

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45611
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR-2016-23141
)
 CARL FRANK BOISSERANC,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE CYNTHIA K.C. MEYER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Carl Frank Boisseranc appeals from the district court's judgment entered after Boisseranc pled guilty to felony failure to notify of address change. Boisseranc claims 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

Carl Frank Boisseranc is a registered sex offender. (R., p.26.) He has never worked as a truck driver. (8/31/2017 Tr., p.8, Ls.4-8.) He has never had a CDL and has never taken any steps to obtain a CDL. (8/31/2017 Tr., p.29, L.25 – p.30, L.3.)

In August 2015, Boisseranc called Stevens Trucking Company in Texas in response to an ad he saw for truck drivers. (8/31/2017 Tr., p.12, Ls.8-23; p.28, L.4 – p.29, L.8.) He gave them his name and information “about [his] driving past.” (8/31/2017 Tr., p.12, L.24 – p.13, L.8.) He did not submit a “formal job application.” (Id.) Stevens Trucking Company did not hire him. (8/31/2017 Tr., p.12, Ls.8-11.) Boisseranc's single phone call with Stevens Trucking Company in August 2015 is the only time he has spoken with the company. (8/31/2017 Tr., p.29, Ls.12-14.)

In December 2016, deputies from the Kootenai County Sheriff's Office found Boisseranc living at an address different from his registered address. (PSI, p.6.¹) The deputies arrested Boisseranc. (Id.) The state charged Boisseranc with felony failure to notify of address change and included a persistent violator sentencing enhancement in the complaint. (R., pp.30-31; see also R., pp.40-42.)

¹ All citations to the PSI refer to the electronic PDF pagination.

In June 2017, Boisseranc and his attorney signed a binding rule 11(f) pretrial settlement offer. (R., p.126.) Boisseranc agreed to plead guilty. (Id.) The state agreed to a sentence of two years of probation with only the first year supervised and that it would not pursue the habitual offender sentencing enhancement. (Id.) The agreement also stated that the “court will put in judgment that it does not object to the defend[ant] seeking a work trip permit.” (Id. (capitalization altered).) At the change-of-plea hearing, the district court read the terms of the agreement. (6/2/2017 Tr., p.8, L.20 – p.9, L.11.) Boisseranc confirmed that the terms read by the district court “comport[ed] with [his] understanding” of the agreement. (6/2/2017 Tr., p.9, Ls.10-12.) He pled guilty to felony failing to update address. (R., p.125.)

The district court originally set sentencing for July 26, 2017 and ordered a PSI. (R., p.127.) Boisseranc failed to appear for his PSI interview. (R., p.128.) At a show cause hearing held in lieu of sentencing on July 26, 2017, Boisseranc suggested he did not appear for his PSI because he “would like to talk to [his attorney] about withdrawing his guilty plea.” (R., p.129.) The district court ordered that Boisseranc be held in custody until his PSI could be completed. (R., p.130.)

On August 7, 2017, Boisseranc moved to withdraw his guilty plea. (R., pp.134-37.) Boisseranc explained at the hearing on his motion why he wanted to withdraw his guilty plea: “it was likely not possible” for him to go work for Stevens Trucking Company “while . . . on formal felony probation” because, according to Boisseranc’s “general understanding” of felony probation, “any time you are . . . out of state . . . you need to obtain and have on record a trip permit for employment.” (8/31/2017 Tr., p.8, Ls.12-24; p.11, Ls.4-12.) After talking with “people that have been on probation” and the “GAIN

assessment person” (8/31/2017 Tr., p.8, L.25 – p.9, L.8), Boisseranc believed “all indications showed that [he] would be kept in this area while . . . on formal probation.” (8/31/2017 Tr., p.10, Ls.21-25.)

Boisseranc admitted that the person he had done the GAIN assessment with “could not be definitive with me” as to whether he could have a long-haul trucking job while on probation. (8/31/2017 Tr., p.32, Ls.8-12.) He admitted that he did not speak to any probation officer “or anyone else within the Department of Corrections about that possibility.” (8/31/2017 Tr., p.32, Ls.13-16.) He admitted that no one at Stevens Trucking Company told him that he could not work for them while on formal probation. (8/31/2017 Tr., p.13, Ls.12-15.) And he admitted that, at the time he entered the agreement, he understood the agreement did not guarantee that he would receive a work trip permit. (8/31/2017 Tr., p.24, L.25 – p.25, L.2; p.27, Ls.17-19.)

