12-29-2009

State v. Schultz Respondent's Brief Dckt. 36445

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 36445
	)	
vs.	)	
	)	
CHRISTOPHER R. SCHULTZ,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature of the Case

Christopher Ray Schultz appeals from an order denying his motion to withdraw his guilty plea.

Statement of the Facts and Course of the Proceedings

Armed with a knife, Schultz invaded the home of Cynthia Van Tassell, who lived in the apartment below Schultz's estranged wife's residence. (#33000 PSI, pp. 1-2; #33000 R., p. 16.) He had planned in advance to invade the home once Cynthia's husband left, with the intent of raping her. (#33000 PSI, p. 2; #33000 R., pp. 17-18.) Once inside he held the knife to Cynthia's throat and demanded money. (#33000 PSI, p. 2; #33000 R., pp. 16-18.) When she denied having any money, he demanded she show him her "boobs." (#33000 PSI p. 2; #33000 R., p. 18.) Fortunately, Cynthia managed to flee and alert the police, who arrested Schultz shortly thereafter. (#33000 PSI, p. 2; #33000 R., pp. 18-19.)

The state ultimately charged Schultz with battery with intent to commit rape, burglary, robbery, and attempted rape, all with enhancements for use of a deadly weapon. (#33000 R., pp. 12-14, 36-38.) Because Schultz was about four months shy of his eighteenth birthday at the time he committed the crimes (#33000 PSI, p. 1), Schultz first appeared in juvenile court (10/05/05 Tr., p. 3, L. 7 – p. 6, L. 18). At the hearing in juvenile court defense counsel put the following on the record:

> Your Honor, in talking with [Schultz] and previously talking with [the prosecutor], [the prosecutor] agreed that upon waiver and if [Schultz] ultimately ends up entering a guilty plea to at least some

> of the charges, the State would make a recommendation to the district court judge of a sentence not to exceed – and certainly it could be less than this depending on negotiations, but not to exceed a 5 year minimum and a 20 year top on the sentence.
>
> Certainly without admitting any of the facts or allegations in this matter but after reviewing the report with [Schultz], he is prepared to waive his rights as a juvenile and proceed into adult court. He realizes this situation is such that certainly it is very likely that he would be waived and, therefore, he's willing to waive into the adult system, your Honor.

(10/05/05 Tr., p. 3, L. 21 – p. 4, L. 13.)

In the adult system, and after a finding of probable cause at the preliminary hearing, Schultz pled not guilty and the court set a status conference. (#33000 R., pp. 28-30, 40-42.) At the status conference the parties agreed to set the case for trial. (#33000 R., p. 45.) The court held a pre-trial conference, and again the parties agreed that the matter would proceed to trial. (#33000 R., p. 53.)

On the date of the trial (see #33000 R., p. 51 (amended order setting trial date)), however, the parties announced they had reached a plea agreement. (#33000 R., pp. 56-57; 12/27/05 Tr., p. 4, Ls. 7-23.) The terms of that agreement were that Schultz would enter an *Alford* plea of guilty to robbery, attempted rape, and one weapons enhancement, and the state would recommend a sentence of up to life with 20 years determinate. (12/27/05 Tr., p. 5, L. 2 – p. 6, L. 18; p. 16, Ls. 1-4.) Schultz then entered his plea as agreed at the hearing. (12/27/05 Tr., p. 6, L. 19 – p. 26, L. 5.)

At sentencing, the prosecution set forth what the evidence would have shown and argued for an aggregate sentence of life with 20 years determinate.

(03/10/06 Tr., p. 43, L. 7 – p. 60, L. 18.) The defense argued that Schultz lacked intent to harm the victim, both when he entered her house with a knife in his hand and his face masked, and when he held the knife to her throat and demanded money and that she show him her "boobs," but that it certainly seemed bad to the victim, so combined sentences totaling five to 20 years, with the court retaining jurisdiction, would be appropriate. (03/10/06 Tr., p. 60, L. 21 – p. 73, L. 24.) The district court applied the goals of sentencing as articulated in law and imposed a sentence of life with 15 years fixed for robbery and 30 years with 15 years fixed for attempted rape with the enhancement, to run concurrently. (03/10/06 Tr., p. 74, L. 18 – p. 91, L. 14; #33000 R., pp. 77-80.) Schultz filed a timely appeal from his judgment. (#33000 R., pp. 83-85.)

Schultz claimed, for the first time on appeal, that the statements of Schultz's counsel at the waiver hearing constituted a plea agreement that took precedence over the plea agreement placed on the record at the time Schultz entered his guilty plea. (#33000 Appellant's brief.) The Court of Appeals entertained this argument, but determined that the appellate record was not sufficient to determine whether the parties had actually reached a plea agreement at the waiver hearing. State v. Schultz, 2008 Unpublished Opinion No. 464, Docket No. 33000 (Idaho App., May 13, 2008). The court reasoned that because the prosecutor's statement of the sentencing recommendation to be made pursuant to the plea agreement was not the same as the potential sentencing recommendation mentioned at the time of the waiver of juvenile jurisdiction, there were "two clear and unequivocal, but entirely contradictory,

agreements pertaining to the sentence recommendation ...." Id. at p. 3. Because of this "ambiguity in the record" the court could not determine that the state breached the plea agreement. Id. at pp. 3-4.

After remand, Schultz filed a motion to withdraw his guilty plea, claiming that he had reached a guilty plea agreement with the state at the waiver hearing. (R., pp. 23-24.) In response to the motion the state presented evidence that before the waiver hearing the state had made a settlement offer that if Schultz would plead guilty to robbery, battery with intent to commit rape, and a weapon enhancement the state would dismiss the other charges. (R., pp. 53, 56; Tr., p. 62, L. 11 – p. 63, L. 3; p. 68, L. 2 – p. 70, L. 21; Defense Exhibit B.) The terms of the proposed agreement included a sentencing recommendation of five to 20 years to be served (no probation); that Schultz waive his preliminary hearing; and that he waive juvenile jurisdiction. (R., pp. 53-54, 56; Tr., p. 64, L. 20 – p. 65, L. 18; Defense Exhibit B.) Although the parties stipulated to a waiver of juvenile jurisdiction at that time, Schultz did not accept the settlement offer at that time. (R., p. 54, 56; Tr., p. 63, L. 4 – p. 64, L. 19.) The prosecutor and the defense attorney agreed to keep the state's offer open after the expiration date and the waiver of juvenile jurisdiction so that they could engage in further negotiations. (Tr., p. 72, L. 18 – p. 75, L. 11.) When Schultz went forward with his preliminary hearing, the prosecutor interpreted that action as a rejection of the settlement offer and proceeded to prepare for trial. (R., p. 54; Tr., p. 76, L. 17 – p. 78, L. 12; p. 79, L. 14 – p. 80, L. 13.)

Near the date of the trial the parties orally reached a plea agreement, ultimately put on the record at the change of plea hearing. (R., pp. 54, 58; Tr., p. 80, L. 14 – p. 81, L. 4.) They discussed whether there had been an agreement at the waiver hearing, and the prosecutor informed the defense attorney of his reasons for believing no agreement had been reached. (R., pp. 54-55; Tr., p. 81, L. 1 – p. 84, L. 13.)

After an evidentiary hearing, the district court determined that no plea agreement had been reached by the parties prior to or at the waiver hearing. (R., pp. 85-94.) The district court found that what the parties had put on the record at the waiver hearing represented the status of ongoing negotiations, not a final agreement. (R., pp. 93-94.) The state therefore had not breached any plea agreement, and Schultz was not entitled to withdraw his plea. (R., pp. 94-95.) Schultz filed a timely notice of appeal. (R., pp. 97-98.)

ISSUE

Schultz states the issue on appeal as:

> Did the district court err when it denied Mr. Schultz' motion to withdraw his guilty plea?

(Appellant's brief, p. 12.)

The state rephrases the issue as:

The district court concluded that Schultz had failed to present evidence to prove his underlying factual allegation that the parties had reached a plea agreement at the time Schultz waived juvenile jurisdiction. Has Schultz failed to show clear error in the district court's factual finding that no plea agreement had been reached prior to the plea agreement under which Schultz pled guilty?

