

1997

State of Utah v. Marvin Jean-Jacques : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Floyd W. Holm; Attorney for Appellant.

Jan Graham Attorneys for Plaintiff.

Recommended Citation

Brief of Appellant, *State of Utah v. Jean-Jacques*, No. 971655 (Utah Court of Appeals, 1997).

https://digitalcommons.law.byu.edu/byu_ca2/1290

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
F U

971655-CA

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	Case No. 971655-CA
vs.)	
)	
MARVIN JEAN-JACQUES,)	Classification Priority 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

Appeal from a Judgment, Sentence and Commitment of the Fifth Judicial District Court, in and for Iron County, State of Utah, the Honorable J. Philip Eves, District Judge, presiding.

FLOYD W HOLM
Attorney for Defendant-Appellant
141 North Main, Suite 220
P.O. Box 2855
Cedar City, Utah 84721
Telephone: (435) 865-5800

JAN GRAHAM
Utah Attorney General
Attorney for Plaintiff-Respondent
236 State Capitol Building
Salt Lake City, Utah 84111

FILED
MAR 18 1999
COURT OF APPEALS

FILED
MAR 12 1999
COURT OF APPEALS

TABLE OF AUTHORITIES

Commonwealth v. Alvarado, 442 Pa. 516, 276 A.2d 526 (1971) 6
Darnell v. Timpani, 68 Wash. 2d 666, 414 P.2d 782 (1966) 6
Miller v. State, 272 Md. 249, 322 A.2d 527 (1974). 6
Santobello v. New York, 404 U.S. 257 (1971). 5,6
State v. Gallegos, 738 P.2d 1040 (Utah 1987) 5,6,7
State v. Gentry, 797 P.2d 456 (Utah Ct. App. 1990) 1,5
State v. Smith, 812 P.2d 470 (Utah Ct. App. 1991). 6
State v. Vasilacopulos, 756 P.2d 92 (Utah Ct. App. 1988) 5
Berry ex rel. Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985). 6

cause shown and with leave of the Court. Utah Code Ann., § 77-13-6(2)(a) (1998).

STATEMENT OF THE CASE

A. Nature of the Case

This is a criminal action against Defendant for Unlawful Possession of a Controlled Substance, a third-degree felony.

B. Course of the Proceedings

Trial of the above-referenced matter was set for July 31, 1997 for the instant charge and other charges. Prior to trial, Defendant entered into an oral plea agreement with the State of Utah to plead guilty to the instant charges. At the time of sentencing on November 3, 1997, Defendant orally moved to withdraw his plea of guilty on the grounds that the Plaintiff had breached its plea agreement. The Court denied Defendant's Motion and the matter proceeded to sentencing.

C. Disposition at Trial Court

Judgment was then entered against Defendant and he was committed to the Utah State Prison.

D. Statement of Facts

On July 31, 1997, Defendant entered into a plea bargain agreement with the State of Utah whereby he pled guilty to Unlawful Possession of a Controlled Substance, a Third-degree Felony. Although, a written "Statement of Defendant Regarding Guilty Plea, Certificates of Counsel and Order" (hereinafter "plea agreement") was prepared, it was never signed by the parties and submitted to the Court; however, the agreement was placed on the record. (Transcript of July 31, 1997, [hereinafter "7/31/97 Tr."] 10-34).

With regard to comment during sentencing, the State and Court stated as follows on the record:

MR. BURNS: It does, your Honor. For the record, the plea agreement that was offered is the defendant is charged with two third degree felonies.

THE COURT: Uh-huh

MR. BURNS: I've offered that if he pleads guilty to count one, I would dismiss count two. I'd recommend a presentence report and I would concur with the Adult Probation and Parole.

.....

THE COURT: All right. Just so that's clear, what I understand that to say is that there will be a presentence report if you plead guilty. The Adult Probation and Parole authority will do a rather thorough investigation. They'll come up with a recommendation as to what penalty ought to be imposed. It may be something that you're comfortable with. It may not be something you're comfortable with.

Mr. Burns has only made the commitment, as I understand what he's just said, that whatever the Adult Probation and Parole recommends, he'll agree with. And if they come up with a light recommendation, he'll agree with that. If they come up with a prison recommendation, he'll agree to that. Is that what you've committed to?

MR. BURNS: Yes. Yes.

.....

MR. BURNS: For the record, your Honor, that's what's in paragraph eleven. That's all I've agreed to do. As I think the Court has explained to him earlier, if their recommendation is light, I would concur with the light. If it's strong, I would concur with the strong. I would concur with the medium. And as your Honor as stated, that's only a recommendation to you, the final decision maker.

THE DEFENDANT: So, in other words, if they want to put me in prison, you'll go along with the prison?

MR. BURNS: Then I concur with the recommendation of prison. You have bound me. As I told you on the telephone yesterday, if you have a criminal record and they recommend something light, as I often do, I could stand up and say, "No. I think Mr. Jean-Jacques should go to prison. I don't agree with their recommendation."

In this case, I'm saying whatever they recommend, that's what the State of Utah prosecutor will concur with. That's it. Nothing more and nothing less.

THE COURT: So, basically if you enter into the plea agreement, the recommendation will come from Adult Probation and Parole and all Mr. Burns will do is stand up at the time of sentencing and say, "I agree with that recommendation, whatever it may be."

....

(7/31/97 Tr. 10-11, 23-24)

At the time of sentencing on November 3, 1997 it was learned that, upon request, counsel for the State had made certain recommendations to Adult Probation and Parole, that Defendant should be committed to prison. Because Defendant believed this to be a breach of the agreement by the State by the Plaintiff, Defendant asked to withdraw his plea. The Court denied the Motion¹. (11-3-97 Tr. 24).

SUMMARY OF ARGUMENT

POINT I: By providing recommendations to Adult Probation and Parole, the State, in effect, made an illusory promise that

¹ The Court suggested that Defendant could file a written motion; however, Defendant has not elected to do so. (Id. at 25).

circumvented the spirit of the plea agreement. Stated another way, the State breached the covenant of good faith and fair dealing implied in all contracts by making a recommendation to Adult Probation and Parole instead of the court, which it could not do under its agreement. Such breach of the covenant of good faith and fair dealing constituted good cause for Defendant to be allowed to withdraw his plea.

ARGUMENT

POINT I

BECAUSE THE STATE BREACHED THE PLEA AGREEMENT,
THERE WAS GOOD CAUSE TO ALLOW DEFENDANT TO
WITHDRAW HIS PLEA

As a general rule, the lower court has discretion whether to grant a motion to withdraw a guilty plea. *State v. Gentry*, 797 P.2d 456, 457 (Utah Ct. App. 1990); *State v. Vasilacopulos*, 946 P.2d 92, 93 (Utah Ct. App. 1988). In *Gentry* this Court held that if the Court fails to find good cause where such good cause exists, it has abused its discretion. *Gentry*, 797 P.2d at 457. Moreover, the Utah Supreme Court has held that in exercising such discretion, the courts should, in general, "liberally" grant motions to withdraw pleas. *State v. Gallegos*, 738 P.2d 1040, 1042 (Utah 1987). See also *Santobello v. New York*, 404 U.S. 257, 268 (1971). Specifically, the *Gallegos* court stated as follows:

The entry of a guilty plea involves the waiver of several important constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront witness. Because the entry of such a plea constitutes such a waiver, and because the prosecution will generally be unable to show that it will suffer any significant prejudice if the plea is withdrawn, a presentence motion to withdraw a guilty plea should, in general, be liberally granted.

Id., at 1041-42 (footnote omitted).

The appellate courts of this State have yet to determine whether a breach of a plea agreement by the State constitutes good cause to withdraw a plea. The Supreme Court of Maryland, in a case factually similar to the case at bar, has held that if a prosecutor agrees to make no recommendations as to sentence and then violates that agreement, the Defendant may have his guilty plea vacated. *Miller v. State*, 272 Md. 249, 322 A.2d 527, 530 (1974). See also *Santobello*, 404 U.S. at 262; *Darnell v. Timpani*, 68 Wash.2d 666, 414 P.2d 782, 783-84 (1966). Likewise, in *Commonwealth v. Alvarado*, 442 Pa. 516, 276 A.2d 526, 529 (1971), the Pennsylvania Supreme Court held that a promise to make no comment or recommendation at sentencing means a "commitment not to make any damning or even potentially damaging statements at the time of sentencing."

In the instant case, the State has failed to show any prejudice that would result if Defendant were allowed to withdraw his plea. Any delay in trial affects Defendant equally as much as the State.² The State, in its plea agreement, agreed to follow the recommendations of Adult Probation and Parole. Although the State technically did follow the recommendations of Adult Probation and Parole, it breached the covenant of good faith and fair dealing by making the very recommendations to Adult Probation and Parole that

²Defendant's motion may have been untimely under Section 77-13-6(2)(b) in that it was not made within thirty days of the entry of his plea; however, such untimeliness, if any, was not raised by the State and, therefore, should not be considered by this Court. *State v. Smith*, 812 P.2d 470, 475-76 (Utah Ct. App. 1991).

