

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-1-2017

State v. Baxter Respondent's Brief Dckt. 44535

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

Recommended Citation

"State v. Baxter Respondent's Brief Dckt. 44535" (2017). *Not Reported*. 4157.
https://digitalcommons.law.uidaho.edu/not_reported/4157

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

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44535
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2016-1996
)	
ROY AYERS BAXTER, JR.,)	
)	
Defendant-Appellant.)	
)	
)	

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 JASON D. SCOTT
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

ANDREA W. REYNOLDS
Deputy State Appellate
Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

**ATTORNEY FOR
DEFENDANT-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	3
ARGUMENT	4
Baxter Has Failed To Show That The District Court Abused Its Discretion When It Denied His Motion To Withdraw His Guilty Plea	4
A. Introduction	4
B. Standard Of Review.....	4
C. Baxter Failed To Show Either That His Guilty Plea Was Invalid Or That There Existed Any Other Just Reason For Withdrawing His Guilty Plea	4
CONCLUSION	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Arthur</u> , 145 Idaho 219, 177 P.3d 966 (2008).....	5
<u>State v. Carrasco</u> , 117 Idaho 295, 787 P.2d 281 (1990).....	4
<u>State v. Dopp</u> , 124 Idaho 481, 861 P.2d 51 (1993).....	4, 6
<u>State v. Hanslovan</u> , 147 Idaho 530, 211 P.3d 775 (Ct. App. 2008).....	4, 5, 6
<u>State v. Holland</u> , 135 Idaho 159, 15 P.3d 1167 (2000).....	4
<u>State v. Mauro</u> , 121 Idaho 178, 824 P.2d 109 (1991)	5
<u>State v. Williston</u> , 159 Idaho 215, 358 P.3d 776 (Ct. App. 2015)	5
 <u>RULES</u>	
I.C.R. 33.....	4, 7

STATEMENT OF THE CASE

Nature Of The Case

Roy Ayers Baxter, Jr., appeals from his judgment of conviction for domestic violence. On appeal, he asserts that the district court abused its discretion when it denied his motion to withdraw his guilty plea.

Statement Of The Facts And Course Of The Proceedings

On February 14, 2016, after using methamphetamine and drinking alcohol most of the day, Baxter violently attacked his wife, punching her throat and leaving bruises on her arms. (7/1/2016 Tr., p.14, L.11 – p.17, L.22.) The state charged Baxter with domestic violence and the violation of a no contact order. (R., pp.41-42.) The state later proffered a plea agreement under which, in exchange for Baxter's guilty plea to the domestic violence charge, it would recommend a rider if a domestic violence evaluation showed that Baxter was a high risk to reoffend, and probation if the evaluation showed less than a high risk to reoffend. (R., pp.82-84; 7/1/2016 Tr., p.5, L.12 – p.6, L.7.)

Prior to accepting the plea agreement, Baxter got a privately-retained evaluation. (8/26/2016 Tr., p.5, Ls.1-9.) Baxter's pre-plea evaluation classified him as a moderate to high risk to reoffend. (PSI, pp.44-51; 8/26/2016 Tr., p.5, Ls.14-18.) With the less-than-high risk evaluation, Baxter pleaded guilty to domestic violence. (7/1/2016 Tr., p.19, Ls.14-17.) But it was later discovered that Baxter was not entirely forthcoming in this pre-plea evaluation. (8/26/2016 Tr., p.18, L.22 – p.20, L.3.) The prosecutor supplemented the information Baxter had originally presented to his privately-retained evaluator with statements he had made during his plea colloquy and asked if that new information had any impact on the evaluator's findings. (See 8/26/2016 Tr., p.20, L.13 –

p.21, L.9.) After taking into consideration the additional information, the evaluator reclassified Baxter as a high risk to reoffend. (PSI, pp.57-58)

In the meantime, a presentence investigation was completed and received by Baxter. (PSI, pp.6-23; 8/26/2016 Tr., p.37, Ls.18-20.) The presentence investigation recommended a rider. (PSI, pp.21-22.) And, “shortly before sentencing,” Baxter was charged with fraud in an unrelated felony case. (PSI, p.12; see also 8/26/2016 Tr., p.12, Ls.8-23; p.23, L.17 – p.24, L.20; R. p.90.)

