

2000

Utah v. Curtis Garfield : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Utah v. Curtis Garfield*, No. 14384.00 (Utah Supreme Court, 2000).
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UTAH SUPREME COURT

BRIEF.

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

STATE OF UTAH, :
 :
 Plaintiff and :
 Respondent, :
 :
 vs : Case No. 14384
 :
 CURTIS GARFIELD, :
 :
 Defendant and :
 Appellant. :

BRIEF OF APPELLANT

Appeal from Judgments of the Fourth Judicial District Court for Utah County, Honorable Maurice Harding and Allen B. Sorensen, Judges

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FILE

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff and	:	
Respondent,	:	
vs	:	Case No. 14384
CURTIS GARFIELD,	:	
Defendant and	:	
Appellant.	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

The State of Utah charged that defendant committed the crime of a felony of the third degree by carrying a concealed weapon, a firearm. At arraignment, defendant entered a plea of not guilty. After plea bargaining, defendant withdrew his not guilty plea and entered a plea of guilty.

DISPOSITION IN THE LOWER COURT

Based upon the guilty plea of defendant, the lower court entered its Judgment that the defendant be confined

in the Utah State Prison for a term of not more than five (5) years.

RELIEF SOUGHT ON APPEAL

Defendant, who appeals from the judgment of conviction entered upon his plea of guilty, seeks the reversal of his conviction, enforcement of his plea bargain or the vacating of his sentence, as detailed in the Argument portion of this Brief. In the alternative, and in the event this Court concludes that the record herein lacks facts essential to the proper and complete disposition of his case, defendant seeks remand to the District Court for an evidentiary hearing.

STATEMENT OF FACTS

On July 8, 1975, defendant was charged by Complaint filed in the City Court of Provo City, County of Utah, State of Utah with committing the crime of a felony in the third degree by carrying a concealed weapon, a firearm. (R-38). A preliminary hearing was held on July 31, 1975 and at the conclusion thereof, defendant was ordered bound over to the District Court for further proceedings. (R-30).

On August 29, 1975 defendant was arraigned before the District Court. Defendant received a copy of the Information (R-27), was advised of his rights and to the

charges contained in the Information, defendant pleaded not guilty. Trial was set for October 20, 1975 with a jury. (R-26).

Between July 31, 1975 and October 21, 1975 defendant's counsel had various plea bargain conversations with the prosecutors and discussed defendant's problem of alcoholism. The prosecutors were informed that defendant was an alcoholic undergoing treatment at Raleigh Hills Hospital, 1255 East 3900 South, Salt Lake City, Utah. (Transcript of Proceedings - 12, 18 and 19). In these conversations defendant's counsel urged that the plea bargain be improved in view of defendant's alcoholism. Defendant's counsel urged that defendant be allowed to plea nolo contendere to a misdemeanor. The prosecutors responded that before a lesser charge would be considered, a representative of Raleigh Hills Hospital would have to convince the arresting officers that defendant was conscientiously seeking help and responding favorably to treatment. Conversations were subsequently held between Scott U. Miller, a representative of Raleigh Hills Hospital, and the arresting officers.

In a telephone conference held on October 20, 1975, Carl J. Nemelka, one of the prosecutors, told defendant's counsel that he could not reduce the charges against

defendant but if defendant would enter a guilty plea, the prosecutor's office would make a strong recommendation to the Court that defendant not be sentenced to jail if he does not drink and continued treatment at Raleigh Hills Hospital. Mr. Nemelka acknowledged that the recommendation of his office would not bind the Court, but expressed his opinion that the Court would not act contrary to such recommendation. (Transcript of Proceedings - 12).

In a conference held the following day, Mr. Nemelka told defendant's counsel that if defendant would plead guilty, he, Mr. Nemelka, would recommend probation and that the Court would follow the recommendation. Mr. Nemelka stated that under the circumstances, the Court would not want defendant to serve jail time if he refrained from drinking and would keep on the Raleigh Hills Hospital program. (Transcript of Proceedings - 18).

The assurances of the prosecutor were transmitted to defendant by his counsel and based thereupon defendant withdrew his not guilty plea and entered a plea of guilty to the Information. (Transcript of Proceedings - 19; R-24).

Judgment was pronounced on November 21, 1975 by Judge Maurice Harding. Contrary to the assurance made

by the prosecutor to defendant's counsel, the Court sentenced the defendant to serve not more than five (5) years in the Utah State Prison. Defendant's counsel, thereupon, moved that the Court allow defendant to withdraw his guilty plea on the ground that the plea was entered by defendant based upon an assurance from the prosecutor that if the defendant pleaded guilty, he would be placed on probation. The Court ordered that the motion be held in abeyance until a transcript of previous hearings could be prepared and allowed defendant to file his Motion To Withdraw Guilty Plea in writing. (R-23). The Motion was filed by defendant on December 18, 1975. (R-15).

Defendant's Motion To Withdraw Guilty Plea was argued before Judge Allen B. Sorensen on December 19, 1975. The Motion was denied.

At that hearing the prosecutor acknowledged that he had not, prior to the sentencing of defendant, recommended to the Court that defendant be placed on probation. (Transcript of Proceedings - 13).

Defendant contends that the failure by the prosecutor to recommend to the Court that defendant be placed on probation goes to the very heart of the plea bargain and constitutes a ground upon which the Judgments of

Judges Harding and Sorensen should be reversed.

ARGUMENT

POINT I

THE PROSECUTOR PROMISED TO RECOMMEND TO THE COURT THAT THE DEFENDANT BE PLACED ON PROBATION AND DID NOT DO SO

As detailed in the Statement of Facts above, defendant withdrew his not guilty plea and entered a plea of guilty based upon the promise made by the prosecutor that he would recommend to the Court that defendant serve no jail time if he refrained from drinking and completed the alcoholism program at Raleigh Hills Hospital. Thereafter, the prosecutor violated his promise by failing to give the promised recommendation regarding defendant to the Court. (Transcript of Proceedings - 13).

As a result of the failure of the prosecutor to fulfill his commitment, defendant is entitled relief under the authority of Santobello v. New York, 404 U.S. 257 (1971), and United States v. Brown, 500 F.2d. 374 (4th Cir. 1974). In both cited cases, convictions were reversed because of the failure of the prosecutors to adhere to their promises as to what they would recommend at the time of sentencing.

In Santobello v. New York, a new prosecutor appar-

ently ignorant of his predecessor's commitment to refrain from making a sentencing recommendation, instead recommended the maximum sentence of one (1) year for defendant. The Supreme Court reversed the conviction. Mr. Chief Justice Berger, writing for the majority, stated:

This phase of the process of criminal justice and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. 404 U.S. at 262.

In United States v. Brown, the defendant entered into a plea bargain whereby he pleaded guilty to the charge of possession of stolen mail in consideration of dismissal of a forgery charge and a recommendation by the Government that he receive a sentence of three years to be served at Lorton concurrently with the unexpired portion of another sentence. He was, instead, sentenced to a term of four years without recommendation that it be served at Lorton. At sentencing, a prosecutor other than the one who entered into the plea bargain merely brought the plea bargain to the attention of the Court but made no recommendation as had been promised. The Court of

Appeals reversed on the ground that the "half-hearted" recommendation of the new prosecutor did not comply with the plea bargain and that it made no difference that defense counsel had brought the reasons for the plea bargain to the attention of the sentencing Court. Holding that the effect on the sentencing Court of the noncompliance with the plea bargain was "a matter into which we need not inquire," the Court of Appeals reversed and remanded for sentencing in accordance with the prosecutor's recommendation. Calling such action necessary for specific enforcement of the plea bargain to which the defendant was entitled, the Court wrote:

In determining the significance of the prosecutors failure to fulfill the promise contained in the plea bargain in Santobello, the Supreme Court did not inquire into the reasons for the breach; nor do we. We have no reason to think that the bargain was breached as a result of anything more than the failure of the first prosecutor to inform the second, and the second's complete candor in responding to the inquiry of the district court. But in Santobello, hinging reversal on the breach of the agreement alone, the Court attached no weight to the fact that the failure to comply with the plea bargain had been inadvertent.

"The staff lawyers in the prosecutor's office have the burden of 'letting the left hand know what the right hand is doing' or has done. That the breach of agreement was inadvertent does not lessen its impact." 404 U.S. at 262, 92 S.Ct. at 499.

The test established to be applied by us is thus an objective one-whether the plea bargain agreement has been breached or not-irrespective of prosecutorial motivations or justifications for failure in performance. 500 F.2d at 378.

The failure by the prosecutor to recommend to the Court that defendant be placed on probation prior to the Court entering judgment on defendant here went to the very heart of the plea bargain, namely that probation would be recommended and that the recommendation of the prosecutor would be accepted and enforced by the District Court. In this respect, the prosecutor's lapse was even more basic than those in Santobello and Brown, which went to the content of the recommendation to the Court. Therefore, the defendant here is entitled to the relief ordered by Santobello and Brown.

POINT II

IT WAS IMPROPER FOR THE DISTRICT COURT TO ACCEPT A GUILTY PLEA PURSUANT TO A PLEA BARGAIN AND THEN SENTENCE CONTRARY TO THE PLEA BARGAIN WITHOUT GIVING DEFENDANT AN OPPORTUNITY TO WITHDRAW HIS PLEA

Defendant's counsel and the prosecutor engaged in negotiations culminating in a plea bargain whereby defendant pleaded guilty to the Information. Under these circumstances, the Court should have been advised of the plea bargaining. The Court would thereafter be obliged to follow the prosecutor's recommendation or inform defendant

that it would not do so and allow him an opportunity to withdraw his plea. The failure of the Court to permit defendant to withdraw his plea of guilty requires this Court to vacate defendant's sentence and remand the case for sentencing in accordance with the prosecutor's recommendation. See Santobello v. New York and United States v. Brown.

POINT III

DEFENDANT'S CHANGE OF PLEA WAS BASED UPON THE ASSURANCES OF THE PROSECUTOR AND WAS, THEREFORE, NOT VOLUNTARY

At the time that defendant withdrew his not guilty plea and entered a plea of guilty, the Court asked the defendant if he had been promised anything if he entered a plea of guilty. The Court also asked the defendant if he understood that the Court was not bound by agreements made between the prosecutor and defense counsel. (Transcript of Proceedings - 5 and 6).

The ritual assertion by the Court below that it was not bound by the plea bargain does not offset an otherwise misleading impression. This was the holding in Walters v. Harris, 460 F.2d 988 (4th Cir. 1972), cert. denied, 409 U.S. 1129 (1973). Walters, a petitioner under 28 U.S.C. §2255, claimed that he was induced into pleading

guilty by the prosecutor's unkept promise that he would receive a ten-year sentence and that he had been sentenced to 20 years in prison instead. This Court stated:

If Walters was in fact promised by the Assistant United States Attorney that he would receive a ten-year sentence, he is entitled to relief. United States v. Carter, 454 F.2d 426 (4th Cir. 1972). Sentencing Walters was within the authority of no one but the trial judge. An assurance by another that Walters would receive a particular sentence, therefore, would be a promise that could not be kept. An unkept bargain which has induced a guilty plea is grounds for relief. Santobello v. New York, 404, U.S. 257, 92 S.Ct. 495, 30 L.Ed 2d 427 (1971). 460 F.2d at 991-92.

At arraignment, the trial court questioned Walters closely as to whether anyone had made any promises to him. The Court then asked:

THE COURT: Do you fully understand that the court, and the court alone, is responsible under the law for any sentence that is imposed upon a defendant who pleads guilty or if found guilty, do you fully understand that?

DEFENDANT: Yes, sir. Id. at 992.

As to the significance of the quoted question and answer, this Court stated:

It is doubtful that the trial judge's instruction that the length of Walters' sentence was within his sole control would have eradicated the effect of the prosecutor's alleged promise to Walters. Ibid.

The Court of Appeals reversed and remanded the case

for further factual inquiry by the District Court. Reversal is similarly required in the instant case.

POINT IV

DEFENDANT WAS MISLEAD BY THE PROSECUTOR INTO BELIEVING HIS PLEA BARGAIN WOULD BE ACCEPTED BY THE COURT

As detailed in the Statement of Facts above, defendant was misled by the prosecutor into believing that the Court would accept his plea bargain. The acts which misled him include the assurance from the prosecutor that under the circumstances of this case, the Court would not want the defendant to serve jail time. (Transcript of Proceedings - 18).

As a result of the misleading impression which was conveyed to him, defendant entered his plea of guilty. The actions of the prosecutor require the specific enforcement of defendant's plea bargain as set forth in Clemons v. United States, 137 F.2d 302 (4th Cir. 1943). In Clemons, the defendant was assured by an Assistant United States Attorney that the indictment on which he went to trial charged only a misdemeanor and that the maximum sentence was one (1) year. The trial judge, however, construed the indictment as charging a felony and, after conviction, imposed a sentence of four (4) years. On appeal, the Court of Appeals held that the prosecutors assurances to the de-

fendant as to the possible future punishment in the event of conviction required reversal and, in addition, rejected the Government's argument that the defendant was not prejudiced since he was convicted after trial. The Court wrote:

It may well be that Clemons and his counsel acted a bit precipitately in accepting this assurance at its face value and in proceeding accordingly. It does not follow that they, therefore, acted altogether unreasonably. Certainly, the whole procedure smacks of surprise, which should if possible avoided.

A criminal trial is not, of course, to be likened to a game....We think accordingly, that Clemons, under the circumstances of this case, was deprived of his liberty against the spirit, if not the letter, of the Due Process Clause of the Constitution of the United States. We think he has been dealt with unfairly in the light of our standards of justice towards those accused of federal crimes - standards, in our opinion, which the courts must always adequately safeguard and must, under all circumstances, zealously protect. 137 F.2d. at 305-306.

CONCLUSION

As a result of the errors committed below, defendant respectfully submits that he is entitled to relief as follows:

ERROR

- I. Failure of Prosecutor to Recommend Probation

RELIEF

Set aside defendant's guilty plea and sentence; in the alternative, remand for an evidentiary hearing.

- | | |
|---|---|
| II. Failure to Sentence Defendant in Accordance With Plea Bargain | Specific enforcement of plea bargain; in the alternative, remand for an evidentiary hearing. |
| III. Defendant's Change of Pleas was Not Voluntary | Set aside defendant's guilty plea and sentence; in the alternative remand for an evidentiary hearing. |

Respectfully submitted,

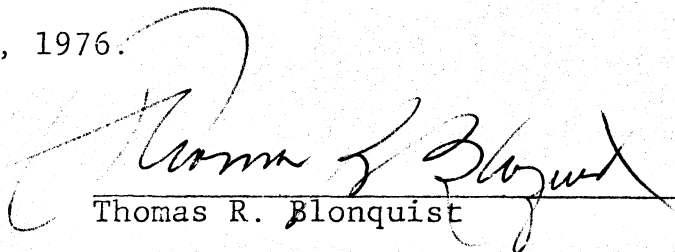
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CERTIFICATE OF DELIVERY

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief of Appellant to:

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Thomas R. Blonquist

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