

1990

State of Utah v. Michael David Hoff : Docketing Statement

Utah Supreme Court

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Walter F. Budgen, Jr.; Attorney for Defendant/Appellant.

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UTAH SUPREME COURT
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Clerk, Supreme Court, Utah

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IN THE UTAH SUPREME COURT

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STATE OF UTAH, :
 : DOCKETING STATEMENT
Plaintiff/Respondent :
v. :
 : Case No. 900096
MICHAEL DAVID HOFF, :
 :
Defendant/Appellant. :

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Pursuant to the provisions of Rule 9 of the Rules of the Utah Supreme Court, Appellant submits the following Docketing Statement:

1. This Appeal is taken from an Order entered on February 26, 1990 by the Third Judicial District Court for Tooele County, the Honorable Raymond S. Uno presiding. Appellant filed his Notice of Appeal on February 28, 1990.

2. Jurisdiction is conferred upon the Utah Supreme Court pursuant to Rule 3 of the Rules of the Utah Supreme Court and U.C.A. Section 78-2-2(4)(a).

3. This Appeal is from a final Order of the District Court

denying the Defendant's Motion to Withdraw Guilty Plea based upon non-compliance with Rule 11(e) of the Utah Rules of Criminal Procedure.

4. On July 22, 1985, the Defendant appeared with counsel before the court for arraignment on a charge alleging Aggravated Sexual Abuse of a Child, a first degree felony. When the Defendant was called upon to enter his plea, the State's attorney, Mr. Elton, reported to the court that the parties had entered into a plea negotiation whereby the Defendant would plead guilty to the charge of Attempted Aggravated Sexual Abuse of a Child, a first degree felony. Utilizing an Affidavit of Defendant, Judge Rokich then received the Defendant's guilty plea.

The court engaged in some on-the-record compliance with Rule 11(e) of the Utah Rules of Criminal Procedure. However, the court did not determine from any conversation with the Defendant that he understood the nature and elements of the offense to which he was entering the guilty plea. Similarly, there was no factual basis presented on the record for the entry of the guilty plea.

On September 30, 1985, Judge Fishler sentenced the Defendant to serve a term of incarceration at the Utah State Prison of five years to life. The Defendant is presently serving that sentence at the Utah State Prison.

On December 28, 1989, the Defendant filed a Motion to Withdraw Guilty Plea based upon State v. Gibbons, 740 P.2d 1309 (Utah 1987), Rule 11(e) of the Utah Rules of Criminal Procedure, and Boykin v. Alabama, 395 U.S. 238 (1969). In an Order dated February 26, 1990, the court denied the Defendant's Motion to Withdraw Guilty Plea. This appeal follows.

5. One (1) issue will be presented in this Appeal:

A. The trial judge abused his discretion by finding that the record as a whole demonstrated substantial compliance with Rule 11(e) when the Defendant entered his guilty plea. In particular, the record does not demonstrate that the Defendant entered his guilty plea with a full understanding of the nature and elements of the offense at the time of his guilty plea. The court, at the time the guilty plea was entered, never reviewed the elements of the offense of Attempted Aggravated Sexual Abuse of a Child with the Defendant. Similarly, there was no on-the-record factual basis for the entry of the guilty plea. The Defendant was never asked to acknowledge the facts contained in the guilty plea affidavit. Hence, there was neither an on-the-record acknowledgement of the elements or of the facts to support the guilty plea. Making sure that an accused understands the facts and elements of the offense to which he pleads guilty are not mere technicalities. The failure of the trial court to

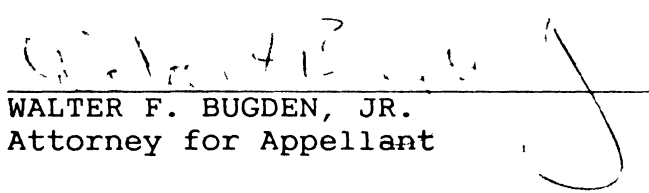
review the facts and the elements of the offense with the Defendant at the time of the guilty plea mandates setting aside his guilty plea.

