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State v. Krambule Appellant's Reply Brief Dckt. 44433

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44433
)	
v.)	FRANKLIN COUNTY
)	NO. CR 2014-246
MARJORIE BALLS KRAMBULE,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF FRANKLIN**

HONORABLE MITCHELL W. BROWN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Marjorie Krambule appeals from the district court's August 2016 order revoking her withheld judgment and continuing her on probation. She contends the order must be vacated because the January 2015 judgment it purportedly revokes was void, as it was entered while she was proceeding *pro se* and had not waived her right to counsel. Alternatively, she contends there is a structural defect in this case, requiring automatic reversal of her conviction.

Ms. Krambule submits this Reply Brief to respond to the State's argument that this Court lacks jurisdiction to consider the issues raised in this appeal. This Court has jurisdiction to consider the validity of the district court's order revoking Ms. Krambule's withheld judgment because, if the withheld judgment was void, there was nothing for the district court to revoke, and the order purportedly revoking the withheld judgment had no legal effect. Ms. Krambule also responds to the State's argument that she validly waived her right to counsel, which is flatly contradicted by the record. The district court did not provide Ms. Krambule with any warnings about proceeding *pro se*, as required by *Faretta v. California*, 422 U.S. 806 (1975), and in fact expressed concern about Ms. Krambule's emotional state and the voluntariness of her decision to plead guilty at an earlier stage of these proceedings. Ms. Krambule must be allowed to proceed anew in the district court with the assistance of an attorney. *See Faretta*, 422 U.S. at 807 ("The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.")

Statement of Facts and Course of Proceedings

Ms. Krambule included a statement of facts and course of proceedings in her Appellant's Brief. (Appellant's Br., pp.2-7.) She relies on and incorporates that statement herein.

ISSUES

1. Should this Court vacate the August 2016 order revoking Ms. Krambule's withheld judgment because the January 2015 judgment it purportedly revokes was entered while Ms. Krambule was proceeding *pro se* and had not waived her right to counsel, and was thus void?

2. Alternatively, should this Court vacate Ms. Krambule's conviction for accessory to felony possession of a controlled substance because she was allowed to change her plea from "not guilty" to "guilty" and was sentenced without being represented by counsel, and without waiving her right to counsel, which is a structural defect requiring automatic reversal?

ARGUMENT

I.

This Court Should Vacate The August 2016 Order Revoking Ms. Krambule's Withheld Judgment Because The January 2015 Judgment It Purportedly Revokes Was Entered While Ms. Krambule Was Proceeding *Pro Se* And Had Not Waived Her Right To Counsel, And Was Thus Void

In its Respondent's Brief, the State contends this appeal must be dismissed because Ms. Krambule's notice of appeal was timely only from the district court's order revoking her withheld judgment, and this Court thus lacks jurisdiction to consider the validity of the withheld judgment. (Respondent's Br., pp.5-8.) The State is incorrect. The district court purported to revoke a judgment that was void. *See State v. Farfan-Galvan*, 161 Idaho 610, ___ 389 P.3d 155, 160 (2016) (deeming significant the holding in *Burgett v. Texas*, 389 U.S. 109, 114 (1967) that "a judgment is void unless the defendant had a lawyer or waived that right"). Where a judgment is void, it is "[o]f no legal effect." BLACK'S LAW DICTIONARY (10th ed. 2014). Thus, in August 2016, when the district court attempted to revoke the January 2015 withheld judgment, there was nothing to revoke.

The State cites multiple cases for the proposition that where a notice of appeal is timely only from an order revoking probation, the issues on appeal are confined to the order revoking probation, and the appellant cannot challenge the underlying judgment. (Respondent's Br., p.6.) None of the cases cited by the State are analogous to this case, where Ms. Krambule contends the underlying judgment was void. Ms. Krambule is not asking this Court to review whether the underlying sentence was reasonable, as the appellant was in *State v. Dryden*, 105 Idaho 848, 852 (Ct. App. 1983). The Court of Appeals correctly stated in *Dryden* that because the appellant did not appeal when the sentences were initially pronounced, he could not challenge their reasonableness when appealing from an order revoking probation. *Id.* Nor is Ms. Krambule

arguing that there was a constitutional defect in the underlying sentence, as the appellants were in *State v. Jensen*, 138 Idaho 941, 944 (Ct. App. 2003) (attempting to challenge underlying sentence on double jeopardy grounds), and *State v. Tucker*, 103 Idaho 885, 887-88 (Ct. App. 1982) (attempting to challenge underlying sentence as a violation of due process). Instead, Ms. Krambule contends the January 2015 withheld judgment was void. This Court has jurisdiction to consider the validity of a withheld judgment in an appeal from an order purportedly revoking that withheld judgment where the appellant alleges the judgment was void.

