1-22-2016

State v. Riggins Appellant's Reply Brief Dckt. 42688

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 42688**
	)	
v.	)	**BONNER COUNTY NO. CR 2013-5834**
	)	
JOSHUA RIGGINS,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

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

HONORABLE BARBARA BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Joshua Riggins challenges the district court's order granting the State's motion to reconsider its order withdrawing his guilty plea. He argues the district court exceeded its authority and denied him due process of law because it unilaterally took away his constitutional rights to a jury trial, to remain silent, and to confront the witnesses against him. In response, the State argues that Mr. Riggins has failed to identify a constitutional violation, the error is not clear on the record because this is an issue of first impression, and any error is harmless because the district court abused its discretion by initially granting Mr. Riggins' motion to withdraw his plea. The State's arguments misconstrue both the law and facts, and are thus unavailing.

ISSUE

Did the district court err by granting the State's motion for reconsideration because the court did not have the authority to reinstate Mr. Riggins' guilty plea?

ARGUMENT

The District Court Erred By Granting The State's Motion For Reconsideration Because The Court Did Not Have The Authority To Reinstate Mr. Riggins' Guilty Plea

In his opening brief, Mr. Riggins challenged the district court's authority to reconsider an order granting the defendant's motion to withdraw his plea under fundamental error. (*See* App. Br., pp.5–6); *State v. Perry*, 150 Idaho 209, 228 (2010). He explained that, by granting the motion to withdraw, the court returned him to his status quo ante and "it is as if the plea had never been entered ab initio." (*See* App. Br., pp.5–6 (citing *Williams v. State*, 762 So. 2d 990, 991 (Fla. Dist. Ct. App. 2000).) Therefore, when the district court granted the State's motion to reconsider, it denied Mr. Riggins due process of law by unilaterally taking away his constitutional rights to a jury trial, to remain silent, and to confront the witnesses against him.

In response, the State first argues that Mr. Riggins has not shown constitutional error:

> [Mr.] Riggins has failed to show any constitutional prohibition on a court's reconsideration of an order granting withdrawal of a guilty plea. The only authority he cites, *Williams v. State*, 762 So.2d 990 (Fla. Ct. App. Fourth Dist., 2000) (cited at Appellant's brief, pp.5–6), relies upon a Florida procedural rule. Riggins does not cite to, and the state is unaware of, any constitutional right implicated in, much less violated by, reconsideration of an order granting a motion to withdraw a guilty plea.

(Resp. Br., p.6.) The State's assertion that Mr. Riggins has failed to identify a constitutional basis for his claim is patently false. As Mr. Riggins Appellant's Brief makes clear, his claim rests on the U.S. and Idaho Constitutions. (*See* App. Br., pp.5–6 ("Criminal defendants enjoy the right to a trial by jury, to remain silent, and to confront the witnesses against him. . . . Allowing the district court to reconsider an order withdrawing a guilty plea in effect allows the district court to unilaterally declare the defendant's guilt; take away his rights to a trial by jury, to remain silent, and to confront the witnesses against him; and in turn denies the defendant due process of law.") (citing U.S. CONST. amends. V and VI; IDAHO CONST. art. I, §§ 7 and 13).)

Similarly, the State's attempt to distinguish *Williams* because it "relie[d] upon a Florida procedural rule" (Resp. Br., p.6), is curious given that *Williams* itself mentions no such procedural rule, *see Williams*, 762 So. 2d at 991. The *Williams* Court cites to two Florida Rules of Criminal Procedure ("FRCP") earlier in the opinion, neither of which has any bearing on this issue. First, *Williams* cited to FRCP 3.172 when explaining the background of the case. *Williams*, 762 So. 2d at 991 ("The trial court found that Williams's change of plea was voluntary under [FRCP] 3.172, accepted Williams's plea of nolo contendere, and set the sentencing hearing for March 5, 1999."). Second, *Williams* cited to FRCP 3.170(f) when discussing the court's discretionary decision to allow the defendant to withdraw his plea in the first place. *Williams*, 762 So. 2d at 991. Neither of those rules appear relevant to this issue (which would explain why *Williams* itself did not cite to them when addressing this issue), the State has failed to actually identify the "Florida procedural rule" on which it claims *Williams* relied, and counsel has found no other rule to which the State could refer.

In fact, *Williams* cites only to cases to support its reasoning on that point. *See id.* The first in the line of cases on which *Williams* relies, *Bell v. State*, 262 So. 2d 244 (Fla. Dist. Ct. App. 1972), appears to have addressed a double jeopardy challenge and does not mention any rules of procedure whatsoever. *Id.* at 245. The defendant's contention in *Bell* was that the district court erred when, after allowing the defendant to withdraw his guilty plea, it allowed the State to recharge him with a greater offense. *Id.* The court rejected the argument, explaining that "[w]hen the appellant withdrew his plea of guilty and it was accepted by the court, it was as if a plea had never been entered ab initio. To hold otherwise would cause the trial courts to be apprehensive of accepting or allowing the withdrawal of a plea because such discretionary action might prevent justice from being carried out." *Id.* The remaining cases cited by *Williams*—

Miles v. State, 620 So. 2d 1075 (Fla. Ct. App. Second Dist., 1993), and *State v. McClain*, 509 So. 2d 1360 (Fla. Ct. App. Second Dist., 1987)—similarly cite to the earlier cases, but not to a "procedural rule." The State's attempt to distinguish *Williams* on the ground that it "relie[d] upon a Florida procedural rule" is baseless. (Resp. Br., p.6.)

The State next claims that there was no clear error, apparently because Idaho has yet to decide the legal issue in this case, while other jurisdictions have gone both ways on it. (Resp. Br., p.6.) The State's argument mistakes the very meaning of clear error. Under the fundamental error standard, "the error must be clear or obvious, without the need for any additional information not *contained in the appellate record*, including information as to whether the failure to object was a tactical decision." *Perry*, 150 Idaho at 226 (emphasis added). It does not, as the State implies, require that the *legal issue* be "clear" or already decided. *State v. Easley*, 156 Idaho 214, 221 (2014) ("This Court has not held that for fundamental error to exist, it is necessary for existing authorities to have unequivocally resolved the issue in appellant's favor.") (footnote regarding the Court of Appeals' holdings to the contrary omitted).

Finally, as for harmlessness, the State contends that Mr. Riggins had not shown prejudice:

> Here the district court abused its discretion when it initially granted [Mr. Riggins'] motion. The *sole basis* for the motion was a claim of innocence, which is not a legal basis for allowing withdrawal of a guilty plea. Because the only prejudice [Mr.] Riggins asserts is the right to retain an erroneous ruling, he has shown no prejudice.

(Resp. Br., p.7 (emphasis added).) As an initial matter, the State's characterization of the facts is not entirely accurate. Mr. Riggins first said that he wanted to withdraw his plea because he was supposed to be taking antidepressants (6/2/2014 Tr., p.5, Ls.1–25), and later said that he wanted to withdraw his plea because he is innocent (6/20/2014 Tr., p.5, L.21 – p.6, L.14). The court

expressly considered both Mr. Riggins' innocence and depression when granting the motion:

> Mr. Riggins, I am loathe to force a person to be sentenced when they're maintaining their innocence. . . . I did read the mental health evaluation and the Gain which suggest that you have been suffering from depression, that you're on medication, that there are some concern[s] about your psychiatric condition, you were walking to talk to a psychiatrist at some point.
>
> Given that, I will allow you to withdraw your plea.

(6/20/14 Tr., p.6, L.16 – p.7, L.11; *see also* R., p.134.) Although on reconsideration the court stated that "there is no meaningful indication in the record that Riggins' depression rose to a level that rendered his guilty plea constitutionally involuntary," that does not change the fact that the court initially granted the motion on both bases. (R., pp.163– 64; *see also* 8/22/14 Tr., p.4, L.20 – p.5, L.19); *State v. Henderson*, 113 Idaho 411, 414 (Ct. App. 1987) ("In granting or denying a motion to withdraw a guilty plea before sentencing has occurred, the district court is empowered with broad discretion, liberal exercise of which is encouraged.") (internal citations omitted). Regardless, just because a court does not abuse its discretion by *denying* a motion brought based on factual innocence alone does not mean it abuses its discretion by *granting* a motion due to factual innocence. The State's assertion that the error was harmless because the district court abused its discretion by granting the motion in the first place is factually incorrect and legally unsupported.

CONCLUSION

Mr. Riggins respectfully requests that this Court vacate his judgment of conviction, withdraw his guilty plea, and remand to the district court for trial.

DATED this 22nd day of January, 2016.

_____/s/_____
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of January, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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