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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45682
Plaintiff-Respondent,)	
)	JEROME COUNTY NO. CR 2006-555
v.)	
)	
MICHAEL R. MURPHY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

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

HONORABLE JOHN K. BUTLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Michael Murphy appeals from the district court's order denying his motion to withdraw his guilty plea.

Statement of Facts and Course of Proceedings

In 2006, Mr. Murphy pled guilty to trafficking in immediate precursors of methamphetamine, a felony, in violation of Idaho Code § 37-2732B(5). (43119 R.,¹ pp.165–66, 175–77.) The district court sentenced him to twenty years imprisonment, with ten years fixed, and retained jurisdiction. (43119 R., pp.175–81.) Following the period of retained jurisdiction, the district court suspended Mr. Murphy's sentence and placed him on probation. (43119 R., pp.190–93.) In 2015, upon Mr. Murphy's admission to a probation violation, the district court revoked his probation and executed his sentence. (43119 R., pp.300–03.) Mr. Murphy appealed, and the Court of Appeals affirmed the district court's order revoking his probation. *State v. Murphy*, Docket No. 43119/43121, 2015 Unpublished Opinion No. 714 (Ct. App. Nov. 16, 2016).

On November 9, 2017, Mr. Murphy moved to withdraw his 2006 guilty plea. (45682 R., pp.6–8.) The district court denied the motion for lack of jurisdiction. (R., p.11) Mr. Murphy appealed. (R., pp.13–14.)

¹ This Court ordered the record be augmented with the Clerk's Record and Transcripts filed in Mr. Murphy's prior appeal: *State v. Murphy*, No. 43119, Jerome County No. CR 2006-555. The Court also ordered a limited clerk's record for this appeal. Citations to each record will reference the Supreme Court Docket Number.

ISSUE

Did the district court abuse its discretion when it denied Mr. Murphy's motion to withdraw his guilty plea?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Murphy's Motion To Withdraw His Guilty Plea

Idaho Criminal Rule 33(c) states: "A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of conviction after sentence and may permit the defendant to withdraw a plea of guilty." I.C.R. 33(c). "[A] court's jurisdiction to amend or set aside the judgment in a case does not continue forever." *State v. Jakoski*, 139 Idaho 352, 354 (2003). "Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." *Id.* at 355. Rule 33(c) "does not include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea." *Id.* Therefore, once the judgment becomes final, the district court "no longer" has jurisdiction to hear a motion to withdraw a guilty plea. *Id.*

Mindful of *Jakoski*, Mr. Murphy nonetheless maintains the district court abused its discretion by denying his motion to withdraw his guilty plea. As he argued in his motion:

On August 23, 2006, defendant had no idea what he was pleading guilty to[], as he was instructed to do so by appointed counsel (see affidavit of Michael Murphy). During the hearing where the defendant ple[d] guilty, the court on the record stated that the defendant had cold pills and since the pills had not been broken down, the defendant did not have a precursor (see affidavit of Michael Murphy).

It's clear that cold pills in the original form [are] not a precursor to methamphetamine until it[']s broken down and separated. On the record the court made this clear, however the transcripts have yet to be produced and every attempt by the defendant to create them . . . is denied (see affidavit of [Michael] Murphy).

The [defendant] clearly ple[d] guilty to a charge for which he is not guilty of and therefore was not made voluntarily, knowingly and intelligently made.

Defendant not having a High School education, relied upon counsel to protect his [constitutional] Rights. Here the plea was not constitutional for several reason[s] as a matter of fact as well as law;

- a) The court stated on the record pill form is not a precursor,
- b) Counsel said or did nothing to protect defendant from pleading guilty to a charge he was not guilty of,
- c) The plea was not voluntarily made, as defendant had limited education,
- d) Manifest Injustice has been imposed upon the defendant as innocent as charged.

The defendant request[s] this honorable court to obtain the full record in this case, including the change of plea hearing dated, August 23, 2006, as the record is required by law.

(R., pp.6–7.) In his affidavit, Mr. Murphy averred: “I do not have a high school education,” I would have never ple[d] guilty had I not been instructed to by my appointed counsel,” “I was not in possession of a precursor,” “I am withdrawing my plea of my own free will,” “I have tried to obtain the full record many time and keep getting denied,” and “The August 23, 2006, transcripts will prove my allegation and support my Rule 33(c) motion.” (R., p.8.) Based on his motion and affidavit, Mr. Murphy asserts his guilty plea was not knowingly, voluntarily, and intelligently made because he relied on his trial counsel’s advice to plead guilty to an offense he did not commit through his possession of cold pills. He submits the district court should have granted his motion to withdraw his guilty plea to correct this manifest injustice. In light of these facts, but mindful of *Jakoski*, Mr. Murphy contends the district court abused its discretion by denying his motion to withdraw his guilty plea.

CONCLUSION

Mr. Murphy respectfully requests this Court reverse the district court's order denying his motion to withdraw his guilty plea and remand his case for further proceedings.

DATED this 15th day of May, 2018.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of May, 2018, 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:

MICHAEL R MURPHY
INMATE #53133
ISCC
PO BOX 70010
BOISE ID 83707

JOHN K BUTLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas