9-13-2018

State v. Christian Appellant's Brief Dckt. 45692

Electronically Filed
9/13/2018 1:19 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45692**
Plaintiff-Respondent,	)	
	)	**CANYON COUNTY NO. CR-2017-5562**
v.	)	
	)	
JONATHAN R. CHRISTIAN,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE GEORGE D. CAREY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Subsequent to Mr. Christian's *Alford* pleas[1] to the crimes of battery with intent to commit a serious felony and attempted strangulation, Mr. Christian was sentenced on each count to a fifteen year term, with two years determinate, both counts to run concurrently. Prior to entering his pleas, Mr. Christian requested the district court appoint to him a new attorney based upon his counsel's alleged inadequate representation. However, the court summarily refused his request, citing financial limitations and relying upon counsel to make the ultimate determination. Mr. Christian thereafter entered his pleas. Once he was sentenced, Mr. Christian moved to withdraw his plea based upon a "just reason," that such plea was not knowing, intelligent, nor voluntary, due to the extreme pain under which he labored at the time of his plea. The district court denied the same after conducting a hearing where it applied an incorrect legal standard. On appeal, Mr. Christian contends the district court abused its discretion when denying his motion to withdraw his plea because his plea was involuntary and he met his burden of showing a just reason to withdraw his plea.

Statement of the Facts and Course of Proceedings

Mr. Christian was involved in a serious domestic dispute with his wife, Amber Williams, in April of 2017. (R., p.18.) Mr. Christian was arrested and formally charged by way of indictment with battery with intent to commit a serious felony, attempted strangulation (three counts), domestic battery with traumatic injury (two counts), false imprisonment, and intentional

[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970). Under an *Alford* plea, a defendant pleads guilty but refuses to admit to the commission of the acts constituting the crime. *State v. Dopp*, 124 Idaho 481, 485, n. 1 (1993).

destruction of a telecommunication device. (R., pp.29-34.) A Canyon County Public Defender was appointed to represent Mr. Christian. (R., p.39.) An Information Part II was filed, alleging Mr. Christian was a persistent violator of the law. (R., p.54.) On the day set for arraignment on the information and possible change of plea, July 20, 2017, approximately three months into the case, Mr. Christian's counsel relayed to the court that he and Mr. Christian had gone over a plea form, but that Mr. Christian had changed his mind. (Tr., p.1, Ls.1-4.) Mr. Christian was arraigned that same day, and then petitioned the court for a new public defender because he felt his counsel was insufficient, and had done nothing in his case. (Tr., p.3, Ls.9-12.) Without conducting a hearing, the district court denied Mr. Christian's request, indicating it was not in a position to financially appoint new counsel, and would rely upon current counsel (the one Mr. Christian alleged was ineffective) to determine whether there was a conflict. (Tr., p.3, L.12 – p.4, L.6; R., pp.56-57.)

After the court denied Mr. Christian's request for new counsel, the prosecution moved to submit the case to mediation. Mr. Christian's counsel signed a stipulation, and the district court ordered the same. (R., pp.58-65.) The case was mediated on the morning on August 8, 2017. Later that same day, Mr. Christian entered into an Idaho Criminal Rule ("I.C.R.") 11 plea agreement, agreeing to enter guilty pleas to two counts - battery with intent to commit a serious felony and attempted strangulation. (R., pp.69-73.) The district court inquired of Mr. Christian to confirm his understanding of the plea agreement reached earlier that morning in mediation, and that Mr. Christian was giving up his rights to remain silent and to jury trial. (Tr. p. 7, L.4 – p.8, L.14.) Mr. Christian's attorney interjected that Mr. Christian's plea would be entered pursuant to *Alford* due to "some issues that he had chemically and some medications and stuff," and there was a lot of the incident that Mr. Christian did not recall. (Tr., p.8, Ls.17-25.) Counsel

assured the court that Mr. Christian had seen all of the evidence and wanted to take advantage of the plea agreement. (Tr., p.9, Ls.1-6.)

When the district court sought to confirm if Mr. Christian agreed with counsel's statements, Mr. Christian replied, "Yes, Your Honor. I have no recollection. I mean, I just had some flashbacks after the fact. That's all I have." (Tr., p.9, Ls.9-11.) Mr. Christian confirmed that he had seen the State's evidence, explaining that he had no intention of doing anything to Ms. Williams, and that he was pleading guilty because there was a likelihood the jury would convict him. (Tr., p.9, L.12 – p.13, L.3.) Mr. Christian went on to explain that he didn't remember anything, that he took a polygraph just to show that he was not lying, that he was put on Xanax at the hospital a few days prior and it was the Xanax that did it, but that he remembered a flashback that he was on top of his wife, had seen the video, and saw that his wife looked pretty "messed up." (Tr., p.10, Ls.6-23.) The district court did not make any inquiries into Mr. Christian's satisfaction with counsel and his representation. The matter was then set for sentencing approximately three weeks later.

On the date set for sentencing, August 28, 2017, Mr. Christian's attorney informed the court that Mr. Christian had contacted the public defender's office several days prior, seeking to withdraw his plea. (R., p.88.) (Tr., p.13, Ls.18-19.) The district court continued the case to allow defense counsel to file a formal motion to withdraw Mr. Christian's plea. (R, p.89.) Thereafter, Mr. Christian filed a motion to withdraw his plea pursuant to I.C.R. 33(c), on the basis that his plea was involuntary due to the fact that he was suffering with immense pain on the day of his mediation and plea such that he was not able to make an intelligent decision in regard to his case. (R., pp.90-95.) On the date of the rescheduled motion to withdraw hearing, the district court announced the legal standard it would apply:

> Mr. Gatewood, it's your client's burden to demonstrate that his plea was not made knowingly, intelligently, and voluntarily, and so how do you want –

(Tr., p.24, Ls.11-13.) At the hearing, Mr. Christian introduced medical records from the jail, to which the State stipulated. (Tr., p.17, L.1 – p.18, L.9.) Based upon those records, the district court made factual findings that Mr. Christian demonstrated that he was prescribed Gabapentin, 600 milligrams, Meloxicam, 7.5 milligrams, and Tramadol, 50 milligrams. Further, the court found that Mr. Christian was not given those prescribed medications in the morning on the date of mediation and plea; that he was given his Gabapentin and Tramadol at 2:00 p.m., in the afternoon that day, and the Meloxicam sometime later in that evening. The court also found that the change of plea hearing occurred at 2:30 p.m. (Tr., p.24, L.21 – p.25, L.13.) Mr. Christian then testified that he took Gabapentin for sciatic nerve damage to his leg, Meloxicam for inflammation, because it "calms it down so that it doesn't pulsate like a wisdom tooth[] ache and down [his] leg all the way to [his] calf. And then the Tramadol is for pain on top of that." (Tr., p.27, Ls.2-7.) Mr. Christian testified that he did not get his medications that morning which left him in very tremendous pain, that having received two of the three medications at 2:00 p.m. was not effective to stop the pain, that the pain affected his ability to make decisions and enter his plea, and that his decisions were not clear nor accurate. (Tr., p. 27, L.24 – p.29, L.3.)

On cross-examination by the State, Mr. Christian acknowledged that on the day of the mediation and plea, he did not tell counsel or the court that he was in so much pain, that he wasn't trying to give the courts any problems and was just trying to get through it and get to his medication. (Tr., p.30, L.23 – p.31, L.22.) The court then engaged in its own questioning, asking Mr. Christian whether he acknowledged filling out the guilty plea advisory form and responding to questions such as those concerning his capacity to understand the proceedings and

medications. (Tr., p.32, L.10 – p.34, L.19.) Mr. Christian acknowledged completing the form accordingly, however, explained that there was a lot going on in his body:

> Your Honor, that whole paper I was going through in agonizing pain, and I said no [to the question regarding medication] because I thought it was about drugs, like illegal drugs and stuff. I was just going over it real quick. It was getting to be lunchtime. I thought people needed to get out of there, and I just wanted to get back and get my meds if I could get them because my legs were really hurting me really bad.

(Tr., p.34, Ls.12-19.) Next, the State called a doctor specializing in the area of pharmacology and toxicology who reviewed the medical records from the Canyon County jail and the affidavit of probable cause. (Tr., p.35, L.19 – p.36, L.19.) Dr. Dawson testified that Gabapentin is commonly used for neuropathic pain, Meloxicam is a fairly long-acting anti-inflammatory agent to help with the inflammatory process associated with nerve damage, and Mr. Christian had a short course of therapy with Prednisone. (Tr., p.37, L.17 – 38, L.8.) Dr. Dawson then explained the half-life of some of these drugs, and then offered an opinion that Mr. Christian could have entered a knowing and voluntary guilty plea even having missed his morning dose. (Tr., p.38, L.14 – p.40, L.12.)

Further, in response to the court's own questioning of Dr. Dawson testified, based upon his review of these Canyon County medical records and the probable cause arrest affidavit, that it was his opinion to a high degree of medical certainty that Mr. Christian could have or would have been able to enter a knowing and voluntary plea, based upon the caveat that "if it was that debilitating it would be very obvious to those who are around him at the time under the clinical circumstances that pain was debilitating. The level of pain with sciatica is such that it's very obvious for those who are in their company. And if there were no comments made about that or nothing specifically referencing that, it's my opinion that it was not that debilitating." (Tr. p.40,

L.15 – p.41, L.4.) The district court took the matter under submission and then issued a written opinion denying Mr. Christian's I.C.R. 33(a) motion.

The district court's denial was based upon application of the legal standard governing constitutionally-valid guilty pleas, i.e., whether the plea was entered knowingly, intelligently, and voluntarily. (R., pp.102-104.) After considering the adduced evidence, the court concluded the following:

> The record in this case clearly reflects that the defendant understood the nature of the charges and not only the possible consequences but the exact penalty that would be imposed. Both the Rule 11 agreement and the Guilty Plea Advisory form clearly spelled out that the defendant was waiving his right to a jury trial and his right to confront his accusers and his right to remain silent. It is the conclusion of this Court that the defendant has failed to demonstrate that he did not understand the consequences of pleading guilty.

(R., p.104.) The district court did not articulate any "just reason" analysis during the hearing or in the written opinion. At the sentencing hearing, although the attorneys wished to go forward with the plea agreement and sentencing, Mr. Christian voiced several concerns to the court, which were consistent with his posture at the plea and motion to withdraw hearing:

> I'm a veteran. I never got veterans court. I didn't get mental health. I'm suffering PTSD, major depression. **I can't remember things anymore. I don't remember what happened. I don't remember signing a Rule 11. I don't remember the day of mediation. That's why I tried to get it withdrawn**. . . .
>
> I don't know why I wasn't afforded the opportunity to get a rider or get a withheld judgment. I'm not a bad person. But I'm mostly concerned about my wife. I love her to death. **I'm glad these cops showed up because I wouldn't have known what I was doing. I wasn't awake. I was blacked out**.
>
> **My lawyer is telling me that's not a defense**. I don't know what is for doing that to a woman. I would never do that. I was raised in the military. I have morals. Okay. I served in the military, Desert Storm. I never got a chance to get anything less than this sentence. I'm not this type of person. I would never do this. I just think that nobody really – just thought I was messing my wife up, you know, to try and hurt her on purpose, and I would never do that.

> I don't know what else to say. I just don't think the system – the other two letters I wrote the judge he never seen. I'm appealing this decision. I thought I should have gotten something less given this – **now, if I had done that blatantly, I should have got more. But if I had no knowledge of what I was doing – and it wasn't alcohol induced. It was something with my brain. Something is going on**.
>
> My mom looked it up. She thinks I have hypoxia, okay, which is these types of things. . . . **I was unaware of what I was doing**, and I would never do this to my wife ever in a million years. If I was conscious, I would never, ever do it, ever. . . .
>
> I don't know why I didn't get offered to do like veterans or mental health. Nobody evaluated me. Nobody checked out – gave me, you know, what I mean, to see what's really wrong with me. Nobody did anything. They said here. Here's what you're going to get. If you don't sign this, you're going to get five to ten years. **You know, I was coerced into signing this deal. That's why I tried to get out of it because I did not want this deal. I don't even remember half of what it contained. . . . These guys said I don't have a defense. Well, I think it's a pretty good defensive (sic) if I have proof I went to the hospital two days before this happened and they put me on a medicine that I'm allergic to or something**.

