

1992

State of Utah v. Randall W. Cates : Brief of Appellant

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

STATE OF UTAH,

PLAINTIFF/APPELLEE

CASE NO. 920389-CA

RANDALL W. CATES,

PRIORITY NO. 2

DEFENDANT/APPELLANT

BRIEF OF APPELLANT

APPEAL FROM DENIAL OF MOTION TO WITHDRAW GUILTY PLEA TO TWO COUNTS OF FORGERY, BOTH SECOND DEGREE FELONIES, UTAH CODE ANN. SECTION 76-6-501, IN THE SECOND JUDICIAL DISTRICT COURT, DAVIS COUNTY, THE HONORABLE DOUGLAS L. CORNABY PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 PLAINTIFF/APPELLEE :
 :
 V. : CASE NO. 920389-CA
 :
 RANDALL W. CATES, : PRIORITY NO. 2
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
PLAINTIFF/APPELLEE, :

V. : CASE NO. 920389-CA

RANDALL W. CATES, : PRIORITY NO. 2
DEFENDANT/APPELLANT. :

BRIEF OF APPELLANT

JURISDICTION

This appeal is taken pursuant to the provisions of Utah Code Ann. Section 78-2a-2(2)(f) 1953 (as amended)., in which Appellant appeals from the denial of his motion to withdraw his plea of guilty from the Second Judicial District Court, Davis County, State of Utah.

NATURE OF PROCEEDINGS

This is an appeal from the denial of Appellant's motion to withdraw his guilty plea entered on two counts of forgery, both second degree felonies.

STATEMENT OF ISSUES

The issue presented in this appeal is:

1. Whether Appellant's plea of guilty was voluntary and knowingly made.

The standard for review is whether the trial court strictly complied with the requirements of Rule 11(5) of the Utah Rules of Criminal Procedure. State v. Hoff, 164 Utah adv. Rep 21.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Rule 11(5) Utah Rules of Criminal Procedure

STATEMENT OF THE CASE

Defendant was charged on March 9, 1992, with three counts of forgery, all second degree felonies, in violation of Utah Code Ann. Section 76-6-501 (1990) (Record [hereinafter R.] at 7). On March 17, 1992, Appellant entered a plea of guilty to two counts of forgery, both second degree felonies (R. at 13-14). On the April 12, 1992, Appellant filed a motion to withdraw plea of guilty and for appointment of a public defender and reinstatement of bail (R. at 15-16). The public defender was appointed and on June 3, 1992, filed a memorandum in support of the motion to withdraw guilty plea (R. at 17). A memorandum in opposition was filed by the County Attorney on May 18, 1992 (R. at 43-45). On June 2, 1992, the motion to withdraw the guilty plea was heard and denied and the defendant was sentenced (R. at 21-22 and 61). On June 19, 1992, Appellant's counsel filed an appeal regarding the Court's ruling regarding the withdrawal of the guilty plea (R. 49).

STATEMENT OF FACTS

On June 2, 1992, a hearing was held before Judge Cornaby to determine if Appellant's plea of guilty was knowingly and voluntarily made (R. 53-59). The position of the Appellant was that at the time of taking of the plea he was coerced by his trial attorney to enter the plea. Trial counsel had stated, "you don't have enough money to take this thing through all the way. Let's

just get this over with" (R. 53-54).

Further, Appellant pointed out that just prior to the time of sentencing he been given the prescription drug imipramine for treatment of depression (R. 56) and that the reason he did not inform the Court of this was because of trial counsel's advise not to say anything (R. 57).

SUMMARY OF ARGUMENT

The trial court erred in not granting the Appellant's motion to withdraw his guilty plea because he was coerced into making the guilty plea by his trial counsel and because he did not knowingly enter the plea due to the effects of prescription medication he had taken just prior to entering his plea.

ARGUMENT

POINT I

APPELLANT'S PLEA OF GUILTY WAS NOT KNOWINGLY AND VOLUNTARILY MADE.

The Appellant has asked his appeal counsel to argue that his plea of guilty was not knowingly and voluntarily made. As stated under Rule 11(5)(b) of the Utah Rules of Criminal Procedure, "The court may refuse to accept a plea of guilty or no contest, and may not accept the plea until the court has found: (b) the plea is voluntarily made..." Further, rule 11 specifies that the court determine whether the plea is knowingly made with regards to specific rights and with knowlege of specific procedural and substantive issues. Rule 11 (5)(c-g).

The Supreme Court of Utah in State v. Huff reaffirmed the proposition that the trial court must strickly comply with the

requirements of Rule 11(5). State v Huff, 164 Utah Adv. Rep. 21,22.

However, the fact pattern of this case does not lend itself to a question and answer exchange between the judge and the appellant. Here, the person which was exercising influence upon the appellant (his trial counsel) is the very person standing next to the appellant at the time the plea is being taken.


It was the influence of his attorney which stopped the Appellant from telling the judge that he (the appellant) had taken a prescription drug just prior the change of plea (R.57).

Without a plea that was voluntarily and knowingly made the requirements of Rule 11 are not satisfied and the Appellant should be allowed to withdraw his plea of guilty.

CONCLUSION

Based on the above discussion, the Appellant respectfully asks this Court to allow the Appellant to withdraw his plea of guilty.

Respectfully submitted this 11th day of November, 1992.