II.

Alternatively, This Court Should Vacate Ms. Krambule's Conviction For Accessory To Felony Possession Of A Controlled Substance Because She Was Allowed To Change Her Plea From "Not Guilty" To "Guilty" And Was Sentenced Without Being Represented By Counsel, And Without Waiving Her Right To Counsel, Which Is A Structural Defect Requiring Automatic Reversal

Ms. Krambule argued in her Appellant's Brief that her conviction should be vacated because it is clear from the record that she was denied her constitutional right to counsel in the proceedings leading up to the entry of the withheld judgment in January 2015, and she is entitled to relief whether the error is viewed as structural error or fundamental error. (Appellant's Br., pp.11-13.) The State argues in its Respondent's Brief that "[a] review of the totality of the circumstances in this case reveals that Krambule knowingly and voluntarily waived her right to counsel and therefore has failed to demonstrate fundamental error." (Respondent's Br., p.9.) Nothing could be further from the truth.

When, represented by counsel, Ms. Krambule first changed her plea from "not guilty" to "guilty," she expressed, in the district court's words, "a lot of emotion and a lot of reluctance." (Mot. to Aug., Ex. A at 3:15-40.) In fact, the district court characterized the plea colloquy as "probably the most difficulty colloquy I've had with respect to a change of plea since I've been

on the bench.” (Mot. to Aug., Ex. A at 28:20-32.) The district court granted Ms. Krambule’s motion to withdraw her guilty plea, recognizing she believed she had no other choice but to plead guilty. (Mot. to Aug., Ex. A at 32:30-33:10.) However, when the district court accepted Ms. Krambule’s second guilty plea, when she was not represented by counsel, the district court did not engage in any colloquy with Ms. Krambule, and instead accepted her guilty plea “based upon the colloquy we had . . . a month of two ago.” (Mot. to Aug. Ex. C at 5:14-30, 7:00-05.) The district court then proceeded directly to sentencing, denying Ms. Krambule any chance to hire an attorney (since one presumably was not going to be appointed for her) or move to withdraw her plea (if she had known how to make such a motion).

In addition, it is clear from the record that Ms. Krambule wanted to be represented by counsel. At the hearing on her attorney’s motion to withdraw, her attorney told the district court, “I think my client would like to get alternative legal counsel, but how she’ll go about that, I don’t know.” (Mot. to Aug., Ex. B at 11:00-15.) After granting her attorney’s motion to withdraw, the district court told Ms. Krambule she was “free if [she] would like to talk to [the prosecutor].” (Mot. to Aug., Ex. B at 17:01-18:36.) Ms. Krambule asked if she could “get in more trouble for doing that” and if she would “still be able to . . . hire another lawyer” and the district court answered, “Oh, absolutely, yes,” and said he could not imagine her getting in any trouble for talking to the prosecutor about this case. (Mot. to Aug., Ex. B at 17:01-18:36.) The district court never told Ms. Krambule she might be eligible to be represented by a public defender, and never warned her of the risks of proceeding *pro se*.

A defendant’s waiver of the right to counsel must be knowing, intelligent and voluntary. *See State v. Lovelace*, 140 Idaho 53, 64 (2003). Ms. Krambule did not express a desire to proceed *pro se*, but was simply left unrepresented after the district court granted her attorney’s

motion to withdraw. There is no indication that Ms. Krambule appreciated the dangers and disadvantages of proceeding *pro se*, and she had not demonstrated any ability to file motions or perform legal research on her behalf. *Compare with State v. Jackson*, 140 Idaho 636, 641 (Ct. App. 2014) (concluding record was insufficient to demonstrate a valid waiver of the right to counsel at trial even though defendant had “demonstrated some ability to file motions and perform legal research”). In no way did Ms. Krambule make a choice to represent herself “with eyes open,” as the United States Supreme Court has required. *See Faretta*, 422 U.S. at 835. Instead, Ms. Krambule, a woman with known mental health issues, entered into a plea agreement she had previously disavowed, pleading guilty to a felony she denied committing, while unrepresented by counsel, and having expressed a desire to be represented by an attorney. Ms. Krambule’s conviction must be vacated.

CONCLUSION

For the reasons stated above, as well as those set forth in her Appellant’s Brief, Ms. Krambule respectfully requests that this Court vacate the district court’s order revoking her withheld judgment, vacate her conviction, and remand this case to the district court with instructions to allow Ms. Krambule to withdraw her guilty plea, and proceed with the assistance of counsel.

DATED this 26th day of July, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of July, 2017, 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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AWR/eas