Likewise, although the Motion is technically untimely, the thirty (30) day time limit in the instant case, constitutes an unconstitutional "statute of repose" because Defendant's right to withdraw his plea does not even arise until the State's breach of the plea agreement, which occurred at the time of sentencing. Cf. *Berry ex rel. Berry v. Beech Aircraft, Corp.* 717 P.2d 670, 684-85 (Utah 1985).

under the agreement it could not make to the court. In essence, the State circumvented its agreement and it became illusory.

Giving Defendant the benefit of the doubt and based upon *State v. Gallegos*, the lower court should have liberally construed the plea agreement and found a breach thereof. Accordingly, it should have found such breach constituted good cause and allowed Defendant to withdraw his plea.

CONCLUSION

Based upon the above discussion, this Court should reverse the Judgment, Sentence and Commitment of the lower Court and remand for the purposes of entry of a not-guilty plea so that the matter can proceed to trial.

RESPECTFULLY SUBMITTED this 11th day of March, 1999.


FLOYD W HOLM
Attorney for Defendant/Appellant

MAILING CERTIFICATE

I hereby certify that on this 11th day of March, 1999, I mailed, first class, postage prepaid, two (2) true and correct copies of the above and foregoing BRIEF OF APPELLANT to:

Ms. Jan Graham
Utah Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114


FLOYD W HOLM

ADDENDUM

FILED

NOV - 7 1997

5th DISTRICT COURT
IRON COUNTY
DEPUTY CLERK

SCOTT M. BURNS (#4283)
Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694
Telecopier: (801) 586-2737

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,)	JUDGMENT, SENTENCE,
)	AND COMMITMENT
Plaintiff,)	
vs.)	
MARVIN JEAN-JACQUES,)	Criminal No. 971500126
Defendant.)	Judge J. Philip Eves

The Defendant, MARVIN JEAN-JACQUES, having entered a plea of guilty to the offense of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, a Third-Degree Felony, on July 31, 1997, and the Court having accepted said plea of guilty and thereafter having ordered the preparation of a presentence investigation report, and upon completion of said report, the above-entitled matter having been called on for sentencing on November 3, 1997, in Parowan, Utah, and the above-named Defendant, MARVIN JEAN-JACQUES, having appeared before the Court in person, representing himself, together with stand-by counsel Floyd W Holm, and the State of Utah having appeared by and through Iron County Attorney Scott M Burns, and the Court having heard

(20000700) 1

statements from all parties, and the Court having reviewed the presentence investigation report and having further reviewed the file in detail, and being fully advised in the premises now makes and enters the following Judgment, Sentence, and Commitment, to wit:

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, MARVIN JEAN-JACQUES, has been convicted of the offense of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, a Third-Degree Felony, and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

SENTENCE

IT IS HEREBY ORDERED that the Defendant, MARVIN JEAN-JACQUES, and pursuant to his conviction of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, a Third-Degree Felony, is hereby sentenced to a term of imprisonment for a period of zero (0) to five (5) years, and the Defendant is hereby placed in the custody of the Utah Department of Corrections.

IT IS FURTHER ORDERED that no fine shall be imposed.

IT IS RECOMMENDED, by the Court, that upon incarceration by the Department of Corrections, that the Defendant be evaluated and, if appropriate, treated for hyperactivity, depression, and substance abuse addiction.

COMMITMENT

TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH:

YOU ARE HEREBY COMMANDED to take the Defendant, MARVIN JEAN-JACQUES,

and deliver him to the Utah State Prison in Draper, Utah, there to be kept and confined in accordance with the above and foregoing Judgment, Sentence, and Commitment.

DATED this 7th day of November, 1997.

BY THE COURT:



Philip Eves
PHILIP EVES
District Court Judge

CERTIFICATE

STATE OF UTAH)
 :SS.
COUNTY OF IRON)

I, CAROLYN BULLOCH, Clerk of the Fifth Judicial District Court in and for Iron County, State of Utah, hereby certify that the foregoing is a full, true, and exact copy of the original Judgment, Sentence, and Commitment in the case entitled State of Utah vs. Marvin Jean-Jacques, Criminal No. 971500126, now on file and of record in my office.

WITNESS my hand and the seal of said office in Cedar City, County of Iron, State of Utah, this 7 day of November, 1997.

(SEAL)



CAROLYN BULLOCH
CAROLYN BULLOCH
District Court Clerk

By. Carolyn Bulloch
Deputy District Court Clerk

