

3-15-2016

State v. Fuentes Respondent's Brief Dckt. 43509

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Fuentes Respondent's Brief Dckt. 43509" (2016). *Not Reported*. 2731.
https://digitalcommons.law.uidaho.edu/not_reported/2731

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43509
Plaintiff-Respondent,)	
)	Canyon County Case No.
vs.)	CR-2013-2590
)	
ROLANDO PAZ FUENTES,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature Of The Case

Rolando Paz Fuentes appeals from an order denying his motion to reconsider the district court's order relinquishing jurisdiction.

Statement Of The Facts And Course Of The Proceedings

The state charged Fuentes with burglary and grand theft. (R., pp. 18-19.) The parties entered a binding plea agreement, pursuant to which Fuentes pled guilty to grand theft, and the burglary and other misdemeanor charges pending in two different

cases were dismissed. (R., pp. 32-42, 59.) Pursuant to the agreement Fuentes waived “the right to move the Court to reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35.” (R., pp. 40-41.) The district court imposed a sentence of eight years with three years determinate, and suspended the sentence and ordered probation. (R., pp. 65-68.)

A few months after entry of judgment the state filed a notice of probation violation. (R., pp. 76-79.) After an evidentiary hearing the district court found Fuentes had violated his probation, and thereafter executed the sentence and retained jurisdiction. (R. pp. 88-89, 95-96, 98-100.)

The district court thereafter relinquished jurisdiction. (R., p. 101.) Fuentes filed a motion to reconsider “the Order Relinquishing Jurisdiction.” (R., p. 103.) The state objected on the grounds that Fuentes “waived any right to have his sentence reconsidered pursuant to Rule 35.” (R., pp. 111-17.) The district court denied the motion to reconsider on the basis that it had been waived by the plea agreement. (R., pp. 118-22.) Fuentes appealed. (R., pp. 124-27.)

ISSUE

Fuentes states the issue on appeal as:

Did the district court err in finding Mr. Fuentes waived his right to file a Rule 35 motion from the order relinquishing jurisdiction?

(Appellant's brief, p. 3.)

The state rephrases the issue as:

Has Fuentes failed to show error in the district court's enforcement of the clear waiver of the right to file a Rule 35 motion?

ARGUMENT

Fuentes Has Shown No Error In The District Court's Enforcement Of The Clear Waiver Of The Right To File A Rule 35 Motion

A. Introduction

The district court enforced the waiver of the right to file a Rule 35 motion to reduce the sentence contained in the plea agreement. (R., pp. 118-22.) Specifically, the district court concluded that the waiver of the “right to move the Court to reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35” contained in the plea agreement was a “clear and unambiguous term of contract and is enforceable under Idaho law.” (R., p. 121 (quoting the language of the plea agreement).) On appeal Fuentes argues that the waiver does not prevent him from seeking reconsideration of the relinquishment of jurisdiction because “relinquishing jurisdiction is not a ‘sentence.’” (Appellant’s brief, pp. 4-8.) Fuentes’ argument, however, ignores contrary authority. Consideration of applicable authority shows Fuentes’ argument to be without merit.

B. Standard Of Review

Whether a plea agreement is ambiguous is a question of law. State v. Peterson, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010) (citing State v. Allen, 143 Idaho 267, 272, 141 P.3d 1136, 1141 (Ct. App. 2006)). If the language of the agreement is ambiguous—*i.e.*, reasonably subject to conflicting interpretations—the ambiguity must be resolved in favor of the defendant. State v. Gomez, 153 Idaho 253, 257, 281 P.3d 90, 94 (2012); Peterson, 148 Idaho at 595, 226 P.3d at 537. If, on the other hand, the language of a plea agreement is not ambiguous, the court “will not look beyond the four corners of the agreement to determine the intent of the parties.” Gomez, 153 Idaho at

257, 281 P.3d at 94 (citing Beus v. Beus, 151 Idaho 235, 241, 254 P.3d 1231, 1237 (2011)).

C. The Language Of The Waiver Is Unambiguous And Barred The Motion To Reduce The Sentence

In the plea agreement Fuentes waived “the right to move the Court to reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35.” (R., pp. 40-41.) Fuentes’ motion to reconsider relinquishment of jurisdiction sought to suspend his sentence and put him on probation. (See, e.g., Tr., p. 18, Ls. 12-19.) It was therefore necessarily a motion “to reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35.” See State v. Knutsen, 138 Idaho 918, 920-23, 71 P.3d 1065, 1067-70 (Ct. App. 2003) (motion to reconsider order relinquishing jurisdiction within scope of authority to reduce or modify a sentence under Rule 35).

On appeal Fuentes argues that “an order relinquishing jurisdiction is not a ‘sentence’ such that the term clearly and unambiguously foreclosed the filing of a Rule 35 motion from such an order.” (Appellant’s brief, p. 4.) This very argument, made by the state to claim that an order relinquishing jurisdiction was outside the scope of Rule 35’s grant of authority to reduce a sentence, has already been rejected. Knutsen, 138 Idaho at 920-22, 71 P.3d at 1067-68.

Rule 35 authorizes a district court to diminish, lessen the severity of, or make more temperate a defendant’s sentence. An order placing defendant on probation lessens the severity of a defendant’s sentence and thus falls within the district court’s authority granted by Rule 35.

Id., at 921, 71 P.3d at 1068. The Court of Appeals’ analysis in Knutsen, that a motion to reconsider relinquishment of jurisdiction is a motion to reduce the sentence,

forecloses Fuentes' argument that the waiver of motions to reduce the sentence in the plea agreement did not include reconsideration of relinquishment of jurisdiction.

The district court properly held that the waiver of the right to file a motion to reduce the sentence included waiving the right to request reconsideration of an order relinquishing jurisdiction. Fuentes' argument that the waiver of the right to seek reduction of the sentence did not include waiver of the right to request reconsideration of relinquishment of jurisdiction is contrary to established law. Fuentes has therefore failed to show error.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying the motion for reconsideration.

DATED this 15th day of March, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd