

6-10-2016

State v. Garner Appellant's Brief Dckt. 43612

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43612
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-106
v.)	
)	
DESIREE ROSE GARNER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
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BRIEF OF APPELLANT

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

**HONORABLE STEVEN J. HIPPLER
District Judge**

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**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Desiree Garner challenges the district court's denial of her motion to withdraw her guilty plea. Because she felt confused, overwhelmed, and pressured at the plea hearing, her plea was not knowing, intelligent, or voluntary, and she showed just reasons to withdraw her plea. The district court thus abused its discretion by denying the motion. This Court should vacate her judgment of conviction, withdraw her guilty plea, and remand to the district court for further proceedings.

Statement of Facts and Course of Proceedings

Ms. Garner was driving her car in Boise when an officer pulled her over because her front license plate was hanging from one bolt. (PSI, pp.2–3.) Ms. Garner's passenger, Mr. Pilkerton, appeared to be under the influence and admitted to the officer that he had marijuana on him. (PSI, p.3.) When the officer asked Ms. Garner to step out of the vehicle, she started crying and said there were drugs in her purse. (*Id.*; *see also* Tr. Vol. I, p.23, L.8.) The officer arrested Ms. Garner for possession of methamphetamine and arrested Mr. Pilkerton for possession of marijuana. (PSI, p.3.) Ms. Garner was twenty-one at the time and Mr. Pilkerton was fifty. (PSI, pp.2–3.)

Ms. Garner later pled guilty to possessing methamphetamine. She filled out a guilty plea advisory form (R., pp.49–56), and the district court asked her many of the same questions at the change of plea hearing (Tr. Vol. I, p.8, L.19–p.18, L.14). For example, in response to the court's questions, Ms. Garner said she understood the questions and proceedings, understood what was going on, had fully discussed possible defenses and the consequences of pleading guilty with her

attorney, had reviewed the discovery, and that she was pleading guilty voluntarily. (Tr. Vol. I, p.13, L.10–p.14, L.23.)

Before participating in the presentence investigation in this case, Ms. Garner hired an attorney and moved to withdraw her plea. (R., p.85.) In the supporting affidavit, Ms. Garner explained that she was born premature, and has a learning disability which makes it hard for her to comprehend. (R., p.87.) She said she told the court that she understood the guilty plea form out of embarrassment and intimidation. (*Id.*) She believed she should have spent more time going over the form, discovery, and circumstances of her arrest. (*Id.*) After speaking with her new attorney, she realized she should not have pled guilty. (*Id.*)

At the first hearing on the motion to withdraw, Ms. Garner's attorney explained that he wanted to request additional discovery because Ms. Garner told him that Mr. Pilkerton had put the methamphetamine in her purse, which was sitting on the floorboard near his feet, when the officer pulled them over. (Tr. Vol. II, p.6, Ls.11–24.) Ms. Garner testified about Mr. Pilkerton's actions at the second hearing on the motion to withdraw. (Tr. Vol. I, p.28, Ls.1–25.) She said she did not tell the officer what Mr. Pilkerton had done because everything happened so fast and the officer never asked her if the methamphetamine was hers. (Tr. Vol. I, p.29, Ls.1–16.) Ms. Garner also said that she did not see any police report on Mr. Pilkerton or listen to the audio of his police interview (Tr. Vol. I, p.30, L.24–p.31, L.6), she was not satisfied with her first attorney, Ms. Owens, but did not want to say so in front of her (Tr. Vol. I, p.35, Ls.3–22), and she felt confused and overwhelmed (Tr. Vol. I, p.36, Ls.3–14). Finally, she explained she had a positive UA just before she entered her plea, which impacted her thinking. (Tr. Vol. I, p.32, Ls.3–25.)

Ms. Owens testified that she had a hard time getting in touch with Ms. Garner, she met with Ms. Garner in-person a couple of times, she believed she spent as much time with Ms. Garner as Ms. Garner needed, she did not perceive that she pressured Ms. Garner to plead guilty, she gave Ms. Garner the guilty plea form to take home with her, and she met with Ms. Garner about an hour before the plea hearing to answer questions about the form. (*See generally* Tr. Vol. I, p.57, L.58, L.14–p.74, L.1.) She also testified that Ms. Garner did not tell her that Mr. Pinkerton put the drugs in her purse. (Tr. Vol. I, p.74, Ls.9–21.)

Relying on that testimony, Ms. Garner argued that her plea was not knowing, intelligent, and voluntary, and that she had a just reason to withdraw the plea. (*See generally* R., pp.88, 92-98; Tr. Vol. I, p.81, L.9–p.99, L.14.) The State disagreed, asserting that the district court was extremely thorough in reviewing the guilty plea questionnaire at the plea hearing, Ms. Garner said she understood and wished to plead guilty, and Ms. Garner had not explained what specifically she did not understand before pleading guilty. (*See generally* R., pp.99–105; Tr. Vol. I, p.99, L.16–p.103, L.5.)

The district court found that Ms. Garner’s plea was knowing, intelligent, and voluntary, and that Ms. Garner did not show a just reason to withdraw her plea, and thus denied the motion. (R., pp.121–22; Tr. Vol. I, p.103, L.20–p.108, L.3.) Specifically, the court explained that it conducted a thorough examination during the plea hearing, and that Ms. Garner had not demonstrated what exactly she didn’t understand. (Tr. Vol. I, p.104, L.18–p.106, L.16.)

The court later sentenced Ms. Garner to serve a total of five years, with 1.5 years fixed, suspended the sentence, and placed Ms. Garner on probation. (R., pp.138–42.) Ms. Garner filed a timely notice of appeal. (R., pp.160–62.)

ISSUE

Did the district court abuse its discretion by denying Ms. Garner's motion to withdraw her guilty plea?

ARGUMENT

The District Court Abused Its Discretion By Denying Ms. Garner's Motion To Withdraw Her Guilty Plea

When a defendant moves to withdraw her guilty plea before sentencing, the Court will first determine whether the defendant entered a knowing, intelligent, and voluntary plea. *State v. Dopp*, 124 Idaho 481, 484 (1993). “Where a guilty plea is shown to be constitutionally invalid . . . leave to withdraw the plea is constitutionally mandated.” *State v. Gardner*, 126 Idaho 428, 432 (Ct. App. 1994). If the court determines that the plea was knowing, intelligent, and voluntary, it must ask whether the defendant provided a “just reason” to withdraw the plea. *Ballard*, 114 Idaho at 801; *State v. Arthur*, 145 Idaho 219, 222 (2008). If the defendant shows there is a just reason to withdraw the plea, the district court will grant the motion “absent a strong showing of prejudice by the state.” *State v. Johnson*, 120 Idaho 408, 411 (Ct. App. 1991); *see also Ballard*, 114 Idaho at 801. “The district court is empowered with broad discretion, liberal exercise of which is encouraged.” *State v. Henderson*, 113 Idaho 411, 414 (Ct. App. 1987) (internal citation omitted); *see also State v. Hanslovan*, 147 Idaho 530 (Ct. App. 2008).

This Court reviews a district court’s denial of a motion to withdraw a guilty plea for an abuse of discretion. *State v. Ballard*, 114 Idaho 799 (1988). That inquiry requires the Court to consider “(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 consistent with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason.” *State v. Warren*, 135 Idaho 836, 839 (Ct. App. 2001).

The district court abused its discretion by denying Ms. Garner’s motion to withdraw her guilty plea. Ms. Garner testified that she has a difficult time with comprehension, and felt confused, overwhelmed, and pressured at the plea hearing. (Tr. Vol. I, p.26, L.20–p.27,

L.1, p.32, Ls.3–25, p.35, Ls.3–22, p.36, Ls.3–14.) She also testified that did not have enough time with her attorney and did not review documents she believed were important to her case. (Tr. Vol. I, p.30, L.24–p.31, L.6, p.35, Ls.3–22.) Her plea was not knowing, intelligent, and voluntary, and she provided just reasons to withdraw her plea. Further, the State did not show prejudice. The district court thus abused its discretion by denying Ms. Garner’s motion.

CONCLUSION

Ms. Garner respectfully requests that this Court vacate her judgment of conviction, withdraw her guilty plea, and remand to the district court for further proceedings.

DATED this 10th day of June, 2016.

/s/
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of June, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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MPW/mal