William J. Albright
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that I have thoroughly reviewed the file and have read the transcripts and that I have raised the points/issues requested by the Appellant in this brief and that on the 12th day of November, 1992, I mailed, postage prepaid, a true and correct copy of the above brief and a copy of the transcript to Randall W. Gates at the following address: Utah State Prison-Star 1, P.o. Box 250, Draper, Utah 84020



ADDENDUM

Cross-References. — Harmless error, Rule 30.

Rights of accused, Utah Const., Art. I, §§ 7 to 13; § 77-1-6.

NOTES TO DECISIONS

ANALYSIS

Additional time to plead.
Waiver of objections.

Additional time to plead.

Where original information did not state public offense and was amended so as to state public offense for first time, as amending information in larceny prosecution so as to allege ownership of property alleged to have been stolen, it was equivalent of a new information requiring arraignment of defendant and his plea

thereto; and where defendant was not given time to plead to such information, court committed reversible error. *State v. Jensen*, 83 Utah 452, 30 P.2d 203 (1934).

Waiver of objections.

Subdivision (c) merely reaffirms the general legal rule that all objections, including those to proceedings in the circuit court, must be made before a guilty plea is entered or the objections will be waived. *State v. Humphrey*, 794 P.2d 496 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d Criminal Law §§ 433 to 438.

C.J.S. — 22 C.J.S. Criminal Law §§ 404, 407, 411.

Key Numbers. — Criminal Law ⇐ 261(1), 263, 264.

Rule 11. Pleas.

(1) Upon arraignment, except for an infraction, a defendant shall be represented by counsel, unless the defendant waives counsel in open court. The defendant may not be required to plead until he has had a reasonable time to confer with counsel.

(2) A defendant may plead not guilty, guilty, no contest, not guilty by reason of insanity, or guilty and mentally ill. A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(3) A defendant may plead no contest only with the consent of the court.

(4) When a defendant enters a plea of not guilty, the case shall forthwith be set for trial. A defendant unable to make bail shall be given a preference for an early trial. In cases other than felonies the court shall advise the defendant, or his counsel, of the requirements for making a written demand for a jury trial.

(5) The court may refuse to accept a plea of guilty or no contest, and may not accept the plea until the court has found:

(a) if the defendant is not represented by counsel, he has knowingly waived his right to counsel and does not desire counsel;

(b) the plea is voluntarily made;

(c) the defendant knows he has rights against compulsory self-incrimination, to a jury trial, and to confront and cross-examine in open court the witnesses against him, and that by entering the plea he waives all of those rights;

(d) the defendant understands the nature and elements of the offense to which he is entering the plea; that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt; and that the plea is an admission of all those elements;

(e) the defendant knows the minimum and maximum sentence that may be imposed upon him for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(f) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached; and

(g) the defendant has been advised of the time limits for filing any motion to withdraw a plea of guilty or no contest.

(6) Failure to advise the defendant of the time limits for filing any motion to withdraw a plea of guilty or no contest is not a ground for setting the plea aside, but may be the ground for extending the time to make a motion under Section 77-13-6.

(7) (a) If it appears that the prosecuting attorney or any other party has agreed to request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of other charges, the agreement shall be approved by the court.

(b) If sentencing recommendations are allowed by the court, the court shall advise the defendant personally that any recommendation as to sentence is not binding on the court.

(8) (a) The judge may not participate in plea discussions prior to any agreement being made by the prosecuting attorney.

(b) When a tentative plea agreement has been reached that contemplates entry of a plea in the expectation that other charges will be dropped or dismissed the judge, upon request of the parties, may permit the disclosure to him of the tentative agreement and the reasons for it, in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether he will approve the proposed disposition.

(c) If the judge then decides that final disposition should not be in conformity with the plea agreement, he shall advise the defendant and then call upon the defendant to either affirm or withdraw his plea.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, redesignated former Subdivisions (a) through (d) and (f) as present Subdivisions (1) through (4) and (8), respectively, and former Subdivision (e) as Subdivisions (5) and (7); divided Subdivision (1) into two sentences, substituting "The defendant may" for "and shall" at the beginning of the present second sentence; substituted "may" for "shall" in the introductory language of Sub-

division (5); added "and" to the end of Subdivision (5)(f) and added Subdivision (5)(g); added Subdivision (6); substituted "may" for "shall" in Subdivision (8)(a); and made minor stylistic changes throughout the rule.

Cross-References. — Inadmissibility of pleas, plea discussions or related statements, Rule 410, U.R.E.

Time limit for filing motion to withdraw plea of guilty or no contest, § 77-13-6.

NOTES TO DECISIONS

ANALYSIS

Guilty or no contest plea.

—Conditional pleas.

—Effect.

—Explanation sufficient.

—Failure to explain.

—Consequences of plea.

—Nature and elements of offense.

—Right against self-incrimination.

—Judicial burden.

—Voluntariness.

—Absence of finding.

—Method of establishing.

—Withdrawal.

Plea agreements.

—Court's participation in negotiations.

—Refusal of court to comply.

—Sentencing.

Cited.

CERTIFICATE OF HAND DELIEVERY

I, William J. Albright, hereby certify that I hand delievered four true and correct copies of the foregoing brief of Appellant Randall W. Cates to the following:

Criminal Appeals Division
Utah Attorney General
236 State Capitol
Salt Lake City, Utah

Dated this 12th day of October, 1992,