Baxter then filed a motion to withdraw his guilty plea. (R., pp.87-94.) Weighing Baxter’s apparent motive in seeking to withdraw his guilty plea, the district court determined that Baxter had failed to show just cause to withdraw the plea and denied his motion. (8/26/2016 Tr., p.37, L.18 – p.41, L.19.) The district court subsequently entered judgement against Baxter and sentenced him to a unified term of ten years with two and a half years fixed, and retained jurisdiction. (R., pp.112-14.) Baxter filed a timely notice of appeal. (R., pp.118-19.)

ISSUE

Baxter states the issue on appeal as:

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

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Baxter failed to show that the district court abused its discretion when it denied his motion to withdraw his guilty plea?

ARGUMENT

Baxter Has Failed To Show That The District Court Abused Its Discretion When It Denied His Motion To Withdraw His Guilty Plea

A. Introduction

Baxter argues that the district court abused its discretion by denying his presentencing motion to withdraw his guilty plea. (Appellant's brief, pp.6-10.) A review of the record and the applicable law, however, supports the district court's determination that Baxter failed to carry his burden of establishing a just reason entitling him to withdraw his plea. Baxter has failed to show an abuse of the district court's discretion.

B. Standard Of Review

Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion, as distinguished from arbitrary action. State v. Dopp, 124 Idaho 481, 483, 861 P.2d 51, 53 (1993). 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).

C. Baxter Failed To Show Either That His Guilty Plea Was Invalid Or That There Existed Any Other Just Reason For Withdrawing His Guilty Plea

Under Idaho Criminal Rule 33(c), a motion to withdraw a guilty plea may be made before sentence is imposed. The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008).

The defendant bears the burden of proving, in the district court, that the plea should be withdrawn. Hanslovan, 147 Idaho at 535, 211 P.3d at 780.

In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. State v. Mauro, 121 Idaho 178, 180, 824 P.2d 109, 111 (1991). As the Court of Appeals has recently recognized:

[T]he determination that a plea is entered knowingly, intelligently, and voluntarily involves a three-part inquiry: (1) whether the defendant's plea was voluntary in the sense that he or she understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived his or her rights to a jury trial, to confront his or her accusers, and to refrain from self-incrimination; and (3) whether the defendant understood the consequences of pleading guilty.

State v. Williston, 159 Idaho 215, 218, 358 P.3d 776, 779 (Ct. App. 2015) (citations omitted).

If the plea was constitutionally valid, then the court must determine whether other reasons exist to allow the defendant to withdraw the plea. Mauro, 121 Idaho at 180, 824 P.2d at 111. When the motion to withdraw is made prior to sentencing, the defendant must present a just reason for withdrawing the plea. Hanslovan, 147 Idaho at 535, 211 P.3d at 780. “[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.” Id. at 537, 211 P.3d at 782. Moreover, where the defendant moves to withdraw his guilty plea before sentencing but after he has read his presentence report or received other information about his probable sentence, the court is to exercise broad discretion, but may temper its liberality by weighing the defendant's apparent motive. State v. Arthur, 145 Idaho 219, 222, 177 P.3d 966, 969 (2008). Ultimately, the decision

to grant or deny a motion to withdraw a guilty plea lies in the discretion of the district court. Hanslovan, 147 Idaho at 535, 211 P.3d at 780.

The district court first determined that Baxter's guilty plea was knowing, intelligent, and voluntary: The plea colloquy showed that he understood the nature of the charges and was not coerced into pleading guilty; it showed that he knowingly and intelligently waived his rights to a jury trial, to confront accusers, and to refrain from self-incrimination; and it showed that he understood the consequences of pleading guilty, because he knew that the trial court ultimately had discretion to impose any sentence allowed by law irrespective of the parties' recommendations. (8/26/2016 Tr., p.36, L.12 – p.37, L.17.) The district court then determined that Baxter had failed to show just reason to withdraw his guilty plea, especially in light of his apparent motive for withdrawing his plea after receiving the presentence investigation report and being charged with a new crime in an unrelated case. (Id., p.37, L.18 – p.38, L.17; p.40, Ls.5-17.) Finally, the district court exercised its discretion and denied Baxter's motion to withdraw his guilty plea. (Id., p.41, Ls.17-19.)