Rule 11(e)(5) of the Utah Rules of Criminal Procedure requires that the Defendant know the minimum and maximum sentence that may be imposed. There was no compliance with this mandate on the record at the time the Defendant entered his plea. Indeed, there was absolutely no mention of the possible sentence that might be imposed at the time the Defendant entered his plea.

6. The Appellant relies upon U.C.A. Section 77-35-11(e), and Article I Section 12 of the Utah Constitution.

The following cases are relevant: State v. Valencia, cited 7-10-89, Utah Court of Appeals; State v. Gibbons, 740 P.2d 1309 (Utah 1987); Boykin v. Alabama, 395 U.S. 238 (1968); McCarthy v. U.S., 349 U.S. 459 (1969).

DATED this 28th day of February, 1990.


WALTER F. BUGDEN, JR.
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Docketing Statement, by first class postage pre-paid, this 16th day of April, 1990, to:

Mark W. Nash
Deputy Tooele County Attorney
Tooele County Courthouse
47 South Main Street
Tooele, Utah 84074

Utah Attorney General's Office
236 State Capitol Building
Salt Lake City, Utah 84114

Vickie Bauer

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MARK W. NASH
Deputy Tooele County Attorney
Tooele County Courthouse
47 South Main Street
Tooele, Utah 84074
Telephone: 882-5550, Ext. 351

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR TOOELE COUNTY, STATE OF UTAH**

* * * * *

THE STATE OF UTAH,)	
)	ORDER DENYING DEFENDANT'S
Plaintiff,)	MOTION TO WITHDRAW GUILTY
)	PLEA
Vs.)	
)	
MICHAEL DAVID HOFF,)	Case No. <u>851301819</u>
)	
Defendant.)	

* * * * *

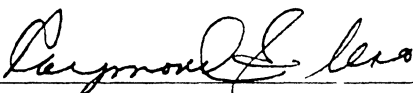
This matter came on before the above-named court on January 22, 1990, the Honorable Raymond S. Uno presiding. Defendant was personally present together with his attorney, Wally F. Bugden. The State was represented by Mark W. Nash, Deputy Tooele County Attorney. The matter came before the court on defendant's Motion to Withdraw Guilty Plea. The court noted that it had received the memoranda filed by counsel in support of and in opposition to the motion and had read the same. The court then heard arguments of counsel and took the matter under advisement.

On February 12, 1990, the court issued a signed minute entry upon which the following ruling is based:

RULING

The court, based upon the memoranda and cases submitted by counsel, the arguments made in open court, the transcript of defendant's arraignment and upon the Affidavit of Defendant, is of the opinion that, taking the record as a whole, the arraigning court showed substantial compliance with Rule 11. Accordingly, defendant's Motion to Withdraw Guilty Plea is denied.

DATED this 26th day of FEBRUARY, 1990.



RAYMOND S. UNO
District Court Judge

CERTIFICATE OF FAX

I certify that I faxed a true and correct copy of the foregoing Order Denying Defendant's Motion to Withdraw Guilty Plea to Wally Bugden, Attorney for Defendant, at 532-7381, this 23 day of February, 1990.



WALTER F. BUGDEN, JR., #480
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Telephone: (801) 532-7282

IN THE THIRD JUDICIAL DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

-----oo0oo-----

STATE OF UTAH,	:	
	:	NOTICE OF APPEAL
Plaintiff/Respondent	:	
v.	:	
	:	Case No. 851301819
MICHAEL DAVID HOFF,	:	
Defendant/Appellant.	:	

-----oo0oo-----

NOTICE IS HEREBY GIVEN that Michael David Hoff, Defendant-Appellant in the above matter, by and through his counsel, Walter F. Bugden, Jr., hereby appeals to the Utah Supreme Court from the Order Denying Defendant's Motion to Withdraw Guilty Plea entered on or about February 26, 1990 by the Third District Court for Tooele County, Judge Raymond S. Uno.

DATED this _____ day of _____, 1990.

WALTER F. BUGDEN, JR.,
Attorney for Defendant/Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Appeal, by first class postage prepaid, this 25th day of February, 1990, to:

Mark W. Nash
Deputy Tooele County Attorney
Tooele County Courthouse
47 South Main Street
Tooele, Utah 84074

Mark W. Nash