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State v. Kincaid Appellant's Brief Dckt. 45489

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

STATE OF IDAHO,	)	
	)	**NO. 45489**
Plaintiff-Respondent,	)	
	)	**CASSIA COUNTY NO. CR 2015-4438**
v.	)	
	)	
RONNIE GENE KINCAID, JR.,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

HONORABLE JOHN K. BUTLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Ronnie Gene Kincaid appeals from the district court's judgment of conviction and order denying his motion to withdraw his guilty plea. Mr. Kincaid asserts that the district court abused its discretion when it denied his motion to withdraw his guilty plea because his plea was involuntary. Additionally, he asserts that the district court abused its discretion when it imposed two fines for crimes of violence against Mr. Kincaid.

Statement of the Facts and Course of Proceedings

In September of 2015, Sheriff's deputies responded to Mr. Kincaid's residence. (Presentence Report (hereinafter, PSI), p.3.)[1] When they arrived, the deputies found Mr. Kincaid's wife in the master bedroom and determined that she had passed away. (PSI, p.3.) After an autopsy was performed, it was determined that the cause of death was exsanguination. (PSI, p.3.) In December of 2015, the State charged Mr. Kincaid with one count of murder in the first degree, one count of mayhem, two counts of penetration by a foreign object, and one count of concealment or destruction of evidence. (R., pp.85-87.) The first four charges were based on the State's allegations that Mr. Kincaid killed his wife by penetrating her vagina and/or rectum with a foreign object, which ultimately resulted in tearing of tissues and exsanguination. (R., pp.85-87.) The concealment of evidence charge was based on the State's allegation that Mr. Kincaid had "washed and/or removed evidence" from the body. (R., p.87.) The State later filed an amended information, which included the original charges and alleged Mr. Kincaid was a persistent violator. (R., pp.91-94.)

[1] All citations to the PSI refer to the 52-page electronic document, which also contains other relevant attachments.

Over one year later, pursuant to a binding Idaho Criminal Rule 11 plea agreement, Mr. Kincaid agreed to plead guilty to one count of second degree murder, and the State agreed to dismiss the other charges and recommend a sentence of life, with 15 to 20 years fixed. (R., pp.150-51.) Mr. Kincaid also agreed to waive his right to file a Rule 35 motion—except as to an illegal sentence—and appeal any issues other than sentencing if the district court exceeded the State's recommendation. (R., p.150.) Mr. Kincaid also agreed not to file a motion to withdraw his guilty plea or file a motion to suppress. (R., p.150.) In April of 2017, Mr. Kincaid entered an *Alford*[2] plea to one count of second degree murder. (4/20/17 Tr., p.25, Ls.14-18.)

Prior to sentencing, however, Mr. Kincaid's attorney filed a motion to withdraw as counsel for Mr. Kincaid. (R., p.159.) In his affidavit in support of the motion, the attorney stated that, because Mr. Kincaid had changed his mind about the plea agreement and wanted to file a motion to withdraw his plea, the attorney believed that his relationship with Mr. Kincaid was "compromised to the extent" that he could no longer provide effective representation. (R., pp.161-62.) The district court denied the motion without prejudice. (6/9/17 Tr., p.5, L.9 – p.6, L.13.) It stated that it was concerned that if it granted the motion to withdraw, another attorney "would not have the familiarity with the case to necessarily effectively assist Mr. Kincaid in" filing a motion to withdraw his plea. (6/9/17 Tr., p.5, L.20 – p.6, L.13.)

Subsequently, Mr. Kincaid filed a motion to withdraw his guilty plea. (R., pp.168-71.) In the motion, he stated that he did not want "to be judged and convicted of intentionally killing his wife upon his own admission." (R., p.169.) Additionally, he stated that he had a "good faith belief that if all of the facts and the circumstances surrounding the death of his wife [were] presented to a fair and impartial jury, that there [would be] a chance that he would be convicted

[2] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

of a lesser charge or even acquitted." (R., pp.169-70.) Thereafter, the State filed an objection to the motion, and a hearing was held on July 17, 2017. (R., pp.175-82.)

Mr. Kincaid testified at the hearing, and his attorney questioned him as follows:

> Q: Were you concerned that I, as your Counsel, would no longer represent you if you didn't follow through with the plea agreement that was reached?
>
> A: Yes.
>
> Q: And why was that?
>
> A: Because I didn't want to plead guilty to anything I didn't do.
>
> Q: But why were you concerned that I would no longer represent you?
>
> A: Because you told me that if I took this to trial, you would quit.
>
> Q: And – well, not if you took it to trial, but if you didn't follow through with the plea agreement; right?
>
> A: Yes.
>
> Q: And, in fact, after you indicated to the Court that you didn't want to continue with your plea and withdraw your plea, I filed a motion to withdraw as your counsel; right?
>
> A: Yes.

(7/17/17 Tr., p.7. L.19 – p.8, L.13.) The district court later asked, "Mr. Kincaid, did you testify that Mr. Valdez told you that he would withdraw if you did not accept this plea before you entered the plea?" (7/17/17 Tr., p.9, Ls.9-13.) Mr. Kincaid said yes, and the district court confirmed his answer. (7/17/17 Tr., p.9, Ls.14-18.) Mr. Kincaid then said, "I wanted a trial from the beginning." (7/17/17 Tr., p.9, Ls.19-20.)

Subsequently, Mr. Kincaid's counsel told the district court that he was "not going to quarrel with what Mr. Kincaid said." (7/17/17 Tr., p.11, L.5.) He went on to say, "Given the magnitude of what Mr. Kincaid is facing and given this case and given what I felt were the possible outcomes and a plea agreement that would have given my client an opportunity to

achieve parole . . . at least at a certain time, those types of pressures are what I exerted." (7/17/17 Tr., p.11, Ls.8-13.) Finally, he said that Mr. Kincaid's plea was not "wholly voluntary," and that he "essentially concurred" with Mr. Kincaid's statements. (7/17/17 Tr., p.12, Ls.5-16.)

After the hearing, the district court denied Mr. Kincaid's motion to withdraw his guilty plea. (R., pp.197-211.) The district court noted that, prior to sentencing, Mr. Kincaid only needed to show a just cause for withdrawing his plea, but—because Mr. Kincaid had entered into a binding Rule 11 plea agreement and thus knew what the probable sentence in his case would be—it could "'temper' its liberality as to what is a 'just reason' to withdraw the plea." (R., pp.200-01.)

With respect to whether Mr. Kincaid's plea was entered voluntarily, it wrote, "The defendant suggests that his plea was not 'voluntary.' In part he suggests that his counsel told him he would withdraw as his attorney if he did not accept the plea deal. However, if the client chooses not to follow the advice of his attorney, counsel does have the right to withdraw." (R., p.203.) Additionally, the district court stated, "Our courts have recognized that counsel's threat to withdraw is neither coercive, so as to make the defendant's plea of guilty involuntary, nor does it constitute ineffective assistance." (R., p.203.) The district court then reviewed the events at the change of plea hearing, and stated that Mr. Kincaid "admitted under oath that his plea was not coerced . . . that he was not pressured by anyone to enter into the plea; that no one pressured him, threatened him, or coerced him into entering into the plea; that the plea was of his own free will and volition; and that no one told him what he must say in order for the court to accept his plea." (R., p.204.)

On the same day the district court denied Mr. Kincaid's motion to withdraw his plea, Mr. Kincaid's attorney filed another motion to withdraw as counsel. (R., p.214.) Several days

later, the district court granted the second motion to withdraw as counsel, appointed a new public defender to represent Mr. Kincaid, and reset the sentencing date. (7/24/17 Tr., p.14, Ls.10-22.)

The district court subsequently imposed a sentence of life, with twenty years fixed. (R., p.285; 9/1/17 Tr., p.69, Ls.9-13.) It also entered two civil judgments for crimes of violence on behalf of the victim's two minor children wherein each child would receive $5,000. (R., pp.277-81; 9/1/17 Tr., p.69, Ls.14-17.) Thereafter, Mr. Kincaid filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.295-97.)

ISSUES

I. Did the district court abuse its discretion when it denied Mr. Kincaid's motion to withdraw his guilty plea?

II. Did the district court abuse its discretion when it ordered Mr. Kincaid to pay two fines of $5,000 pursuant to Idaho Code § 19-5307?

ARGUMENT

I.

The District Court Abused Its Discretion When It Denied Mr. Kincaid's Motion To Withdraw His Guilty Plea

A. Introduction

Mr. Kincaid's guilty plea was not voluntary because his counsel threatened to withdraw if he did not plead guilty. Nevertheless, the district court held that this did not render Mr. Kincaid's plea involuntary. The district court abused its discretion because it relied on precedent that had been implicitly overruled in Idaho. Therefore, it did not act consistently with the legal standards applicable to this issue.

B. Standard Of Review

An appellate court reviews a district court's decision to deny a motion to withdraw a guilty plea for an abuse of discretion. *State v. Arthur*, 145 Idaho 219, 222 (2008). In such a review, the Court "conducts a multi-tiered inquiry" and considers "(1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted).

C. Mr. Kincaid's Guilty Plea Was Not Voluntary Because His Counsel Threatened To Withdraw If He Did Not Plead Guilty

To withdraw a guilty plea prior to sentencing, the defendant need only show a "just reason" for withdrawing the plea. *State v. Flowers*, 150 Idaho 568, 571 (2011). "A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of

conviction after sentence and may permit the defendant to withdraw a plea of guilty." I.C.R. 33(c). Thus, "[t]he rule distinguishes between pleas made prior to and after sentencing, exacting a less rigorous measure of proof for presentence motions." *Flowers*, 150 Idaho at 571 (citation omitted). Therefore, when a just reason is shown, the State can only avoid the granting of the motion by showing that it would be prejudiced if the plea were withdrawn. *Id.* "Because a guilty plea by a criminal defendant waives certain constitutional rights, including the privilege against self-incrimination, the right to a jury trial, and the right of confrontation, a guilty plea will only be upheld if the entire record demonstrates that the waiver was made voluntarily, knowingly, and intelligently." *State v. Heredia*, 144 Idaho 95, 97 (2007) (citation omitted). And, when a plea is the result of a threat, it is not a voluntary plea. "A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void." *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

A court determines whether a plea is entered voluntarily and knowingly through a three-part inquiry involving:

> (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 (1993) (citations omitted). "On appeal, Idaho law requires that voluntariness of the guilty plea and waiver must be reasonably inferred from the record as a whole." *Id.* (citations omitted).

In this case, despite the fact that Mr. Kincaid's counsel admitted that he threatened to withdraw if Mr. Kincaid did not plead guilty, the district court denied Mr. Kincaid's motion to withdraw his plea. In its order denying the motion, the district court wrote that Mr. Kincaid "suggests that his plea was not 'voluntary.' In part he suggests that his counsel told him he would

withdraw as his attorney if he did not accept the plea deal. However, if the client chooses not to follow the advice of his attorney, counsel does have the right to withdraw. Our courts have recognized that counsel's threat to withdraw is [not] coercive, so as to make the defendant's plea of guilty involuntary . . . ." (R., p.203.) In reaching this decision, the district court relied on *Hollon v. State*, 132 Idaho 573 (1999). (R., p.203.) In *Hollon*, Mr. Hollon alleged that his attorney was ineffective because he threatened to withdraw after Mr. Hollon told him that he wanted to go to trial instead of pleading guilty. *Id.* at 576. This Court stated that the record clearly indicated that "Hollon's counsel told him he would withdraw if Hollon went to trial. However, the hearing on the change of plea also demonstrates that Hollon was given ample opportunity to express whether he felt coerced into entering the plea." *Id.* at 576-77.

The Court subsequently wrote, "Someone in Hollon's position might feel that they were being abandoned by counsel upon whom they had come to trust and depend. However, in a situation such as this one, if counsel feels that they cannot support a client's choice, that counsel should be allowed to withdraw, without then rendering a client's subsequent decision to enter into a guilty plea, involuntary." *Id.* at 577. But 14 years after *Hollon*, this Court held instead that "counsel may *not* withdraw merely because his client refuses to plead guilty, or because another attorney might possibly be able to convince the client to plead guilty." *State v. Grant*, 154 Idaho 281, 285 (2013) (emphasis added) (holding that the district court did not abuse its discretion when it denied appointed counsel's motion to withdraw). This of course is contrary to *Hollon* and to the district court's statement here.

In reaching its conclusion, the *Grant* Court relied on precedent from the United States Supreme Court and the Ninth Circuit; it also relied on the Idaho Rules of Professional Conduct. First, the Court noted that the United States Supreme Court has held that the defendant has the "ultimate authority to make certain fundamental decisions regarding the case," such as whether

to plead guilty. *Id.* (citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983)). Second, *Grant* relied on the Ninth Circuit *Nehad* case, which found that, "it is widely held that counsel's threatening to withdraw unless the defendant agrees to plead guilty can render the plea involuntary." *Id.* (citing *Nehad v. Mukasey*, 535 F.3d 962, 971 (9th Cir.2008)). Finally, this Court noted that Idaho Rule of Professional Conduct 1.2(a) requires an attorney to abide by the client's decision as to a plea to be entered. *Id.* (citing I.R.P.C. 1.2(a)). Therefore, *Grant* implicitly overruled *Hollon*. *See State v. Moad*, 156 Idaho 654, 658 n.3 (Ct. App. 2014) (noting that the Idaho Supreme Court's "most recent pronouncement on the issue" is the correct theory to be applied); *see also State v. Clinton*, 155 Idaho 271, 272 n.1 (2013). Thus, the district court abused its discretion because it did not apply the applicable legal standard when ruling on Mr. Kincaid's motion to withdraw his plea.

Further, this Court's holding in *Grant* appears to be consistent with the approach taken by the majority of federal courts that have considered the issue in this case. *See e.g.*, *Heiser v. Ryan*, 951 F.2d 559, 561-62 (3d Cir.1991) ("We hold that if Heiser's counsel threatened to withdraw from the case unless Heiser pleaded guilty, then his plea is involuntary . . . ."); *United States v. Estrada*, 849 F.2d 1304, 1305-06 (10th Cir.1988); *Iaea v. Sunn*, 800 F.2d 861, 866-68 (9th Cir.1986); *Downton v. Perini*, 511 F. Supp. 258, 259 (N.D. Ohio 1981) ("counsel's threat to withdraw if petitioner did not enter a plea of guilty to second degree murder does establish the sort of compulsion which would invalidate the plea."); *but see Uresti v. Lynaugh*, 821 F.2d 1099, 1101-02 (5th Cir.1987) (holding attorney's threat to withdraw and ask to have other counsel appointed did not render plea involuntary).[3]

Additionally, the district court relied too heavily on Mr. Kincaid's statements at the change plea hearing, ignoring proof that his counsel's threat was coercive. When it conducted an

[3] The *Hollon* Court referenced *Uresti*. 132 Idaho at 577.

analysis of the conflicting factors at play in Mr. Kincaid's motion, it held that his statements at the change of plea hearing weighed against his position. (R., pp.202-210.) It stated, among other things, that Mr. Kincaid "admitted under oath that his plea was not coerced." (R., p.204.) However, *Heiser* and *Downton* indicate that if there is proof that counsel threatened to withdraw if his client did not plead guilty, the defendant's sworn statements at the change of plea hearing are called into doubt. In *Heiser*, the court stated, "If Heiser can prove that his trial counsel threatened to withdraw if he did not plead guilty, such proof is sufficient to rebut the 'strong presumption of verity,' attached to his 'solemn declarations,' at the plea hearing that his guilty plea was voluntarily entered and free from coercion." 951 F.2d at 562 (citations omitted). Similarly, in *Downton*, the court stated, "Petitioner's counsel has testified that he did threaten to withdraw. Therefore, petitioner has rebutted the presumption of truth that attached to his solemn declaration in open court when he entered the plea of guilty." 511 F. Supp. at 259.

In this case, there is proof that trial counsel threatened to withdraw if Mr. Kincaid did not plead guilty. Mr. Kincaid's attorney acknowledged that he made the threat to withdraw prior to entry of the plea and that Mr. Kincaid's plea was not "wholly voluntary." (7/17/17 Tr., p.11, L.5 – p.12, L.16.) Thus, Mr. Kincaid has rebutted the presumption that his statements at the change of plea hearing were true, and he has shown a just cause for withdrawing his guilty plea because his plea was not voluntary. The district court failed to apply this Court's most recent precedent in reaching its decision and therefore abused its discretion. As such, this Court should vacate the district court's judgment of conviction, as well as its order denying Mr. Kincaid's motion to withdraw his guilty plea, and remand the case for further proceedings.

II.

The District Court Abused Its Discretion When It Ordered Mr. Kincaid To Pay Two Fines Of $5,000 Pursuant To Idaho Code § 19-5307

A. Introduction

Pursuant to his guilty plea to one count of second degree murder, the district court ordered Mr. Kincaid to pay $5,000 each to two separate victims under Idaho Code § 19-5307. However, I.C. § 19-5307 only permits the district court to order a fine of $5,000 total in a criminal case. Therefore, the district court abused its discretion because it did not act consistently with the legal standard articulated in the statute.

B. Standard Of Review

Fines imposed upon a criminal defendant are reviewed under an abuse of discretion standard. *State v. Lemmons*, 161 Idaho 652, 653-54 (Ct. App. 2017). Appellate courts conduct a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. "The sequence of the inquiry is: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted). The interpretation of a statute is a question of law over which this Court exercises free review. *State v. Hart*, 135 Idaho 827, 829 (2001).

C. The District Court Abused Its Discretion When It When It Ordered Mr. Kincaid To Pay $5,000 To Each Victim

After Mr. Kincaid pleaded guilty to one count of second degree murder, the district court entered two separate civil judgments for crimes of violence requiring Mr. Kincaid to pay a fine of $5,000 to two different victims. (R., pp.277-81; 9/1/17 Tr., p.69, Ls.14-17.) Idaho Code § 19-5307(1) provides the district court with the option to order that the defendant in a criminal case pay an additional fine when convicted of any of the crimes enumerated in

I.C. § 19-5307(2). The fine is payable to the victim or the family of the victim in cases of homicide and functions as a civil judgment. The statute reads:

> Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, *may impose a fine not to exceed five thousand dollars ($5,000) against any defendant* found guilty of any felony listed in subsection (2) of this section.
>
> The fine shall operate as a civil judgment against the defendant, and shall be entered on behalf of the victim named in the indictment or information, *or the family of the victim in cases of homicide* or crimes against children, and shall not be subject to any distribution otherwise required in section 19-4705, Idaho Code.

I.C. § 19-5307(1) (emphasis added).

Where the language of a statute is plain and unambiguous, this Court does not construe it, but follows the law as written. *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011). The plain language of the statute reads: the court "may impose a fine not to exceed five thousand dollars ($5,000) against any defendant." Therefore, the legislature has clearly placed a cap of $5,000 on this fine. However, in this case, the district court ordered Mr. Kincaid to pay $10,000—$5,000 to each victim. Therefore, the district court abused its discretion because it did not act consistently with the legal standard articulated in the statute when it ordered Mr. Kincaid to pay two $5,000 fines.

CONCLUSION

Mr. Kincaid respectfully requests that this Court vacate the district court's judgment of conviction, and its orders denying his motion to withdraw his guilty plea and imposing fines for crimes of violence and remand the case for further proceedings.

DATED this 22nd day of August, 2018.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of August, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Delivered via e-mail to: ecf@ag.idaho.gov

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

RPA/eas