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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48036-2020**
Plaintiff-Respondent,	)	
	)	**Cassia County Case No.**
v.	)	**CR16-19-5698**
	)	
MECHELLA LYNN BOWLIN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE MICHAEL P. TRIBE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Mechella Lynn Bowlin appeals from the district court's judgment. Bowlin entered an Alford[1] plea to possession of a controlled substance. She argues the district court abused its discretion by denying her motion to withdraw her guilty plea and by refusing to place her on probation at sentencing.

Statement Of The Facts And Course Of The Proceedings

On April 8, 2019, a jail deputy in the Mini-Cassia Criminal Justice Center found a small clear baggy containing a white crystal substance by the door in the lobby of the jail. (PSI, p.3.) The jail surveillance video showed the small baggie fell from Mechella Lynn Bowlin's right hand when she adjusted her clothing on her way in to the secure area to visit a prisoner. (PSI, p.3.) The substance inside the baggie weighed 4.2 grams and tested presumptive positive as methamphetamine. (PSI, p.3.)

The state charged Bowlin with possession of a controlled substance. (R., pp.24-26.) Bowlin insisted on going to trial (R., p.34), and the district court set the trial for January 8, 2020 (R., p.30). The district court had 80 potential jurors come in on the morning of January 8 (1/8/2020 Tr., p.3, Ls.5-6), but Bowlin decided to enter an Alford plea at the last minute (1/8/2020 Tr., p.3, Ls.8-21). The district court questioned Bowlin under oath. (1/8/2020 Tr., p.4, L.21 – p.8, L.17.) Bowlin failed to identify anything that would make it difficult for her to make a reasoned and informed decision to enter a plea, she said she was satisfied with her counsel's representation, and she stated that she was "pleading guilty based on [her] own free will." (1/8/2020 Tr., p.4, L.21 –

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

p.8, L.17.) The state explained to the district court that it was prepared to present at trial the jail surveillance video showing Bowlin drop the baggie and that an individual from the Idaho State Police Drug Lab was prepared to testify that the substance in the baggie tested positive for methamphetamine. (1/8/2020 Tr., p.11, L.8 – p.13, L.10.) Bowlin's counsel informed the district court that, after Bowlin viewed the jail surveillance video, "she decided that it would be in her best interest to enter a plea pursuant to [Alford]." (1/8/2020 Tr., p.13, L.13 – p.14, L.4.) The district court accepted an Alford plea from Bowlin. (1/8/2020 Tr., p.10, L.16 – p.11, L.1, p.15, L.11 – p.16, L.9.)

One month after Bowlin's game-day plea, she asked the district court to allow her "to withdraw her guilty plea and reset this matter for trial." (R., p.59.) At a hearing on the motion, Bowlin explained that she felt "she was placed under undue pressure to enter a guilty plea based upon the presence of the jury and that she feels that she was not adequately prepared to make that decision at that time." (3/16/2020 Tr., p.4, Ls.16-21.) Bowlin also stated that she wanted to withdraw her plea because she "was not guilty of the crime." (3/16/2020 Tr., p.6, L.5 – p.7, L.2.) After reviewing the applicable law, the district court denied Bowlin's motion because she failed to assert a just reason for withdrawal. (3/16/2020 Tr., p.5, L.15 – p.10, L.16.)

At the sentencing hearing, Bowlin asked the district court to place her on probation. (5/18/2020 Tr., p.12, L.18 – p.13, L.4.) But the district court imposed a sentence of five years with two years fixed and retained jurisdiction. (R., pp.71-74.)

Bowlin timely appealed. (R., pp.77-79.)

ISSUES

Bowlin states the issues on appeal as:

I. Did the district court abuse its discretion when it denied Ms. Bowlin's motion to withdraw her guilty plea?

II. Did the district court abuse its discretion when it declined to suspend Ms. Bowlin's sentence and place her on probation?

(Appellant's brief, p.5.)

The state rephrases the issues as:

I. Has Bowlin failed to show the district court abused its discretion by denying her motion to withdraw her plea?

II. Has Bowlin failed to show the district court abused its discretion by executing Bowlin's sentence instead of placing her on probation?

ARGUMENT

I.
Bowlin Has Failed To Show The District Court Abused Its Discretion When It Denied Her Motion To Withdraw Her Plea

A. Introduction

The district court did not abuse its discretion when it denied Bowlin's motion to withdraw her guilty plea. All four of the relevant factors weighed against allowing Bowlin to withdraw her plea: First, Bowlin failed to present any evidence to support her protestations of innocence, and the jail surveillance video showed Bowlin committing the crime. And Bowlin's statements under oath at the time she entered her Alford plea, including that she was entering the plea of her own free will, contradict her post hoc claim that she pled guilty because she felt pressure from the presence of the jury. Second, the 29-day delay between Bowlin's plea and her motion to withdraw her plea weighed in favor of denying her motion, especially because Bowlin has offered no explanation for the delay. Third, Bowlin had the assistance of competent counsel for all of the proceedings in the district court. Fourth, allowing Bowlin to withdraw her plea, which she decided to enter on the first day of trial after eighty community members reported for jury duty, would waste judicial resources and be an inconvenience to the district court. Because none of the relevant factors weighed in favor of allowing Bowlin to withdraw her plea, the district court did not abuse its discretion when it denied Bowlin's motion.