The district court denied Boisseranc’s motion to withdraw his guilty plea. (8/31/2017 Tr., p.53, Ls.1-2; R., pp.161-62.) It found that “Boisseranc knew what he was doing” when he signed the agreement and also found Boisseranc’s testimony that he understood the agreement to mean something different than what it actually said to be “not particularly credible.” (8/31/2017 Tr., p.51, Ls.17-21; p.52, Ls.16-17.) The district court also found, with respect to Boisseranc’s opportunity to work as a long-haul trucker for Stevens Trucking Company, “that there had not been a formal application taken, that he has not been hired, and that he does not have a CDL.” (8/31/2017 Tr., p.49, Ls.16-21.) In light of the evidence presented at the hearing, the district court found “that just cause for withdrawing the guilty plea has not been made.” (8/31/2017 Tr., p.52, Ls.15-16.)

The district court sentenced Boisseranc to two years' imprisonment, with one year fixed and one year indeterminate; suspended the execution of the sentence; and placed Boisseranc on supervised probation for two years. (R., p.179.) Boisseranc timely appealed. (R., pp.190-95.)

ISSUE

Boisseranc states the issue on appeal as:

Did the district court abuse its discretion when it denied Mr. Boisseranc's motion to withdraw his guilty plea, because a just reason existed to withdraw the plea?

(Appellant's brief, p.7.)

The state rephrases the issue as:

Has Boisseranc failed to show the district court abused its discretion when it denied Boisseranc's motion to withdraw his guilty plea?

ARGUMENT

Boisseranc Has Failed To Show The District Court Abused Its Discretion When It Denied Boisseranc's Motion To Withdraw His Guilty Plea

A. Introduction

The district court properly exercised its discretion when it denied Boisseranc's motion to withdraw his guilty plea. Boisseranc tried to carry his burden to present a just, plausible reason to withdraw by claiming that, after agreeing to the plea, he became aware that serving probation could interfere with an opportunity he had to work as a long-haul truck driver for Stevens Trucking Company in Texas. He failed on two counts.

First, Boisseranc failed to establish that anything changed, from the time he signed the agreement to the time he moved to withdraw his guilty plea, in his understanding of the effect the agreement could have on his potential employment. The agreement did not guarantee Boisseranc would obtain a work trip permit while on probation, and Boisseranc conceded he knew that when he signed the agreement. Boisseranc claims he subsequently learned from probationers and the presentence investigator that he would likely not receive a permit, but he failed to show how any of these people, none of whom make permitting decisions, could have known the likelihood of Boisseranc obtaining a permit.

Second, Boisseranc failed to establish that he actually had an opportunity to work as a long-haul truck driver for Stevens Trucking Company. His only evidence of the alleged opportunity was a phone call he placed *two years* prior to his motion to withdraw his guilty plea in which he told the company his name and provided his driving history. Boisseranc never followed up with the company, never filed a formal application, and never took any steps toward securing his CDL. Serving probation cannot interfere with a job opportunity that does not exist.

B. Standard Of Review

“The standard of review on appeal in cases where a defendant has attempted to withdraw a guilty plea is whether the district court has properly exercised judicial discretion as distinguished from arbitrary action.” State v. Dopp, 124 Idaho 481, 483, 861 P.2d 51, 53 (1993). “[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.” State v. Hartsock, 160 Idaho 639, 641, 377 P.3d 1102, 1104 (Ct. App. 2016) (quoting State v. Hanslovan, 147 Idaho 530, 537, 211 P.3d 775, 782 (Ct. App. 2008)).