(Tr., p.56, L.20 – p.59, L.23.) (emphasis added.) The district court made no comment nor inquiry into Mr. Christian's assertions and concerns. The district court inquired of the attorneys as to the lack of a presentence investigation, and was advised that since probation was not on the table, none was needed and they wanted to go ahead and take care of things. (Tr., p.59, L.24 – p.60, L.14.) The district court then imposed a sentence of fifteen years on each count, two years determinate, to run concurrent. (R., p.114.) Mr. Christian thereafter filed a timely appeal. (R., p.121.)

ISSUE

Did the district court abuse its discretion by denying Mr. Christian's motion to withdraw his *Alford* pleas?

ARGUMENT

The District Court Abuse Its Discretion By Denying Mr. Christian's Motion To Withdraw His *Alford* Pleas

A. Introduction

Mr. Christian asserts the district abused its discretion in denying his motion to withdraw his plea by unreasonably determining his plea was knowing, intentional, and voluntary. Even assuming it was proper to conclude his plea was consistent with constitutional standards, Mr. Christian further asserts the district court applied an incorrect legal standard and unreasonably concluded Mr. Christian failed to provide a "just reason" for withdrawal of his plea. Idaho Criminal Rule 33(c) governs motions to withdraw a plea. It states that a motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended, or if made after sentencing, to correct manifest injustice. I.C.R. 33(c). The timing of when the motion is made is of importance. Where a defendant seeks to withdraw his plea prior to sentencing, he need only demonstrate a just reason to withdraw his plea. *State v. Gonzales*, 158 Idaho 112, 115 (Ct. App. 2015); *State v. Hocker*, 115 Idaho 137, 139 (Ct. App. 1988). District courts are encouraged to exercise their discretion to grant a motion to withdraw a guilty plea liberally when it is made prior to sentencing, before a defendant learns of the contents of a PSI report. *State v. Hartsock*, 160 Idaho 639, 641–42 (Ct. App. 2016). Once a defendant presents a just reason, relief will be granted absent a strong showing of prejudice to the state. *Hocker*, 115 Idaho at 139. Upon review, a district court's denial of a motion to withdraw will be reviewed for an abuse of discretion, i.e., (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).

B. The District Court Abused Its Discretion By Failing To Exercise Reason When Determining The Constitutionality Of His *Alford* Pleas

Mr. Christian asserts his pleas were not valid based upon the totality of the circumstances which rendered his plea invalid. "A threshold question is whether the plea of guilty was knowingly, intelligently and voluntarily made." *State v. Rodriguez*, 118 Idaho 957, 959 (Ct. App. 1990). Relief must be granted if the plea is legally defective. *Id.*

> That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so—hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge. Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.

Brady v. United States, 397 U.S. 742, 748 (1970). Under Rule 33(c), "[i]f a plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be made voluntarily, knowingly, and intelligently, then . . . 'just reason' will be established as a matter of law." *State v. Stone*, 147 Idaho 330, 333 (Ct. App. 2009). A just reason for permitting the withdrawal of a guilty plea exists if the plea is involuntary. *See State v. Hanslovan*, 147 Idaho at 530, 536 (Ct. App. 2008).

The analysis therefore begins with an initial determination as to whether the plea was constitutionally valid. *State v. Ballard*, 114 Idaho 799, 801-802 (1988) (answering the preliminary question of whether the plea was voluntarily and intelligently given first, and then

proceeding to an analysis of whether the district court abused its discretion in denying his motion to withdraw guilty plea on the basis that the state breached the plea agreement). *See also, State v. Anderson*, 156 Idaho 230 (Ct. App. 2014). Pursuant to I.C.R. 11, the record must demonstrate the voluntariness of the plea; that defendant was informed of the consequences of the plea, including minimum and maximum punishments, as well as direct consequences; that defendant was advised he would be waiving the right against compulsory self-incrimination; the right to trial by jury and the right to confront witnesses against the defendant; that the defendant was informed of the nature of the charge against him; whether any promises were made to induce him to plead; and the nature and terms of any plea agreement. I.C.R. 11(c). Moreover, while a plea advisory form may be used to aid the court, the district court must make a record showing the following:

> (1) the defendant understands the nature of the charge(s), including any mental element such as intent, knowledge, state of mind;
> (2) the defendant understands the maximum and minimum punishments, and any other direct consequences that may apply;
> (3) the defendant understood the contents of the guilty plea advisory form, and the defendant's plea is voluntary.