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, 485, 861 P.2d 51, 55 (1993).

C. The District Court Properly Denied Bowlin's Motion To Withdraw Her Plea

The district court properly denied Bowlin's motion to withdraw her plea. "To withdraw a guilty plea prior to sentencing, the defendant must show a just reason for withdrawing the plea." State v. Flowers, 150 Idaho 568, 571, 249 P.3d 367, 370 (2011). "The determination whether a defendant has shown a just reason for withdrawal of the plea is a factual decision committed to the discretion of the trial court." State v. Sunseri, 165 Idaho 9, 14, 437 P.3d 9, 14 (2018). "Among other factors, the trial court should consider: (1) whether the defendant has credibly asserted his legal innocence; (2) the length of delay between the entry of the guilty plea and the filing of the motion; (3) whether the defendant had the assistance of competent counsel at the time of the guilty plea; and (4) whether withdrawal of the plea will inconvenience the court and waste judicial resources." Id. All four factors support the district court's decision to deny Bowlin's motion to withdraw her guilty plea.

First, Bowlin has failed to credibly assert her innocence. "A mere assertion of innocence, by itself, is not grounds to withdraw a guilty plea." State v. Hanslovan, 147 Idaho 530, 537, 211 P.3d 775, 782 (Ct. App. 2008). "When an assertion of innocence is made in order to withdraw a plea, the court must also consider the reason why the defense was not put forward at the time of original pleading." Id.

Bowlin offered no admissible evidence to support her unsworn assertion of innocence. Instead, she argued to the district court that the video showing her dropping the methamphetamine

was "wrong" and vaguely asserted that there were "just a lot of discrepancies in the [state's] case."[2] (3/16/2020 Tr., p.6, L.5 – p.7, L.2.) Bowlin's mere vocal disagreement with the state's evidence was not sufficient to make her assertion of innocence credible, especially in light of the fact that the state had video evidence showing Bowlin drop the methamphetamine in the jail. See State v. Dopp, 124 Idaho 481, 486, 861 P.2d 51, 56 (1993) (holding, even when the defendant enters an Alford plea, "withdrawal is not an automatic right and more substantial reasons than just asserting legal innocence must be given").

Moreover, Bowlin's explanation for entering a plea finds no support in the record. Bowlin claims that she "was placed under undue pressure . . . based upon the presence of the jury and . . . she was not adequately prepared to make that decision at that time." (3/16/2020 Tr., p.4, Ls.16-21.) Those unsworn assertions contradict Bowlin's statements, under oath, at the time she entered her plea. See State v. Wyatt, 131 Idaho 95, 98, 952 P.2d 910, 913 (Ct. App. 1998) (holding district court did not abuse discretion denying defendant's motion to withdraw a guilty plea where defendant claimed the prosecution threatened him because "his unsworn claim was contradicted by his own testimony at the time of his change of plea and no other proof was presented"). Specifically, at the time she entered her plea, Bowlin confirmed that there was not "anything else going on in [her] life that would make it difficult to make a reasoned and informed decision," stated that her attorney had done everything she wanted to prepare for trial, said that she was

[2] Bowlin gave only one example of the so-called "discrepancies": "And the paperwork, the notary signed off on the 4th of March, and the crime didn't even supposedly happen until the 8th of April." (3/16/2020 Tr., p.6, Ls.23-25.) Presumably, Bowlin was referring to the affidavit in support of the complaint, which the notary misdated March 4, 2019. (See R., pp.10-11.) But that typo does not support Bowlin's claim of innocence or contradict the state's video evidence of her committing the crime charged.

"satisfied with his representation," and told the district court that she made the decision to enter an Alford plea based on her "own free will." (1/8/2020 Tr., p.4, L.21 – p.8, L.17.)

Second, the 29-day delay between Bowlin entering her Alford plea and moving to withdraw her plea does not weigh in favor of withdrawal. The Fifth Circuit, for example, found a motion to withdraw filed 22 days after the defendant entered a guilty plea weighed against withdrawal:

> The rationale for allowing a defendant to withdraw a guilty plea is to permit him to undo a plea that was unknowingly made at the time it was entered. The purpose is not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty.

United States v. Carr, 740 F.2d 339, 345 (5th Cir. 1984).

Perhaps more important than the exact length of the delay, however, is Bowlin's failure to assert a cogent explanation for the delay. If, as Bowlin claims, she pled guilty because she felt pressure from the presence of the jury, the pressure would have dissipated once she entered her Alford plea and the district court dismissed the potential jurors. Yet she waited 29 days to bring the alleged "undue pressure" to the district court's attention. That length of time suggests, as Bowlin's counsel recognized, that Bowlin simply "had buyer's remorse." (5/18/2020 Tr., p.12, Ls.18-23.) And buyer's remorse is not a just reason to withdraw a plea. See Dopp, 124 Idaho at 517, 861 P.2d at 87 (affirming denial of motion to withdraw plea where defendant "simply changed his mind after pleading guilty").

Third, Bowlin had the assistance of competent counsel at all relevant times. Bowlin stated under oath at her change of plea hearing that she was satisfied with her attorney's representation, and she has not asserted any problems with her attorney since that time. (1/8/2020 Tr., p.7, Ls.1-

3.) In fact, Bowlin concedes that this factor supports the district court's decision to deny her motion to withdraw her guilty plea. (Appellant's brief, p.9.)

Fourth, allowing Bowlin to withdraw her plea would inconvenience the court and waste judicial resources. Bowlin waited until the day of trial to plead guilty to the only crime charged in the Information. (1/8/2020 Tr., p.3, Ls.8-21.) Eighty members of the community came into the courthouse that morning and waited in the room next door to serve on a jury that was never selected because of Bowlin's last-minute decision. (1/8/2020 Tr., p.3, Ls.3-7, p.15, Ls.11-15.) All of that would be a waste if Bowlin were permitted to withdraw her guilty plea. See United States v. Neal, 509 F. App'x 302, 311 (5th Cir. 2013) (finding "withdrawal would waste judicial resources" because "the district court had scheduled the matter for trial and had selected a jury before [the defendant] decided to plead guilty"); United States v. Zambrano-Sanchez, 182 F.3d 934, at *3 (10th Cir. May 28, 1999) (table decision) (finding withdrawal of plea would inconvenience the court and waste judicial resources where defendant "waited until only two days before his trial to change his plea to guilty" and "jury members waited while the government ensured the . . . [defendant] entered [his] guilty plea[]").

None of the four relevant factors weighs in favor of allowing Bowlin to withdraw her plea. She has thus failed to show the district court abused its discretion when it denied her motion to withdraw her guilty plea.

II.
Bowlin Has Failed To Show The District Court Abused Its Discretion When It Refused To Place Her On Probation

A. Introduction

The district court did not abuse its discretion when it refused to place Bowlin on probation and instead retained jurisdiction. The district court properly "reviewed the factors in [I.C. §] 19-2521" and opted for retained jurisdiction rather than probation so that Bowlin could have access to classes available in the retained jurisdiction program and so that the Idaho Department of Corrections could help address her mental health issues. (5/18/2020 Tr., p.15, L.4 – p.19, L.3.) That was not an abuse of discretion.

B. Standard Of Review

"The decision whether to grant probation or to impose a sentence of imprisonment is within the discretion of the sentencing court." State v. Spurgeon, 107 Idaho 175, 177, 687 P.2d 19, 21 (Ct. App. 1984). "Its decision to deny probation will not be overturned unless the appellant shows there was a clear abuse of discretion." Id.

C. The District Court Properly Refused To Place Bowlin On Probation

The district court did not abuse its discretion when it refused to place Bowlin on probation. It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015) (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id.

A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (holding district court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Bowlin concedes that her "sentence does not exceed the statutory maximum." (Appellant's brief, p.10.) That leaves Bowlin the burden of proving that her sentence is excessive under any reasonable view of the facts. See McIntosh, 160 Idaho at 8, 368 P.3d at 628. She cannot do so.

The district court relied on the proper factors. It recognized that it had to consider four goals in deciding the sentence to impose: "protection of society being number one; rehabilitation, retribution, and deterrence . . . also." (5/18/2020 Tr., p.15, Ls.7-12.) The district court also recognized that it had to "consider[] the factors set forth Idaho Code 19-2521 to determine whether probation or some form of incarceration is appropriate." (5/18/2020 Tr., p.15, Ls.13-18.)

After the district court "reviewed the factors in 19-2521," it decided to reject Bowlin's request for probation and instead impose a sentence of five years with two years fixed and retain jurisdiction. (5/18/2020 Tr., p.16, L.20 – p.19, L.3.) The district court decided on retained

jurisdiction instead of probation because it found Bowlin needed classes available in the retained jurisdiction program to address her "absolute unwillingness to take any accountability" and because it found the Department of Corrections could help treat her mental health issues. (5/18/2020 Tr., p.18, Ls.4-20.) The record supported both of those findings. Despite video evidence showing Bowlin committed the charged crime, she continued to refuse to accept responsibility at sentencing. (5/18/2020 Tr., p.13, L.9 – p.14, L.19.) And Bowlin had mental health issues, including severe anxiety and depression, for which she received prescription medication that she "ha[d] not taken for some time." (PSI, p.10.) The district court did not abuse its discretion when it decided that Bowlin could better deal with her accountability and mental health issues in the retained jurisdiction program than she could out in the community on probation.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment.

DATED this 18th day of November, 2020.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of November, 2020, 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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