On appeal, Baxter asserts that the district court "did not reach its decision to deny [his] 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." (Appellant's brief, pp.6-9.) Even assuming a lack of prejudice to the state, Baxter's argument still fails. As found by the district court and shown above, Baxter failed to present a just reason for withdrawing his guilty plea. The defendant's failure to present and support a plausible reason, even in the absence of prejudice to the state, dictates against granting withdrawal. Dopp, 124 Idaho at 485, 861 P.2d at 55.

Ultimately, Baxter's argument is that he pleaded guilty believing that the state would be bound to recommend probation; when it became apparent that the state would not be so bound and would instead recommend a rider, he wanted to withdraw that guilty plea. (Appellant's brief, pp.6-9.) First, under the facts of this case, that is certainly not a just reason for withdrawing the guilty plea. Second, Baxter's supposed reason does not appear wholly supported by the record.

As he did below, Baxter asserts that he only pleaded guilty because the state agreed to recommend probation if a domestic violence evaluation concluded that he was less than a high risk to reoffend, and (unbeknownst to the state) Baxter had already gotten a domestic violence evaluation from Dr. Arnold that concluded he was less than a high risk to reoffend. (Appellant's brief, pp.6-9; see also 8/26/2016 Tr., p.5, L.1 – p.6, L.14; R., p.82.) But Dr. Arnold's evaluation was based on incomplete information, because Baxter was not forthcoming with the evaluator. (8/26/2016 Tr., p.18, L.22 – p.20, L.3.) Because of Baxter's omissions during the evaluation, Dr. Arnold was unaware of basic information like Baxter's drug usage and involvement of substance abuse in the incident, both of which are necessary under the rules to complete a domestic violence evaluation. See I.C.R. 33.3(c)(3). The state therefore supplemented the information considered by Dr. Arnold with the admissions Baxter had made during his plea colloquy. (8/26/2016 Tr., p.20, L.13 – p.21, L.9.) In light of that new information, Dr. Arnold revised his evaluation, reclassifying Baxter as a high risk to reoffend on July 8, 2016. (PSI, pp.57-58.)

Though the state was now no longer bound to recommend probation, Baxter did not immediately file a motion to withdraw his guilty plea. First, new charges in an

unrelated case were filed against Baxter on July 18. (PSI, p.12; 8/26/216 Tr., p.23, L.24 – p.24, L.3.) Under the plea agreement, even had the evaluation remained unchanged, this alone would have released the state from its obligations. (See R., p.83 (“The State’s offer is conditioned upon ... Defendant not acquiring a new criminal charge or charges between the date of this offer and sentencing...” and, if Baxter failed to meet that condition, “the State is not bound to make the sentencing recommendation as outlined above....”).) Then, on August 5, the presentence investigation report was filed (see PSI p.6), giving Baxter the opportunity to review the report. That report was not entirely favorable. (See PSI, pp.6-23.) Then, for the first time on August 12, Baxter’s trial counsel stated that Baxter would be filing a motion to withdraw his guilty plea. (R., p.87.) Baxter’s motion was filed on August 16. (R., p.94.)

The district court was correct that Baxter’s claim that he wanted to withdraw his guilty plea because Dr. Arnold (when given all the information necessary to complete a domestic violence evaluation under the criminal rules) reclassified him as a high risk to reoffend does not entitle him to withdraw his guilty plea. The district court was also correct to consider the timing of Baxter’s motion, which was only filed after he had the opportunity to review his presentence report and new criminal charges had been filed against him. Considering all of the circumstances of this case, the apparent motive for Baxter’s motion to withdraw his guilty plea was simply buyer’s remorse, and buyer’s remorse does not show a just reason to withdraw a guilty plea. The district court should be affirmed.

CONCLUSION

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

DATED this 1st day of March, 2017.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of March, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd