1-2-2017

State v. Baxter Appellant's Brief Dckt. 44535

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 44535**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO.**
v.	)	**CR-FE-2016-1996**
	)	
ROY AYERS BAXTER, JR.,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

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 JASON D. SCOTT
District Judge

_____

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STATEMENT OF THE CASE

Nature of the Case

Roy Ayers Baxter, Jr., was sentenced to a unified term of ten years, with two-and one-half years fixed, after he pled guilty to, and was convicted of, domestic violence. Prior to sentencing, Mr. Baxter filed a motion to withdraw his guilty plea based largely on a post-plea communication the prosecutor had with the psychologist who performed Mr. Baxter's domestic violence evaluation, which led the psychologist to increase his assessment of Mr. Baxter's risk of reoffending from moderate to high. Based on this increased risk assessment, the prosecutor decided to recommend a rider rather than probation. Mr. Baxter contends the district court abused its discretion in denying his motion to withdraw his guilty plea because he met his burden of showing a just reason to withdraw his plea, which was rendered unknowing as a result of the post-plea change in his domestic violence evaluation, and the State did not make any showing that it would be prejudiced by the withdrawal of Mr. Baxter's guilty plea.

Statement of Facts and Course of Proceedings

Mr. Baxter was involved in an altercation with his wife, who is the mother of two of his three children, on February 14, 2015. (Conf. Exs., pp.7-8.) Following a preliminary hearing, Mr. Baxter was charged by Information with felony domestic violence and violation of a no contact order. (R., pp.40, 41-42.) At a status conference on May 27, 2015, counsel for Mr. Baxter informed the district court that the parties had the outline of a plea agreement in place, but Mr. Baxter was going to obtain a domestic violence evaluation before deciding whether to plead guilty. (R., pp.72, 89.)

Mr. Baxter was evaluated by a licensed psychologist, Dr. Bill Arnold, who issued a Domestic Violence Evaluation Report on June 17, 2016. (Conf. Exs., pp.58, 238-45.) Based on his interview of Mr. Baxter and his review of the police reports and the transcript of the preliminary hearing, among other things, Dr. Arnold concluded Mr. Baxter presented a moderate risk to reoffend. (Conf. Exs., pp.238, 243, 244; R., p.89.) Counsel for Mr. Baxter shared a copy of Dr. Arnold's report with the prosecutor. (8/26/16 Tr., p.5, Ls.23-24; R., p.101.) The prosecutor expressed concerns about the report, but did not indicate she would not accept Dr. Arnold's conclusion that Mr. Baxter presented a moderate risk to reoffend. (8/26/16 Tr., p.6, Ls.5-11; R., p.89.)

Based on Dr. Arnold's conclusion that Mr. Baxter presented a moderate risk to reoffend, Mr. Baxter accepted a plea offer and entered into a written plea agreement on July 1, 2016. (8/26/16 Tr., p.6, Ls.12-14; R., pp.74-84, 89.) Pursuant to the plea agreement, Mr. Baxter agreed to plead guilty to felony domestic violence and, in exchange, the State agreed to dismiss a felony influencing charge and no contact order violations in this and other cases. (R., p.82; 7/1/16 Tr., p.5, Ls.12-24.) The State agreed that if Mr. Baxter was determined to present a high risk to reoffend on the domestic violence evaluation, it would recommend a unified sentence of ten years, with three years fixed, and with a period of retained jurisdiction. (7/1/16 Tr., p.5, L.25 – p.6, L.7; R., p.82.) However, if Mr. Baxter was determined to present less than a high risk to reoffend, it would recommend Mr. Baxter be placed on probation. (7/1/16 Tr., p.5, L.25 – p.6, L.7; R., p.82; R., p.82.) The district court accepted Mr. Baxter's guilty plea on July 1, 2016. (7/1/16 Tr., p19, Ls.18-25.)

On July 7, 2016, the prosecutor e-mailed Dr. Arnold to provide him with statements made by Mr. Baxter at the change of plea hearing. (R., pp.89, 102; 8/26/16 Tr., p.20, Ls.10-22.) The prosecutor wrote:

> I am not sure if it will change the outcome of your report finding a risk level, but thought it would be important for you to know and consider. When telling the court what he did, he said he had been drinking all day and doing meth.[1] He said, ["One] thing led to another, and the next thing you know I backhanded her on the neck. Also in the scuffle with the neighbor, I did hit her in the arm, and she had a bruise.["]

(8/26/16 Tr., p.20, L.23 – p.21, L.6.) The prosecutor asked "if this has any impact on your finding of risk." (8/26/16 Tr., p.21, Ls.7-9.) Even though Dr. Arnold had a copy of the police reports and the preliminary hearing transcript at the time he evaluated Mr. Baxter, he issued an Addendum to Risk Ratings on July 8, 2016, stating that, based upon the "additional information" provided to him by the prosecutor, "Mr. Baxter now falls in the group of offenders who display a high risk of future violent offending." (Conf. Exs., p.58.) The prosecutor advised counsel for Mr. Baxter that she would recommend a rider instead of probation based on Dr. Arnold's new risk assessment. (R., p.89.)

Mr. Baxter filed a motion to withdraw his guilty plea and supporting memorandum on August 16, 2016. (R., pp.94, 88-93.). Mr. Baxter argued, among other things, that "the prosecutor's intervention with Dr. Arnold after he entered his guilty plea rendered the plea agreement in this case meaningless."[2] (R., p.91.) The State filed an objection

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[1] Though not central to the issue presented in this appeal, Mr. Baxter notes he did not admit at the change of plea hearing to using methamphetamine on the date of the offense. He stated that, on Valentine's weekend, he and his wife "were just out drinking and partying" but "[b]efore that, a couple days, it was actually out partying and doing meth." (7/1/16 Tr., p.14, Ls.13-18.)

[2] Mr. Baxter also argued he should be allowed to withdraw his guilty plea because the State filed new charges against him prior to sentencing, which "ensured that he would never be legitimately considered for probation." (R., p.91.)

to Mr. Baxter's motion. (R., pp.98-108.) The district court denied Mr. Baxter's motion, concluding Mr. Baxter did not have a just reason to withdraw his guilty plea, which was knowing, intelligent and voluntary. (8/26/16 Tr., p.41, Ls.1-3, 17-19; R., pp.109-10.)

At sentencing, the State recommended a rider based in large part on Dr. Arnold's assessment that Mr. Baxter presented a high risk of reoffending. (9/23/16 Tr., p.33, L.12 – p.34, L.8.) Counsel for Mr. Baxter recommended a ten-year term of probation. (9/23/16 Tr., p.41, Ls.17-19.) The district court sentenced Mr. Baxter to a unified term of ten years, with two and one-half years fixed, and retained jurisdiction.[3] (9/23/16 Tr., p.46, L.23 – p.47, L.16.) The district court did not place Mr. Baxter on probation. The judgment was entered on September 26, 2016, and Mr. Baxter filed a timely notice of appeal on September 28, 2016. (R., pp.112-15, 118-20.)

[3] At sentencing, the district court granted the State's oral motion to consolidate this case with three other cases (CR-FE-2016-9176, CR-FE-2016-4713, and CR-MD-2016-5434). (9/23/16 Tr., p.27, Ls.14-19; R., pp.111, 116-17.) In CR-FE-2016-9176, the district court sentenced Mr. Baxter for fraudulent misappropriation of personal identifying information to a unified term of five years, with two years fixed, to be served concurrently to the sentence imposed in this case. (9/23/16 Tr., p.47, Ls.2-24.)

ISSUE

Did the district court abuse its discretion in denying Mr. Baxter's motion to withdraw his guilty plea?

ARGUMENT

The District Court Abused Its Discretion In Denying Mr. Baxter's Motion To Withdraw His Guilty Plea Because Mr. Baxter Met His Burden Of Showing A Just Reason To Withdraw His Guilty Plea, And The State Did Not Make Any Showing Of Prejudice

"Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied." *State v. Hartsock*, 160 Idaho 640, __, 377 P.3d 1102, 1103 (Ct. App. 2016). Where a defendant moves to withdraw a guilty plea before sentencing, the grant of such motion "is not an automatic right," but "a less rigorous standard applies." *State v. Williston*, 159 Idaho 215, 217 (Ct. App. 2015). In the pre-sentencing context, "the defendant has the burden of showing that a just reason exists to withdraw the plea." *Id*. "Once the defendant has met this burden, the state may still avoid a withdrawal of the plea by demonstrating the existence of prejudice to the state." *Id.* at 218; *see also State v. Johnson*, 120 Idaho 408, 411 (Ct. App. 1991) (stating "relief will be granted absent a strong showing of prejudice by the state"). When a trial court's discretionary decision 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 lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

The district court did not reach its decision to deny Mr. Baxter's motion to withdraw his guilty plea by an exercise of reason because Mr. Baxter met his burden of showing a just reason to withdraw his guilty plea and the State made no showing of

prejudice. Mr. Baxter obtained a domestic violence evaluation before deciding whether to plead guilty, and decided to plead guilty only after the evaluation was completed, and after the evaluator concluded he presented only a moderate risk to reoffend. Counsel for Mr. Baxter shared the domestic violence evaluation report with the prosecutor before Mr. Baxter decided to plead guilty. (8/26/16 Tr., p.5, Ls.23-24; R., p.101.) The prosecutor claimed Mr. Baxter made "gross omissions" to the domestic violence evaluator and did not accurately describe his substance use. In fact, after reviewing the report, the prosecutor informed defense counsel that she would not recommend a bond reduction lower than $100,000 because of Mr. Baxter's "gross omissions as to his conduct in the instant offense, as well as his misstatements regarding substance use." (R., p.101.) But the prosecutor *did not* inform defense counsel that she would be challenging Dr. Arnold's assessment of Mr. Baxter's risk of reoffending. (8/26/16 Tr., p.6, Ls.5-11; R., p.89.) Mr. Baxter decided to plead guilty knowing the domestic violence evaluation had been completed, and with the understanding that the State would be recommending probation.