C. Boisseranc Failed To Present A Just Reason To Withdraw His Guilty Plea

The district court did not abuse its discretion when it denied Boisseranc’s motion to withdraw his guilty plea. “Withdrawal of a presentence guilty plea is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn.” Dopp, 124 Idaho at 485, 861 P.2d at 55 (citation omitted). “[D]efendants seeking to withdraw a guilty plea before sentencing must show a just reason for withdrawing the plea.” Id. “The defendant’s failure to present and support a plausible reason will dictate against granting withdrawal, even absent prejudice to the prosecution.” Id. Boisseranc claims he presented a just reason—namely, that he “did not fully understand how the plea would impair his ability to obtain future employment as a long haul truck driver.” (Appellant’s brief, p.8.) His claim is not supported by the record.

Boisseranc failed to establish that his understanding of the effect the plea could have on his future employment changed. The agreement itself, which Boisseranc signed, did not state that Boisseranc would get a work trip permit but only that the “court will put in judgment that it does not object to the defend[ant] seeking a work trip permit.” (R.,

p.126 (capitalization altered).) Boisseranc conceded at the hearing on his motion that, at the time he entered the agreement, he understood it did not guarantee him a work trip permit (8/31/2017 Tr., p.24, L.25 – p.25, L.6), he “could only trust and believe” that he would get a work trip permit (8/31/2017 Tr., p.25, L.23 – p.26, L.2), and he was merely “hopeful that [he] would get granted a trip permit by [his] probation officer” (8/31/2017 Tr., p.26, Ls.3-5). At the conclusion of the hearing, the district court expressly found that “Mr. Boisseranc knew what he was doing” when he signed the agreement. (8/31/2017 Tr., p.52, Ls.15-25.)

Boisseranc asserts that, after he entered the agreement, “he ‘found out that it was likely not possible [to be a long-haul trucker] while I was on formal felony probation.’” (Appellant’s brief, p.12 (quoting 8/31/2017 Tr., p.8, Ls.20-24).) He cites two sources for that information: “word of mouth from people that have been on probation” and “the GAIN assessment person.” (8/31/2017 Tr., p.8, L.25 – p.9, L.8.) But Boisseranc has failed to show that either source would (or could) have known the likelihood of him getting a work trip permit. He provided no context for the information he supposedly learned from the probationers: he did not provide their names, any details of their conversation, the basis for their assertions, or even a general recollection of what the probationers actually said. (See id.) And, as Boisseranc conceded at the hearing, the individual who conducted the GAIN assessment “could not be definitive with me.” (8/31/2017 Tr., p.32, Ls.8-12.) That is because, as the district court noted, “people who conduct GAIN assessments are not Probation and Parole officers and are not the people who would be making decisions about whether or not to grant a trip permit.” (8/31/2017 Tr., p.46, Ls.13-16.)

Moreover, aside from the second-hand speculation from the probationers and the individual who conducted the GAIN assessment, Boisseranc presented no evidence at the

hearing that it is, in fact, “likely not possible [to be a long-haul trucker] while . . . on formal felony probation.” (8/31/2017 Tr., p.8, Ls.20-24.) No one at Stevens Trucking Company told Boisseranc he could not work for them as a long-haul trucker while on probation. (8/31/2017 Tr., p.13, Ls.12-15.) And Boisseranc did not talk to any “probation officer . . . about that possibility.” (8/31/2017 Tr., p.32, Ls.13-16.)

In sum, Boisseranc knew the risk that he may not be able to obtain a work trip permit at the time he entered the plea agreement. (8/31/2017 Tr., p.24, L.25 – p.25, L.6; p.52, Ls.15-25.) He then moved to withdraw his plea, without any additional reliable information, based on the previously-known risk that he may not be able to obtain a work trip permit. (8/31/2017 Tr., p.8, Ls.20-24.) That does not show that Boisseranc gained a “full[er] understand[ing] [of] what he was getting into with the agreement.” (Appellant’s brief, p.13.) It shows that he simply changed his mind after pleading guilty, which is not a “just reason” to withdraw a guilty plea. Dopp, 124 Idaho at 484-86, 861 P.2d at 54-56 (holding defendant did not show a just reason where “he subsequently changed his mind and believed his chances of getting a lighter sentence would be better if he went to trial and submitted the case to the jury”).

