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State v. Kincaid Appellant's Reply 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,	)	
	)	
Plaintiff-Respondent,	)	**NO. 45489**
	)	
v.	)	**CASSIA COUNTY NO. CR 2015-4438**
	)	
RONNIE GENE KINCAID, JR.,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY 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

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

In his appellant's brief, Mr. Kincaid argued that the district court abused its discretion when it denied his motion to withdraw his guilty plea and when it ordered him to pay two fines to two separate victims. He argued that his plea was involuntary because his counsel threatened to withdraw if he did not plead guilty, and the district court abused its discretion in reaching the opposite conclusion because it relied on precedent that had been implicitly overruled. Regarding the second issue, he argued that the statute under which the fines were imposed permitted only one fine. The State agrees that the statute allowed the district court to impose only one fine. However, the State claims that the district court did not abuse its discretion in denying Mr. Kincaid's motion to withdraw his plea because it correctly found Mr. Kincaid's plea was not coerced. This reply brief is necessary to address that argument.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Kincaid's appellant's brief. They need not be repeated in this reply brief, but are incorporated herein by reference.

ISSUES[1]

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?

[1] This reply brief addresses issue one only.

ARGUMENT

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

In *State v. Grant*, 154 Idaho 281, 285 (2013) (citations omitted), this Court held, "[C]ounsel 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." In denying Mr. Kincaid's motion to withdraw his guilty plea, however, the district court—relying on *Hollon v. State*, 132 Idaho 573 (1999)—wrote, "[I]f 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 neither coercive, so as to make the defendant's plea of guilty involuntary, nor does it constitute ineffective assistance." (R., p.203.) In *Hollon*, this Court held that Mr. Hollon's attorney was not deficient because an attorney could withdraw if his client refused to plead guilty: "[I]f 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." 132 Idaho at 577. *Grant* implicitly overruled *Hollon* on this issue, and thus the district court failed to apply the correct legal standard.

In attempting to argue otherwise, the State claims *Hollon* and *Grant* can be "easily reconciled" because the facts of the cases are different and they stand for different propositions. (Resp. Br., pp.8-10.) The State's protracted argument, however, turns on distinctions without differences and fails to directly address the problem that the two cases reach entirely different conclusions as to whether counsel can withdraw if his client refuses to plead guilty. That the two cases involved different facts and addressed different issues does not change this. *Grant's* statement that counsel cannot withdraw because a client refuses to plead guilty is this Court's most recent pronouncement of the law on the issue and directly contradicts *Hollon.*

Hollon and *Grant* reached these opposite conclusions by considering federal authority on the issue that reflects the same division. As the State points out, the *Hollon* Court cited to *Uresti v. Lynaugh*, 821 F.2d 1099, 1102 (5th Cir. 1987). (Resp. Br., p.7.) The *Grant* Court, however, cited to a Ninth Circuit case that was not yet decided when *Hollon* was issued: *Nehad v. Mukasey*, 535 F.3d 962, 971 (9th Cir. 2008). 154 Idaho at 285. But in attempting to argue that "a threat to withdraw might be coercive based on the facts of the case," and that *Nehad* can somehow be reconciled with *Hollon* (Resp. Br., p.10), the State ignores the fact that *Nehad* made it clear that *Uresti* took the contrary position from it and several other circuits on this issue. *Nehad*, 535 F.3d at 971 (noting *Uresti* held that "attorney's threat to request to withdraw and find replacement counsel if defendant did not plead guilty was unproblematic").

Nevertheless, the State focuses on Mr. Kincaid's statements at the change of plea hearing instead of responding to the argument that federal courts—some of which were cited in *Nehad*—considering this issue have held a defendant can rebut the presumption of truth attached to those statements if he proves his counsel threatened to withdraw if he did not plead guilty. (App. Br., pp.10-11.) Proof of such coercion calls those statements into doubt. *See Heiser v. Ryan*, 951 F.2d 559, 561-62 (3d Cir. 1991). In fact, after citing to *Heiser* and other cases focusing on this issue—as well as a threat to withdraw if a client insists on testifying—the *Nehad* court stated, "this jurisprudence confirms that it is improper for a lawyer to threaten to withdraw if his client does not follow his advice on a matter of fundamental importance to the representation, and that doing so is both a violation of counsel's duties to his client and egregious conduct that threatens the fairness of the proceeding." 535 F.3d at 971.

Mr. Kincaid showed that his plea was not voluntary because it was coerced, and his statements to the contrary at the change of plea hearing do not disprove this as the State argues.

(Resp. Br., pp.10-11.) Indeed, the "*entire* record" in this case does not demonstrate that Mr. Kincaid entered his plea and waived his right to a jury trial voluntarily. *See State v. Heredia*, 144 Idaho 95, 97 (2007) (emphasis added). His attorney admitted he threatened to withdraw if Mr. Kincaid did not take his advice and plead guilty, and that therefore Mr. Kincaid's plea was not "wholly voluntary." (7/17/17 Tr., p.11, L.5 – p.12, L.16.) As such, Mr. Kincaid established a just reason for withdrawing his guilty plea, and the district court abused its discretion when it denied his motion to withdraw his plea because it applied an incorrect legal standard.

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 9th day of November, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2018, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

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

RPA/eas