At the change of plea hearing, counsel for Mr. Baxter informed the district court that the domestic violence evaluation had been completed, and he had shared the report with the State, "so we don't have to do that." (7/1/16 Tr., p.7, Ls.21-23.) After the district court accepted Mr. Baxter's guilty plea and was setting the matter for sentencing, counsel for Mr. Baxter stated, "Your Honor, it's our hope that since the domestic violence evaluation has already been done, that we can set it more quickly." (7/1/16 Tr., p.20, Ls.3-5.) The district court later said, "And you say you already have a domestic violence evaluation done, and you'll submit that." (7/1/16 Tr., p.21, Ls.1-2.)

Counsel responded, "I've submitted it to the state. We'll make sure the presentence investigator gets a copy, or I could just send a copy to you and then we're done with that I guess. Either way is fine by me." (7/1/16 Tr., p.21, Ls.3-7.) At no point did the prosecutor state she was no longer satisfied with the domestic violence evaluation, or would be contacting Dr. Arnold to suggest changing the results of the evaluation, based on Mr. Baxter's statements at the change of plea hearing.

Six days after the change of plea hearing, the prosecutor contacted Dr. Arnold to ask whether Mr. Baxter's statements at the change of plea hearing—specifically concerning the nature of his offense and his methamphetamine use—had "any impact on your finding of risk." (8/26/16 Tr., p.21, Ls.7-9.) Notably, Mr. Baxter's statements at the change of plea hearing were consistent with the police reports and the testimony at the preliminary hearing, which the prosecutor knew of prior to entering into a plea agreement with Mr. Baxter, and which Dr. Arnold knew of when he evaluated Mr. Baxter. Nonetheless, Dr. Arnold concluded that, based on the additional information provided to him by the prosecutor, Mr. Baxter "now falls into the group of offenders who display a high risk of future violent offending."[4] (Conf. Exs., p.58.)

In its opposition to Mr. Baxter's motion to withdraw his guilty plea, the State asserted in the district court that "there is a significant likelihood that the filing of the Defendant's motion is linked to the pre-sentence investigation's less than flattering assessment of the Defendant." (R., p.106.) Mr. Baxter recognizes that a district court may temper the liberal treatment normally afforded to a presentence motion to withdraw

[4] Dr. Baxter qualified his conclusion somewhat by stating Mr. Baxter is in "the marginally high risk range for future violence" meaning "he was placed low within the normative group placed in the high risk range." (Conf. Exs., p.57.)

a guilty plea where the defendant's apparent motive is to avoid what he perceives to be the probable sentence based on the presentence investigation report or other information. *See Hartsock*, 377 P.3d at 1104. However, there is simply no indication that Mr. Baxter moved to withdraw his guilty plea in this case because of the presentence investigator's recommendation for a rider. At the hearing on Mr. Baxter's motion, counsel for Mr. Baxter told the district court Mr. Baxter "never would have pled guilty to a rider offer." (8/26/16 Tr., p.15, Ls.12-13.) The district court asked defense counsel whether he would withdraw the motion if the prosecutor agreed to recommend probation, and he answered, "Yes," but the prosecutor said she was not willing to recommend probation. (8/26/16 Tr., p.16, Ls.13-17; p.27, Ls.10-13.)

When Mr. Baxter entered into a plea agreement with the State and pled guilty to domestic violence, he understood the State would recommend probation based on the already completed domestic violence evaluation. Mr. Baxter knew the State's sentencing recommendation would not be binding on the district court, but it was still the critical factor in his decision to plead guilty. This Court has recognized that, before sentencing, the inconvenience to the court and prosecution resulting from a change of plea is usually slight compared to protecting the right of the accused to trial by jury. *State v. Hawkins*, 117 Idaho 285, 291 (1990); *Johnson*, 120 Idaho at 415. Here, the State never argued it would be prejudiced by the withdrawal of Mr. Baxter's guilty plea. The district court abused its discretion in denying Mr. Baxter's motion to withdraw his guilty plea.

CONCLUSION

Mr. Baxter respectfully requests that this Court vacate his conviction, reverse the district court's denial of his motion to withdraw his guilty plea, and remand this case to the district court for further proceedings.

DATED this 2nd day of January, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of January, 2017, 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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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas