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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 Case No.**
v.	)	**CR-2015-4438**
	)	
RONNIE GENE KINCAID, JR.,	)	
	)	
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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronnie Gene Kincaid, Jr., appeals from his judgment of conviction for second-degree murder. He challenges the denial of his motion to withdraw his guilty plea.

Statement Of The Facts And Course Of The Proceedings

Kincaid held down his wife, Melissia, and violently thrust a foreign object into her vagina, severely injuring her and causing her to bleed to death. (PSI, pp. 3, 46-48, 49-52.) The autopsy revealed Melissia died of "[e]xsanguination due to massive vaginal and rectal trauma." (PSI, p. 50.) Kincaid's attack resulted in "[m]assive penetrating trauma involving the vaginal canal with tearing of tissues extending from the clitoris all the way through the floor of the vagina, to connect with the rectum with massive tearing of the rectal mucosa." (Id.) The object Kincaid used tore "through the left lateral wall" of Melissia's vagina and into the "retroperitoneal tissues on the left side" causing "extensive hemorrhage" and trauma extending "approximately 6 to 8 inches" "into the muscle and soft tissues of the lateral wall of the pelvic cavity and abdominal cavity." (Id.) Kincaid also inflicted "[b]lunt force trauma" to Melissia's head. (PSI, pp. 50-51.) Four children were in the home and could hear Melissia "screaming" as Kincaid brutalized her. (PSI, p. 3.)

The state charged Kincaid with first-degree murder, mayhem, two counts of penetration with a foreign object, and destruction or concealment of evidence, with a persistent violator enhancement. (R., pp. 85-88, 91-94.) Kincaid later entered an *Alford* guilty plea to a reduced charge of second-degree murder. (R., pp. 143-54.) The district court scheduled the sentencing for June 9, 2017. (R., p. 155.) The PSI was lodged with the district court on June 2, 2017. (PSI, p. 1.)

Five days after the PSI was lodged, and two days before the scheduled sentencing hearing, Kincaid's trial attorney filed a motion to withdraw from representation because Kincaid had decided to file a motion to withdraw his plea, a position "directly at odds with [counsel's] legal advice and recommendation." (R., pp. 159-63.) Filing a motion to withdraw the plea would be a breach of the plea agreement, which would free the prosecution to make any sentencing recommendation it wanted to. (R., p. 150; see 6/9/17 Tr., p. 8, Ls. 4-17.) The district court denied the motion to withdraw. (R., p. 164.)

Kincaid filed his motion to withdraw his plea, offering as grounds for the motion: (1) the court had not yet indicated "an intent to follow the proposed Rule 11 Agreement"; (2) a "wish" that he not "be judged and convicted of intentionally killing his wife upon his own admission"; and (3) a "good faith belief" that "there is a chance" a jury would not convict him. (R., pp. 168-71.)

At the conclusion of the hearing on the motion to withdraw, the district court noted that Kincaid had raised a new issue: that counsel "informed him" that he "would not be further representing him if he did not accept the plea agreement." (7/17/17 Tr., p. 28, Ls. 3-21.) Because the new issue was not raised in the motion, the district court took the matter under advisement. (7/17/17 Tr., p. 31, Ls. 16-25.) The district court subsequently filed a written order denying the motion to withdraw. (R., pp. 197-211.)

The case proceeded to sentencing with different counsel representing Kincaid. (R., pp. 214, 221-29, 232, 275-76, 283-84.) The district court imposed a sentence of life with 20 years determinate for second-degree murder. (R., pp. 285-87.) The district court also entered two civil judgments for $5,000 each in favor of M.B. and T.K., Melissia's children.

(R., pp. 277-82.) Kincaid filed a timely notice of appeal from the entry of the judgment. (R., pp. 295-97.)

ISSUES

Kincaid states the issues on appeal as:

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?

(Appellant's brief, p. 6.)

The state rephrases the issues as:

1. Has Kincaid failed to show an abuse of discretion in the district court's conclusion that Kincaid's claim that his counsel threatened to withdraw from representation if Kincaid did not take the plea agreement did not show that his plea was coerced?

2. Is the civil penalty imposed under I.C. § 19-5307 imposed on a per-felony basis?

ARGUMENT

I.
Kincaid Has Failed To Show An Abuse Of Discretion In The Denial Of His Motion To Withdraw His Plea

A. Introduction

The district court denied Kincaid's motion to withdraw his plea. (R., pp. 197-211.) On appeal Kincaid argues that the district court erred because his "plea was not voluntary because his counsel threatened to withdraw if he did not plead guilty." (Appellant's brief, p. 7.) This argument fails because it is incorrect on the law and because it fails to address the district court's analysis.

B. Standard Of Review

"Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action." State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); Gabourie v. State, 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).

C. The District Court Correctly Concluded Kincaid's Plea Was Not Coerced

A motion to withdraw a guilty plea "may be made only before sentence is imposed or imposition of sentence is suspended." I.C.R. 33(c). Although a district court's discretion should be "liberally exercised" when ruling on a motion to withdraw a guilty plea made prior to the pronouncement of sentence, withdrawal of a guilty plea is not an

automatic right. State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). Rather, "the defendant has the burden of showing a 'just reason' exists to withdraw the plea." Id. (citations omitted). Failure to present and support a just or plausible reason, even absent prejudice to the prosecution, will weigh against granting withdrawal. State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004). "[T]he good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide." Hanslovan, 147 Idaho at 537, 211 P.3d at 782 (citations omitted).

"The first step in analyzing a motion to withdraw a guilty plea is to determine whether the plea was knowingly, intelligently, and voluntarily made." Hanslovan, 147 Idaho at 536, 211 P.3d at 781 (citing State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990)). A plea was made voluntarily where the record shows the defendant "understood the nature of the charges and was not coerced." State v. Flowers, 150 Idaho 568, 572, 249 P.3d 367, 371 (2011).

The district court rejected Kincaid's claim that his guilty plea was not voluntary because "his counsel told him that he would withdraw as his attorney if he did not accept the plea deal." (R., pp. 203-04.) The court applied the legal standards in Hollon v. State, 132 Idaho 573, 577, 976 P.2d 927, 931 (1999), and State v. Dopp, 124 Idaho 481, 483-84, 961 P.2d 251, 253-54 (1993). (R., pp. 203-04.) Pursuant to Hollon, the court found counsel's statement regarding withdrawal was not coercive. (R., p. 203.) Pursuant to Dopp, the court concluded that Kincaid's decision to accept the plea agreement and plead guilty was voluntary and not the result of the statement. (R., pp. 203-04.) The district court was correct on both counts.

In Hollon defense counsel informed his client that he "would not represent him in a trial, believing that if Hollon went to trial, he would likely spend the remainder of his life in prison." 132 Idaho at 575, 976 P.2d at 929. Hollon asserted that his counsel was ineffective because the threat to withdraw coerced him into pleading guilty. Id. at 576, 976 P.2d at 930. The Court pointed out that Hollon did not:

> assert that there was insufficient time for a new attorney to be appointed who could adequately represent him at trial or that [counsel] did not make him aware that new counsel could be appointed. Hollon's main contention appears to be that he wanted his chosen attorney to represent him at trial and if his attorney was not willing to do so, he was prepared to forego his right to a trial.

Id. at 577, 976 P.2d at 931. The Court acknowledged that someone "in Hollon's position might feel that they were being abandoned by counsel," but that counsel should be allowed to withdraw "without then rendering a client's subsequent decision to enter into a guilty plea involuntary." Id. The Court cited the Fifth Circuit, which stated that counsel "'acting in good faith and affording sound representation'" has the right to "'ask the court to allow him to withdraw as counsel and have another counsel appointed'" who is "'more sympathetic to trial'" if the client refuses to accept his advice to accept a plea agreement. Id. (citing Uresti v. Lynaugh, 821 F.2d 1099, 1102 (5th Cir. 1987)). Indeed, not informing a client of such intentions would "'withhold a material and significant fact from the accused when the accused was undertaking to decide whether or not to accept the plea bargain.'" Id. (citing Uresti, 821 F.2d at 1102). The Court affirmed the finding that counsel's performance was not deficient. Id. at 577-78, 976 P.2d at 931-32.

This case is indistinguishable from Hollon in any meaningful way. Like Hollon, Kincaid "did not support his allegations" with "anything beyond the threat of counsel to withdraw." Id. at 577, 976 P.2d at 931. He did not "assert that there was insufficient time

for a new attorney" to prepare for trial, or that counsel did not inform him that other counsel would represent him. Id. at 577, 976 P.2d at 931. Like Hollon, Kincaid's position "appears to be that he wanted his chosen attorney to represent him at trial and if his attorney was not willing to do so, he was prepared to forego his right to a trial." Id. Finally, like Hollon, Kincaid did not "state that he felt coerced." Id. at 577, 976 P.2d at 931.

Kincaid's mere claim that counsel "told [him] that if [he] took this to trial, [counsel] would quit" (7/17/17 Tr., p. 8, Ls. 1-4; see also p. 9, Ls. 9-17) did not show coercion any more than Hollon's nearly identical claim showed deficient performance. The district court correctly concluded that the Hollon decision foreclosed Kincaid's claim.

Kincaid contends the district court "failed to apply this Court's most recent precedent in reaching its decision and therefore abused its discretion." (Appellant's brief, p. 11.) Specifically, Kincaid argues that State v. Grant, 154 Idaho 281, 297 P.3d 244 (2013), "implicitly overruled *Hollon*." (Appellant's brief, p. 10.) Review shows this argument to be without merit.

The facts and law in Hollon are set forth above, but relevant to this case is that Hollon claimed his counsel was ineffective for threatening to withdraw if Hollon did not accept a plea agreement. Hollon, 132 Idaho at 577, 976 P.2d at 931. The Court specifically set forth what Hollon had not claimed: that there was insufficient time for new counsel to prepare for trial, that he was unaware that new counsel would be appointed to represent him, and that he in fact felt coerced by counsel's statement. Id. These facts match those in this case, because Kincaid did not claim that new counsel could not have been prepared for trial, that he was unaware that new counsel could be appointed to represent him at trial, or that he felt coerced by the statement.

In comparison, the facts of Grant are that his counsel moved to withdraw, asserting that "communications had broken down" after Grant refused his advice to accept a plea agreement. 154 Idaho at 283, 297 P.3d at 246. The district court, focusing on "the key question of whether [counsel] could competently represent Grant at trial despite their disagreement regarding the plea agreement," denied the motion. Id. In finding no abuse of discretion, the Court stated 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." Id. at 285, 297 P.3d at 248 (citing Nehad v. Mukasey, 535 F.3d 962, 971 (9th Cir. 2008), by "see" citation). Even treating this language in Grant as a holding, there is no obvious way that a holding that a court does not abuse its discretion by denying a motion to withdraw "merely because his client refuses to plead guilty" overrules Hollon. Whether the court would have granted the threatened motion to withdraw is ultimately of little, if any, consequence in deciding whether counsel coerced a guilty plea by threatening to move to withdraw.

Kincaid argues that, because the Court in Grant cited to Nehad, a case he believes is contrary to Hollon, Hollon is no longer good law. (Appellant's brief, pp. 9-10). Kincaid does not show how the holdings of Hollon or Grant are incompatible. Indeed, the two may be easily reconciled. Hollon stands for the proposition that a threat to withdraw if the client does not accept a plea agreement is not enough alone to show that the plea was coerced. 132 Idaho at 577, 976 P.2d at 931. Grant stands for the proposition that a client's refusal to accept a recommended plea agreement is not enough alone to justify withdrawal. 154 Idaho at 285, 297 P.3d at 248. Nothing in Grant overruled Hollon, implicitly or otherwise.

Even if citing Nehad (with a "see" cite) were sufficient to infer adoption of its legal standard regarding whether a threat to withdraw can be deemed coercive (which it is not), such would not show Hollon to be overruled. In Nehad the Ninth Circuit noted that "it is widely held that counsel's threatening to withdraw *can* render the plea involuntary." 535 F.3d at 971 (emphasis added). The Court in Hollon recognized as much when it specifically noted that Hollon had not alleged more than the threat to withdraw, such as that there was insufficient time for new counsel to prepare for trial or that Hollon was unaware that new counsel would be appointed. 132 Idaho at 577, 976 P.2d at 931. Both the Ninth Circuit case of Nehad and, more importantly, the Idaho case of Hollon recognize that a threat to withdraw might be coercive based on the facts of the case.

But not the facts of this case. The district court's analysis included noting that, during the plea colloquy, Kincaid "admitted under oath that his plea was not coerced," stated that "he was not pressured by anyone to enter into the plea," stated that no one "coerced him into entering into the plea," and "never advised the court at the change of plea that his attorney's threat of withdrawal pressured him to enter his plea." (R., p. 204.) The district court applied the correct legal standard to the record and found "it was clear" that Kincaid's plea was voluntary. (R., p. 204.)

The district court's determination is supported by the record. In the plea agreement Kincaid represented that he believed that the agreement was in his "best interest," and that he had "weighed the risks and consequences of proceeding to jury trial" and believed that entering the plea agreement was "a better course of action." (R., p. 153.) He further represented that he was "satisfied with the performance and advice of defense counsel." (Id.) During the plea colloquy, before the district court took and accepted his *Alford* guilty

plea, Kincaid testified that no one told him he "had to take" the plea agreement, that the plea agreement was satisfactory to him, and that no one had "pressured [him] in any way into making or taking this deal." (4/20/17 Tr., p. 18, Ls. 3-11.) He further testified that he was entering the plea of his "own free will and volition," that he was "satisfied with the services of [his] attorney," and that no one had "pressured" him or "coerced" him "in any way into entering into this plea." (4/20/17 Tr., p. 21, Ls. 4-20.) Kincaid represented that there was nothing he asked his attorney to do that was not done. (4/20/17 Tr., p. 22, Ls. 23-25.) When the court asked Kincaid if he wanted a jury trial, Kincaid answered, under oath, "No, sir." (4/20/17 Tr., p. 24, Ls. 1-3.) The record supports the district court's determination that the record made it "clear" Kincaid's plea was entered voluntarily. (R., p. 204.)

Kincaid's argument that Hollon was implicitly overruled by Grant does not withstand analysis. The district court did not abuse its discretion by relying on Hollon as authority. Moreover, the district court's analysis based on the facts of this case is well supported. The district court did not abuse its discretion when it concluded that Kincaid had failed to demonstrate that his guilty plea was coerced.

II.
The Fine Provided By I.C. § 19-5307 Applies To The Felony Conviction

A. Introduction

The district court ordered a $5,000 fine pursuant to I.C. § 19-5307 to each of the victim's two surviving children. (R., pp. 277-82.) Kincaid claims the court erred by granting two $5,000 fines. (Appellant's brief, pp. 11-13.) The plain language of the statute

applies the fine per conviction. The civil judgments should be vacated and the case remanded so that a single judgment for $5,000 can be entered.

B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The $5,000 Civil Fine Applies Per Felony

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the wording of the statute itself, the interpretation of a statute must begin with its literal words. Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). The words of a statute "'must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.'" Verska, 151 Idaho at 893, 265 P.3d at 506 (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). "[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

The statute provides that 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." I.C. § 19-5307(1). The resulting "civil judgment … shall be entered on behalf of … the family of the victim in cases of homicide." Id. Because the fine attaches to the finding of guilt of "any" qualifying felony, and Kincaid was found guilty of one qualifying felony, a homicide, the district court was authorized to impose only one civil fine in a judgment entered on behalf of the family of the victim.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction, but to vacate the civil judgments and remand for entry of a single civil judgment on behalf of the family of the victim.

DATED this 28th day of September, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of September, 2018, 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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