I.C.R. 11(e). "The determination that a plea is entered voluntarily, knowingly and intelligently involves a three-part inquiry: (1) whether the defendant's plea was voluntary in the sense that he understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived his rights to a jury trial, to confront his accusers, and to refrain from incriminating himself; and (3) whether the defendant understood the consequences of pleading guilty." *State v. Dopp*, 124 Idaho 481, 484, 861 P.2d 51, 54 (1993) (upholding denial of motion to withdraw because Dopp failed to demonstrate just reason.) Upon review, the voluntariness of the guilty plea and waiver must be reasonably inferred from the record as a whole. *State v. Carrasco*, 117 Idaho 295 (1990).

Mr. Christian's plea was unconstitutional because it was not knowing and intelligent. Mr. Christian asserted that on the morning of mediation and his afternoon plea, he labored under intense sciatic nerve pain that throbbed like a pulsing toothache that prevented him from making clear and accurate decisions that day. (Tr., p.27, Ls.2-7; p.28, L.23 – p. 29, L.2.) Mr. Christian fully documented his injury and pain through his testimony at the motion to withdraw hearing, and entered into evidence medical records clearly indicating he was on three different medications for and related to pain. (R., pp.99-101.) Not only did he document his pain and the necessity for medication, but he produced concrete evidence that he did not receive his medication the morning of the mediation and that his pain continued into the afternoon, when he entered his plea. (Tr., p.27, L.2 – p.29, L.3.) The district court issued factual findings adopting this evidence regarding medications and when they were received. Moreover, Mr. Christian voiced his intention to withdraw his plea within days of entering it and the consistency of his posture bolsters his claim. Further, since Mr. Christian's attorney waived a presentence investigation, and there was a binding plea agreement, there is no contention that Mr. Christian developed buyers' remorse only after learning about the projected sentence. (Tr., p.59, L.24 – p.60, L.14.)

In contrast, the State's evidence was insufficient to demonstrate the voluntariness of Mr. Christian's plea. Despite that the government called a doctor to testify about medication generally and review Mr. Christian's medical records, Dr. Dawson had no personal knowledge of Mr. Christian, nor had he conducted an individual analysis of Mr. Christian's medical condition, Mr. Christian's pain, or even Mr. Christian's response to medication. Dr. Dawson's opinion was based upon pure speculation. He opined, to a high degree of medical certainty, Mr. Christian "could have or would have been able to enter a knowing and voluntary plea," with one caveat,

"[t]hat caveat would be that if it was that debilitating it would be very obvious to those who are around him at the time under the clinical circumstances that pain was debilitating. The level of pain particularly with sciatica is such that it's very obvious for those who are in their company. And if there were no comments made about that or nothing specifically referencing that, it's my opinion that it was not that debilitating." (Tr., p.40, L.15 – p.41, L.5.) From this language, one can conclude Dr. Dawson's opinion as to whether an injured party is suffering debilitating pain appears to be dependent upon the observations of other people.

Even assuming it was proper for this doctor to make this supposition on scant information, his opinion did not eliminate the trial court's duty to actually analyze whether, even if Mr. Christian *could have* entered a voluntary plea, he actually did. Thus, the district court abused its discretion in affording Dr. Dawson's speculative opinion weight over Mr. Christian's valid and medically document first-hand account.

Further, a review of the record as a whole does not lead to the reasonable inference that Mr. Christian's plea was knowing, intelligent, and voluntary. Rather, Mr. Christian's *Alford* pleas were undermined by the apparent conflict between Mr. Christian and his counsel, including the timing and nature of the court-ordered mediation; the district court's failure to confirm the voluntariness through compliance with Rule 11(e) given Mr. Christian's equivocal statements on the record; and the immense physical pain Mr. Christian suffered on the date of the mediation and plea which rendered his plea involuntary. His motion to withdraw his plea should have been granted because he established a just reason as a matter of law. *State v. Thomas*, 154 Idaho 305, 307 (Ct. App. 2013) ("If a plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be made voluntarily, knowingly and intelligently, then

"manifest injustice" or the lower standard of "just reason" will be established as a matter of law.").