ARGUMENT

Schultz Has Failed To Show Clear Error In The Factual Finding That The Parties Had Not Finalized A Plea Agreement At The Waiver Hearing

A. Introduction

Based on the evidence presented, the district court found that there had been no plea agreement reached at the time of the waiver of juvenile jurisdiction. (R., pp. 88-94.) On appeal Schultz challenges that finding, arguing that the events at the waiver hearing constituted a binding offer and acceptance that constitutionally entitled Schultz to what his attorney had represented regardless of all other facts. (Appellant's brief, p. 26.) The argument that a defendant gets the benefit of whatever his attorney puts on the record regardless of whether the state actually agreed to it is wrong as a matter of law. The district court's factual finding that there was in fact no plea agreement at the time of the waiver hearing is supported by competent evidence. Schultz has failed to show error in the denial of his motion to withdraw his plea.

B. Standard Of Review

Appellate review of the denial of a motion to withdraw a guilty plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action. State v. Ward, 135 Idaho 68, 71, 14 P.3d 388, 391 (Ct. App. 2000). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. E.g., 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. Schultz Has Failed To Show That The District Court's Factual Finding That There Was No Plea Agreement In Conjunction With The Waiver Of Juvenile Jurisdiction Was Either Legally Irrelevant Or Clearly Erroneous

Plea agreements are contractual in nature and are thus measured by contract law standards. State v. Lankford, 127 Idaho 608, 903 P.2d 1305 (1995); State v. Fuhriman, 137 Idaho 741, 744, 52 P.3d 886, 889 (Ct. App. 2002); State v. Holdaway, 130 Idaho 482, 484, 943 P.2d 72, 74 (Ct. App. 1997). Like any contract, there must be a meeting of the minds of the parties in order for a plea agreement to be valid. See Haener v. Ada County Highway Dist., 108 Idaho 170, 173, 697 P.2d 1184, 1187 (1985) (it is the "very essence of contract law that there must be a meeting of the minds of the parties for the contract to be binding upon the parties"); Corder v. Idaho Farmway, Inc., 133 Idaho 353, 359, 986 P.2d 1019, 1025 (Ct. App. 1999) (same). Whether there was a sufficient meeting of the minds to form a binding agreement is a factual determination. Corder, 133 Idaho at 359, 986 P.2d at 1025.

The district court concluded that there had been no plea agreement reached until the December agreement that actually resulted in Schultz's guilty plea. (R., pp. 88-94.) The court rejected the argument that the statements of Schultz's counsel at the waiver hearing represented an agreement reached by the parties, concluding that the comments were more in the nature of a counter-offer and represented ongoing negotiations. (R., pp. 93-94.) This factual determination that there was no agreement is based squarely on the evidence presented. (Tr., p. 29, L. 16 – p. 103, L., 21; Defense exhibits A, B.) It is also supported by the procedure that followed the waiver hearing, to wit, entry of

Schultz's not guilty plea, a preliminary hearing, a joint request for a trial, the representation at the pre-trial conference that the matter would be tried and, ultimately, entry into a plea agreement whereby he did plead guilty on the day of trial. (#33000 R., pp. 28-30, 40-42, 45, 53, 56-60.)

On appeal Schultz argues that whether there was in fact a plea agreement reached by the parties is irrelevant because there was an "oral stipulation" at the waiver hearing that must be interpreted and enforced against the state. (Appellant's brief, pp. 14-19.) This argument is completely without support in the law, and must be rejected.

First, there is no rational distinction between a "stipulation" and an "agreement," and Schultz has cited no cases drawing such a distinction. That a "stipulation" as opposed to a "plea agreement" can be reached upon the silence of one of the parties is a premise without foundation in the law cited by Schultz.

Second, although he has cited cases for the proposition that ambiguous wording of a plea agreement must be interpreted in favor of the defendant, such is irrelevant because there was no agreement. Schultz has cited no cases supporting his argument that where there is an ambiguity as to whether an agreement was actually reached by the parties the court must find that there was an agreement.

