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10-7-16

Court of Appeals
Division I
State of Washington

NO. 75023-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DANIELLE WENTLAND,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

Because it was not the product of a knowing and voluntary waiver, Danielle Wentland's waiver of various rights upon entering drug court violated the Due Process Clause of the Fourteenth Amendment.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The waiver of a constitutional right must be made voluntarily and with an understanding and knowledge of the rights at stake and consequences of the waiver. Intoxication may prevent a person from properly understanding and knowingly waiving her rights. Where the evidence established Ms. Wentland was under the influence of drugs at the time she waived a variety of rights upon entering drug court was that waiver knowing and voluntary?

C. STATEMENT OF THE CASE

The State charged Ms. Wentland, a long-time heroin addict, with a single count of possession of heroin. CP 89-90.

Ms. Wentland entered drug court. CP 77-82.

Ms. Wentland was terminated from drug court. CP 22-57. The trial court found her guilty as charged and sentenced her to 24 months in prison. CP 58-75.

D. ARGUMENT

Ms. Wentland’s waiver of a host of constitutional rights was not knowing, intelligent and voluntary where made when she was under the influence of narcotics.

The waiver of a constitutional right must be knowing, voluntary, and intelligent. *State v. Humphries*, 181 Wn.2d 708, 717, 336 P.3d 1121 (2014). A waiver must be “an intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

Ms. Wentland waived numerous constitutional rights when she entered drug court. Ms. Wentland waived her right to speedy trial and her right to a jury, her right to confront witnesses, her right to call witnesses or to testify on her own behalf, and her right not to incriminate herself. CP 77-78. Ms. Wentland stipulated that she possessed a substance and that the substance was heroin. CP 76. In doing so, she waived her right to require the State prove either element of the offense in this case beyond a reasonable doubt. *Humphries*, 181 Wn.2d at 716. As those are the only two elements of the offense she effectively entered a guilty plea to the offense. Ms. Wentland also waived her right to require the State prove any violation leading to her termination from drug court, freeing the State of its burden unless she

requested a hearing. CP 78. Ms. Wentland agreed to pay a \$900 nonrefundable fee, and to allow drug court staff and the state access to her relevant medical records. CP 78-79.

The circumstances of each case determine the “validity of any waiver of a constitutional right, as well as the inquiry required by the court to establish waiver.” *State v. Herron*, 183 Wn.2d 737, 743, 356 P.3d 709 (2015). Intoxication is “a factor in deciding whether the defendant understood his rights and made a conscious decision to forego them.” *State v. Gardner*, 28 Wn. App. 721, 723, 626 P.2d 56 (1981). Intoxication renders a statement involuntary if the circumstances show it affected the person’s ability to comprehend her words or actions. *State v. Cuzzetto*, 76 Wn.2d 378, 383, 386, 457 P.2d 204 (1969).

Here, on the very day she entered the numerous waivers and stipulations addressed above Ms. Wentland, a heroin addict, bluntly stated to the court she had used drugs. 9/2/15 RP at 9. The record establishes Ms. Wentland was under the influence of a narcotic at the time of she entered the waivers. In that condition, Ms. Wentland would not have been competent to testify as a witness in a court.

RCW 5.60.050 provides:

The following persons shall not be competent to testify:

(1) Those who are of unsound mind, or intoxicated at the time of their production for examination . . .

But that is precisely what she did when she entered what amounted to a guilty plea. Chief among the rights waived by a guilty plea is the right not to incriminate or to give witness against oneself. “A plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that no proof by the prosecution need be advanced It supplies both evidence and verdict, ending controversy.” *Boykin v. Alabama*, 395 U.S. 238, 249 n.4, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969) (quoting *Woodard v. State*, 171 So.2d 462, 469 (Ala. Ct. App. 1965)). If as a matter of law Ms. Wentland was incompetent as a witness, she could not enter a guilty plea, or otherwise waive the host of rights involved.

Because the waivers were not voluntarily and understandingly entered, Ms. Wentland’s conviction must be reversed. *Boykin*, 395 U.S. at 244.

E. CONCLUSION

For the reasons above, this Court should reverse Ms. Wentland's conviction. If the court disagrees and affirms the conviction, the Court should exercise its discretion and deny any claim for costs. *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612, *review denied*, 185 Wn.2d 1034 (2016).

Respectfully submitted this 7th day of October, 2016.

s/ Gregory C. Link
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DIVISION I**

STATE OF WASHINGTON,)	
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DANIELLE WENTLAND,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7TH DAY OF OCTOBER, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] SETH FINE, DPA [sfine@snoco.org] SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201	() () (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X] DANIELLE WENTLAND 820973 WACC FOR WOMEN 9601 BUJACICH RD NW GIG HARBOR, WA 98332-8300	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON, THIS 7TH DAY OF OCTOBER, 2016.



X _____

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