The apparent conflict with counsel was evident from the hearing transcripts. A discussion in court went as follows:

Christian:	Your Honor, how can I get like a different counsel?
Court:	Well –
Christian:	I feel insufficient counsel.
Court:	Mr. Christian, let me just tell you a couple of things. One is the county provides for the public defender's office, and they're staffed by in my opinion some of the best criminal lawyers in the State of Idaho. Now, maybe you're not happy with your particular counsel, but I'm not in a position financially to appoint another lawyer for you. The record will reflect that you've asked for different counsel, but the court is going to deny it today. I'm going to leave it to you and Mr. Gatewood to work out your differences. Sometimes when you get legal advice, you're not always happy with it because it may not be what you want to hear. In any event, Mr. Christian, at least for today's date I'm not changing counsel. Mr. Gatewood if for some reason you feel like there's a conflict, I'm sure there's other attorneys in your office that could perhaps represent Mr. Christian.
Christian:	Yes, Judge.
Court:	That's all we're going to take care of today.
Christian:	It's not It's not insufficient counsel. It's insufficient finding evidence. Nobody has tried to get any of it. That's what it is. Nobody has tried to get any of it.
Court:	Well, I'm sure you've communicated that to Mr. Gatewood. And Mr. Gatewood -
Christian:	Hasn't done anything.
Court:	Mr. Gatewood, I think you're aware of the requests that have been made. I think it's your judgment as to whether or not they can be pursued. So, Mr. Christian, that's all we're going to take up today.
Christian:	Yes, sir.

(Tr., p.3, L.3 – p.4, L.22.) This apparent conflict between Mr. Christian and his counsel is highly relevant to an analysis of the constitutionality of his plea because of the timing of proceedings that occurred next. At the very next court appearance, July 25, 2017, a different attorney from the Canyon County Public Defender's Office represented Mr. Christian, and the prosecution advised the court that the parties had intentions for mediation. (R., p.58.) On the same day of the mediation, Mr. Christian changed his pleas. That Mr. Christian's concerns with the efficacy

of his representation were ignored, and that he went to mediation and entered pleas such a short time later raises concerns about the voluntariness of his decision to enter *Alford* pleas. There were minimal assurances that the attorney-client relationship was sufficiently intact in that timeframe between his request for new counsel and the time of his mediation and plea to ensure Mr. Christian was acting on his own volition.

In addition to the concerns Mr. Christian raised regarding counsel, he made repeated statements contrary to a showing of voluntariness, which the district court failed to heed. During the plea colloquy, he told the court he had no intentions of hurting his wife, that he didn't remember any of it, that he took a polygraph to prove he wasn't lying about not remembering, and that he wished he never went to the hospital and got put on Xanax. (Tr., pp.8-10.) This inferred he believed he had a valid defense. Mr. Christian's statements were akin to protestations of innocence and/or evidenced a lack of understanding of the intent element of the crimes, and the district court should have engaged in a more in-depth plea colloquy to ensure his pleas were knowing, intelligent, and voluntary. "The procedures outlined in I.C.R. 11(c) are intended to protect the constitutional requirement that guilty pleas be entered voluntarily, knowingly and intelligently, but the procedures of Rule 11(c) themselves are not constitutionally mandated." *State v. Thomas*, 154 Idaho 305, 308 (Ct. App. 2013). Although the district court did engage in some questioning regarding constitutional rights, such as the right to remain silent and right to trial, the district court did not also confirm Mr. Christian understood the nature of the charges, the maximum and minimum punishments, and that his plea was voluntary. For instance, the court did not ask Mr. Christian whether he understood his right to confront and cross-examine his accusers and his right to compulsory process, whether anyone had pressured

him, threatened him, or coerced him into pleading, or whether he understood the nature of charges and mental intent elements. This was contrary to the goal of Rule 11.

Where the record shows the defendant failed to correctly understand an element of the crime, a guilty plea is invalid. *State v. Salazar-Garcia*, 145 Idaho 690, 693 (Ct. App. 2008) (finding guilty plea invalid in a grand theft of livestock case because the magistrate rejected defendant's argument at the preliminary hearing that the state needed to prove the value of the livestock, and even though defendant admitted under oath the value did exceed $150, neither counsel nor the court correctly ensured defendant understood proof of the livestock value was an element of the crime). Recently, in *State v. Gonzales*, 158 Idaho 112 (Ct. App. 2015), the court discussed methods in which a proper record demonstrates compliance with the Rule 11(e) requirement that a defendant be fully advised of the nature of the charges, including the elements of the crime.

> A required statutory mental element such as the defendant's intent in committing a crime, "is perhaps as close as one might hope to come to a core criminal offense 'element.' " *Apprendi v. New Jersey*, 530 U.S. 466, 493, 120 S.Ct. 2348, 2364, 147 L.Ed.2d 435, 457 (2000). There are three primary ways that a record is established showing that a defendant has been informed of the elements of the crime to which he is pleading guilty. The first is through a properly drafted charging document, which should contain, among other things, a clear statement of the elements of the offense. Thus, there will often be a sufficient record of the defendant's awareness of the elements of the offense if the complaint, information, or indictment was read to the defendant in open court at some point in the criminal proceedings. . . . Second, a court taking a guilty plea may rely on a representation by defense counsel on the record that the nature of the charge and the elements of the crime were explained to the defendant. The reliability of this method of notification is dependent, however, on counsel's explanation being accurate. Third, a court taking a guilty plea may choose not to rely on the charging instrument or defense counsel to inform the defendant, but instead independently inform the defendant of the elements of the crime in open court at the change of plea hearing. Although this procedure takes more time and is not constitutionally required, it has a number of advantages.

Id. at 1123-1124 (citations omitted). The *Gonzales* Court went on to describe the main advantage gained when a district court independently informs the defendant of the elements of the crime in open court. That main advantage is confidence in the plea and assurances that a defendant did not receive erroneous advice or operate under misconceptions. A clear record such as this can also preclude future litigation. *Id*. at n.2. In that case, the court vacated Mr. Gonzales's plea, finding he made no statement at the plea hearing from which to infer he was aware of the elements of the crime. Moreover, his statements at the hearing did not indicate that his conduct was willful; his statements only indicated that he was admitting inattentiveness or simple negligence. Even though Gonzales admitted going through the elements of the crime with counsel and signing a guilty plea questionnaire, Gonzales introduced evidence that his attorney's advice regarding the mental state was inaccurate. *Id.* at 1126.

Analogous here is Mr. Christian's posture, that he did not demonstrate his conduct was willful, or that he understood the mental intent required, as evidenced by his statements regarding medication, being in a blackout, and not intending to hurt his wife. Mr. Christian's statements during the plea hearing, the motion to withdraw hearing, and the sentencing hearing, all indicate that he did not believe his conduct was willful or that he fully understand the required mental intent element of his crimes. (R., pp.69-87; Tr. pp.6-64.) "I had no intentions of hurting my wife," and "I just wish – I wish I never went to the hospital and got put an [sic] Xanax because that's what did it. I don't remember any of it. And I wish she knew me that I didn't mean to do this to her. I didn't mean to do it." (Tr., p.9, Ls.17-18; p.10, Ls.10-15.) Meanwhile, even though the charging document includes the nature of the charges and the guilty plea advisory states Mr. Christian checked "yes" to the box asking whether counsel went over the charges and elements (R., p.80.), the record does not also reflect that counsel or the district court

went over the elements of the crime including the required mental state in court. Inquiry along those lines was required in order to ensure a valid plea, given Mr. Christian's protestations that he was in a blackout and did not even remember what happened that night, and that it occurred due to medication he was given at the hospital, all of which intimated that he did not understand the elements of the offenses. *See State v. Carrasco*, 117 Idaho 295, 300-301 (1990) (finding defendant's plea was involuntary due to the English language barrier, and the minimal assurances that his plea was knowing, intelligent, and voluntary, despite that he did engage in some dialogue at the plea hearing evidencing the contrary, and despite that the district court was not required to "follow any prescribed litany or enumerate rights which a defendant waives by pleading guilty".)

In sum, due to Mr. Christian's apparent conflict with counsel, the timing of his mediation and plea, the district court's insufficient questioning during the change of plea, Mr. Christian's protestations of innocence and claims of inability to remember the incident, and Mr. Christian's documented physical and mental deficits on the day of his plea, the integrity of Mr. Christian's plea impugned and should have been vacated by the district court at the motion to withdraw hearing.

C. The District Court Abused Its Discretion When It Denied Mr. Christian's Motion To Withdraw After Application Of The Wrong Legal Standard

Even upon a finding that Mr. Christian's pleas were constitutional, the district court applied the wrong legal standard. When a district court applies the wrong legal standard, the appropriate remedy is to vacate and remand the case back for proper application of governing law. *Jobe v. Dirne Clinic/Heritage Health*, 163 Idaho 65 (2017). Here, the district court began the hearing by announcing it was defendant's burden to demonstrate his plea was not knowing,

intelligent, and voluntary. (Tr., p.24, Ls.11-13.) The district court also conducted its own questioning of Mr. Christian, asking him to explain why he filled out the plea form the way he did. (Tr., p.32, L.9 – p.34, L.19.) The court asked no other questions of Mr. Christian. The district court did not appear to recognize its ability to grant relief upon a lesser stringent than a constitutionally deficient plea, i.e., just reason. Likewise, the court questioned Dr. Dawson, focusing only on whether the plea was knowing and voluntary. (Tr., p.40, L.15 – p.41, L.5.) The district court was required to assess whether, even if Mr. Christian failed to show his plea was unconstitutional, he demonstrated a just reason. If it had found Mr. Christian presented a just reason, the district court should have then contemplated whether the State produced any evidence of strong prejudice it would suffer upon plea withdrawal. Yet here, the State presented no evidence as to prejudice, and the district court eliminated the "just reason" analysis from any consideration. This is demonstrated through the hearing transcript, as well as the court's written decision, which fails to even mention "just reason" or prejudice to the State. (R., pp.102-104) ("It is the conclusion of this Court that the defendant failed to demonstrate that he did not understand the consequences of pleading guilty.")

Although Mr. Christian acknowledges that upon review, a district judge is presumed to know the law, *State v. Leavitt*, 121 Idaho 4 (1991), there is an absence of evidence to support the district court actually considered whether Mr. Christian's reason for withdrawal was just, much less considered any prejudicial effect on the government. No deference that the court applied the correct legal standard should be afforded. *See Lovitt v. Robideaux*, 139 Idaho 322, 326 (2003) (holding a finding is clearly erroneous and not due deference if not supported by substantial evidence). Because the district court abused its discretion in applying the wrong legal standard, the denial of the motion to withdraw should be vacated.

D. The District Court Abused Its Discretion In Denying Mr. Christian's Motion To Withdraw Because He Presented A Just Reason For Withdrawal

Alternatively, even if Mr. Christian's plea was found to be knowing, intelligent, and voluntary, *and* the court applied the correct legal standard, it abused its discretion by unreasonably determining Mr. Christian's reasons for withdrawal did not equate to a "just reason." The "just reason" standard does not require a defendant to establish a constitutional defect. *State v. Henderson*, 113 Idaho 411, 413 (Ct. App. 1987). Moreover, a district court is encouraged to liberally exercise its discretion when considering the good faith, credibility, and weight of a defendant's assertions and ruling on a motion to withdraw. *State v. Hartsock*, 160 Idaho 639, 641 (Ct. App. 2016). Here, the district court did not liberally exercise its discretion. Mr. Christian incorporates the same arguments in support of this claim as he made in support of his challenge to the constitutionality of his plea. *See* Section B., *supra*. Simply put, the totality of the circumstances surrounding the raised, but ignored potential conflict with counsel, the prompt mediation and change of plea hearing on the heels of Mr. Christian's request for new counsel, Mr. Christian's statements regarding lack of intent and claims of innocence and the district court's failure to full ensure a voluntary plea through explicit and thorough questioning, and Mr. Christian's strong evidence demonstrating his health was severely affected on the day of mediation and plea, was more than sufficient to warrant relief under this lower, just reason standard.

CONCLUSION

Based upon the foregoing, Mr. Christian requests this Court to find his *Alford* pleas were involuntary. In the alternative, Mr. Christian asks this Court to find he met his burden of demonstrating a "just reason" that his plea be withdrawn. If this Court does not grant that relief, Mr. Christian requests this Court to find the district court applied the wrong legal standard, vacate the court's denial of his motion to withdrawn, and remand for a new hearing.

DATED this 13th day of September, 2018.

/s/ Lara E. Anderson
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

LEA/eas