Boisseranc’s claim also fails because he did not establish that he actually had an opportunity to obtain future employment as a long-haul truck driver. The sum total of his evidence was his claim he made a single phone call to Stevens Trucking Company more than *two years* prior to his decision to withdraw his guilty plea and gave the company his name and information about his “driving past.” (8/31/2017 Tr., p.12, L.24 – p.13, L.8; p.28, L.4 – p.29, L.11.) As the district court found, “there had not been a formal application taken, . . . he has not been hired, and . . . he does not have a CDL.” (8/31/2017 Tr., p.49,

Ls.16-21.) Boisseranc's potential inability to travel while on probation cannot possibly interfere with an opportunity that does not exist.

Boisseranc testified that, during the phone call in August 2015, Stevens Trucking Company "cleared me to go in and work for them, and when I'm ready to go, just to contact them and they would be sending me a plane ticket and I would be heading to Texas and I would be on my way to training." (8/31/2017 Tr., p.28, L.25 – p.29, L.8.) Even assuming the conversation happened exactly as Boisseranc remembered, it happened more than two years prior to his motion to withdraw his guilty plea (8/31/2017 Tr., p.29, Ls.9-11), and Boisseranc had not been in contact with Stevens Trucking Company since that time (8/31/2017 Tr., p.29, Ls12-14). Boisseranc's implausible suggestion that, two years after the phone call, Stevens Trucking Company still had a long-haul trucking opportunity waiting for him does not pass muster as a just reason to withdraw his guilty plea. See Hartsock, 160 Idaho at 641, 377 P.3d at 1104 ("The defendant's failure to present and support a *plausible* reason will dictate against granting withdrawal" (emphasis added)).

Boisseranc tried pointing to "periodic ongoing advertisements" that Stevens Trucking Company ran as proof that "they would have a job open for [him] at this time." (8/31/2017 Tr., p.29, Ls.15-21.) But as Boisseranc conceded, the mere fact that the company was advertising for truck drivers does not mean that *Boisseranc* could obtain a job with the company. (8/31/2017 Tr., p.29, Ls.22-24.) If a generic hiring advertisement from an out-of-state company sufficed as a just reason to withdraw a guilty plea, "withdrawal would effectively be an automatic right." State v. Akin, 139 Idaho 160, 162, 75 P.3d 214, 216 (Ct. App. 2003) (observing mere assertion of legal innocence not

sufficient condition for withdrawal because that would mean “withdrawal would effectively be an automatic right”).

On appeal, Boisseranc erroneously faults the district court for focusing on whether interference with employment prospects qualifies as a “collateral consequence.” (Appellant’s brief, p.8.) The collateral-consequence analysis is relevant to determining whether the plea was entered “voluntarily, knowingly, and intelligently,” State v. Heredia, 144 Idaho 95, 97-99, 156 P.3d 1193, 1195-97 (2007), which is “[t]he first step in analyzing a motion to withdraw a guilty plea,” State v. Baxter, No. 44535, Slip Op. at 4 (Idaho App. June 27, 2017). While Boisseranc has conceded on appeal that his plea did not suffer from a constitutional defect (Appellant’s brief, p.8), that was the thrust of his argument before the district court (R., p.136 (arguing Boisseranc’s alleged lack of understanding made his plea “not knowing, intelligent, and voluntary”)).

Furthermore, the district court did not focus exclusively on the constitutional analysis. The district court articulated the proper standard:

Well, the Court under Rule 33(c) certainly has discretion to determine whether or not to grant a motion to withdraw a guilty plea presentencing and pre-receipt of a PSI. There is no PSI in this case, and we have not gone to sentencing. That discretion is to be liberally applied. However, the defendant has to show good cause for the withdrawal of the guilty plea.

(8/31/2017 Tr., p.43, Ls.3-9.) The district court made a series of factual findings and credibility determinations. (8/31/2017 Tr., p.43, L.10 – p.52, L.14.) And the district court applied the correct standard to the facts of the case to make its decision: “I do find that just cause for withdrawing the guilty plea has not been made.” (8/31/2017 Tr., p.52, Ls.15-16.) The district court thus “properly exercised judicial discretion as distinguished from arbitrary action.” Dopp, 124 Idaho at 483, 861 P.2d at 53.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment entered after Boisseranc pled guilty to felony failure to notify of address change.

DATED this 24th day of July, 2018.

/s/ Jeff Nye _____
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of July, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Jeff Nye _____
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JN/dd