appeal, Jones argues the court abused its discretion in denying his motion to withdraw his guilty plea “because the district court acknowledged that he had made a compelling case to withdraw his plea.” (Appellant’s brief, p.6.) This argument is contrary to the record. In denying Jones’ motion to withdraw his guilty plea, the district court correctly concluded Jones failed to provide a legally sufficient reason for withdrawal: “Having said all of that, Mr. Jones, **you do not make a compelling case** to set aside your guilty plea. I understand your motives behind it; legally it is my view they are insufficient.” (10/28/14 Tr., p.77, Ls.12-16 (emphasis added).)

Jones has failed to show the district court abused its discretion in denying his motion to withdraw his guilty plea given that the plea was constitutionally valid and Jones offered no just reason to withdraw it.

CONCLUSION

The state respectfully requests this Court affirm Jones' judgment of conviction for possession of methamphetamine.

DATED this 20th day of October, 2015.



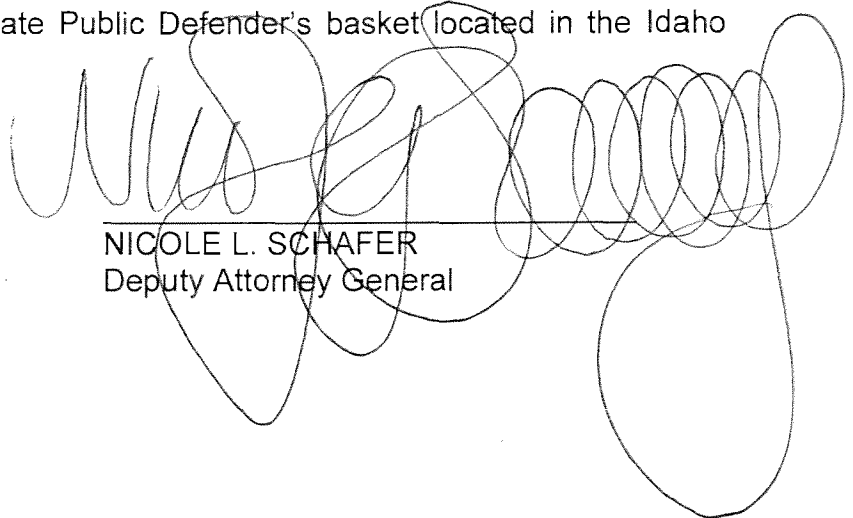
NICOLE L. SCHAFER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of October, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

REED P. ANDERSON  
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.



NICOLE L. SCHAFER  
Deputy Attorney General

NLS/dd