Finally, Schultz has simply cited no authority whatsoever for his claim that a defense attorney can announce at a hearing a potential settlement or the status of plea negotiations and if the prosecutor does not state that such is not a plea agreement then it is a plea agreement. His first argument on appeal must

therefore be rejected because it is utterly devoid of actual citation to law that supports it. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

Schultz next argues that the district court's factual findings were clear error. (Appellant's brief, pp. 19-22.) This argument is analytically no different than his first argument: Both are based on the premise that the prosecutor's silence in the face of a representation by the defense attorney constituted an acceptance of that representation as a plea agreement. As with the prior argument, this one fails because it is unsupported by law. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

Even if silence could be construed as acceptance in some circumstances, there is no evidence that such is the case here. Schultz relies exclusively upon the transcript of the waiver hearing as the evidence for his argument. The wording of that transcript, however, is entirely consistent with the district court's conclusion that defense counsel's comments were a representation of ongoing negotiations, not of a final resolution of the case.

Defense counsel stated that the prosecution had agreed that "if" Schultz "ultimately ends up entering a guilty plea to at least some of the charges" that the state would, "depending on negotiations" make a certain recommendation. (#33000 10/5/05 Tr., p. 3, L. 20 – p. 4, L. 5.) This language is consistent with ongoing negotiations because Schultz did not agree to enter a plea (the wording was "if" Schultz "ultimately" entered a plea); what charges he would plead to was clearly not resolved, as which charges he would plead to and which would be dismissed was not mentioned; and even the sentencing recommendations were

still subject to negotiations. In short, even if the trial court had made its factual determination that there was no agreement from the transcript alone it would be supported by evidence.

The court did not rely on the transcript alone, however. In his argument on appeal Schultz merely ignores the other evidence presented. That evidence, however, included evidence of the plea negotiations that both preceded and followed the waiver hearing. (Tr., p. 29, L. 16 – p. 103, L., 21; Defense Exhibit B.) That evidence uniformly shows that no agreement had been reached before the waiver hearing and that negotiations had continued after the waiver hearing because neither side believed the case had been resolved.

Schultz next "asserts that if [the prosecutor] felt that he was not obligated to follow the terms of the plea agreement that Mr. Schultz asserted existed, he should have sought relief from the district court." (Appellant's brief, pp. 22-24.) The state gives Schultz full credit for chutzpah for arguing that the prosecutor should have argued at sentencing an issue Schultz himself did not raise until appeal. In addition, as with all of Schultz's arguments, this one assumes an agreement despite the district court's rejection of the existence of an agreement based on the evidence. Finally, the state notes that if Schultz thought he had a plea agreement based upon his waiver of juvenile jurisdiction he should (and would) have tried to enter a plea upon his first appearance in district court. Instead he entered a not guilty plea, after a preliminary hearing, and requested a trial. The argument that the prosecutor had the duty to inform the court that there was no plea agreement when Schultz was not trying to claim there was, and was

obligated to seek relief from an agreement that had never been entered by either party, is flatly ridiculous.

Schultz next argues that the Idaho Court of Appeals concluded that the statement at the waiver hearing was a plea agreement. (Appellant's brief, pp. 24-26.) Not even a superficial reading of the court of appeals' opinion supports this argument. State v. Schultz, 2008 Unpublished Opinion No. 464, Docket No. 33000 (Idaho App., May 13, 2008).

Finally, Schultz argues that the state breached its plea agreement. (Appellant's brief, pp. 27-28.) This argument is premised upon the contention that an agreement was reached at the waiver hearing, and that the later plea agreement is somehow null and void. As shown above, that argument is frivolous. Because there was only one agreement, and it was the one entered by the parties just prior to Schultz entering his plea, the underlying premise of Shultz's argument fails. He has failed to show error in the district court's factual finding that there was no plea agreement reached until the parties entered the agreement put on the record at the guilty plea hearing.

CONCLUSION

The state respectfully requests this Court to affirm the order of the district court denying Shultz's motion to withdraw his guilty plea.

DATED this 29th day of December 2009.

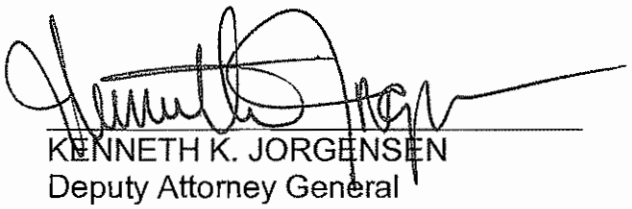
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December 2009 I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT by causing a copy addressed to:

DIANE M. WALKER
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.



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