NO. 52639-5-II

COURT OF APPEALS, Division II
STATE OF WASHINGTON

STATE OF WASHINGTON,
RESPONDENT,

V.S.

ANTHONY DWAIN DAVIS,
APPELLANT.

COURT OF APPEALS
DIVISION II
2019 MAR -6 AM 11:59
STATE OF WASHINGTON
BY DEPUTY

ON APPEAL FROM the Pierce county
SUPERIOR COURT
CAUSE NO. 95-1-00160-4
THE HONORABLE JERRY COSTELLO, Judge

APPELLATE PROCEDURE 10.10
STATE OF ADDITIONAL GROUNDS

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1) ASSIGNMENT OF ERROR

A. APPELLANT DAVIS' FIFTH AMENDMENT right to PROCEDURAL DUE PROCESS WAS VIOLATED by the TRIAL COURT'S UNCONSTITUTIONAL APPLICATION OF RCW 9.94A.120(3), which LEGISLATIVELY MANDATES A STANDARD RANGE sentence not to exceed the STATUTORY MAXIMUM sentence.

B. APPELLANT DAVIS' FIFTH AMENDMENT right AGAINST ARBITRARY STATE ACTION WAS VIOLATED by the TRIAL COURT'S UNCONSTITUTIONAL APPLICATION OF RCW 9.94A.360(11), which LEGISLATIVELY MANDATES the STATE must PROVE the VALIDITY OF A PRIOR CONVICTION.

C. APPELLANT DAVIS' FOURTEENTH AMENDMENT right to EQUAL PROTECTION OF the LAW WAS VIOLATED by the TRIAL COURT'S DENIAL OF AN APPLICATION OF, NOT ONLY the DECISION but the mode OF ANALYSIS, IN BOYKIN V. ALABAMA, 395 U.S. 238 (1969).

THE 1995 PLEA CONVICTION IS INVALID, [it] HAS the 1986 PLEA CONVICTION that is INVALID; THE STATE CONCEDES the ERRORS ON the FACE OF the JUDGMENT AND SENTENCE OF the 1986 JUDGMENT.

D. THE PURPOSE OF this is to obtain INVALIDATION BASED UPON the SUPREME COURT'S FINDINGS. THE WASHINGTON STATE SUPREME COURT HAS determined that DAVIS' 1986 CONVICTION IS "INVALID IN that respect.

THE COURT OF APPEALS DIVISION TWO, ORDERED COURT ACTION REQUIRED. THE SUPERIOR COURT GAVE A TELE-PHONIC HEARING IN MARCH 10th 2017 ON the MOTION to Resentence: which WAS DENIED.

ISSUES.

APPELLANT DAVIS' Sixth Amendment right WAS VIOLATED by the trial COURT'S USE OF the 1986 PLEA CONVICTION, that is INVALID by the WASHINGTON STATE SUPREME COURT.

THE PIERCE COUNTY SUPERIOR COURT IMPOSITION OF DAVIS' PLEA AGREEMENTS RESULTED IN A DECISION that WAS CONTRARY to AN UNREASONABLE DETERMINATION OF FEDERAL LAW.

APPELLANT DAVIS' is SERVING A sentence imposed PURSUANT to his CONVICTION that VIOLATES DUE PROCESS.

APPeLLANT DAVIS' beLieves that iF his 1986 CONVICTION is INVALid, he is "IN custody IN VIOLATION OF the CONSTITUTION OR LAWS OR treaties OF the UNited States." 28 USC § 2254(A).

ON october 30, 1995., APPeLLANT entered AN [I]NVALid [P]LeA OF GuiLty FOR the CHARGe OF FIRST DeGREE RAPe, ON CAUSE number 95-1-00160-4, *PLeASE Note that APPeLLANT [D]id dispute the criminAL history used IN this MATTER.

ARGuMENT.

The Statue IN eFFect At the time OF the 1986 & 1988 "PRIOR CONVICTIONS" OF the APPeLLANT WAS the sentencING REFORM ACT (SRA) OF 1981, which would Not have been UNDER the AUthORITY OF the AMended 1993 eNACted LAW CONCERNING the "Persistent offender ACCOUNTAbiLity Act (POAA)" AND to use APPeLLANT "PRIOR CONVICTIONS" which PRe-dated the enactment OF the 1993 Amended SRA FOR the PURPOSE OF enFORCing the POAA VIOLATED the LAWS OF ex Post FACto which resuLted IN A FATAL constitutionAL ERROR OF the APPeLLANT rights. IN the INSTANT MATTER, the 1993 AMENdment to RCW 9.94A, does NOT CONTAIN ANY SPeciFic LegisLative command. "See" State v. McCLENDON, 131 WN. 2d 853, 861, 935 P.2d 1334, cert. Denied, 552 U.S. 1027, 118 S.ct. 624, 139 L.Ed. 605 (1997)

IN determining whether a new statue should be given retroactive effect, the courts look at whether the amendment contained [E]xplicit legislative command. (State v. Varga, 151 Wn.2d 179, 190, 86 P.2d 139 (2004); State v. Sell, 110 Wn. App. 741, 747, 43 P.3d 1246 (Div. 1 2002).

On October 30th 1995, Appellant Davis entered into a legally binding contractual plea agreement with the Pierce County Prosecutors office on cause number 95-1-00160-4.
This plea agreement was [I]nvalid on its face, as the document used to perpetuate the negotiated plea agreement contained "unconstitutional" standard boilerplate language in section (7) subsection (c) lines: 2-4 declaring: (c) "Even so, [M]y plea of guilty to this crime is binding on me. I cannot change my mind, even if additional criminal history is discovered and even though the standard sentencing range and the prosecuting attorney's recommendation increase."

This standard boilerplate language is contained on the courts documents as a preformat to avoid the element of time

consumption of drafting a true and accurate document to reflect the authority which allows a defendant the right to contest the plea by motion to withdraw. Instead the document used was inconsistent with the statutory authority provided in the WPIC or the court rules as provided in CrR 4.2(F) "withdrawal of plea", Because the court did not inform the appellant at the time of the plea, of the right to withdraw his plea to correct manifest injustice even after the appellant duly informed the court that he disputed the criminal history, the court disregarded the appellant and proceeded to sentencing.

Because this document did not accurately reflect the authority stated in paragraph 17, the document obliterated the appellant constitutional right to due process by "forcing" the appellant to enter into and adhere to an "unintelligent and unknowing" waiver of his rights. The use of this document was unconstitutional and coupled with the trial courts failure to comprise the appellant of his right to "withdraw his plea", further compacted the constitutional violation of the appellant right to due process of the law.

Had the appellant been comprised of his rights by the court and intelligently understood the ramifications of the language contained in the plea document the appellant could have "Rejected" the plea agreement and filed his motion to withdraw his plea, thus allowing the court to rule under RCW 9.94A.431(1); Lines 6-11, where it is clear in its language: "If the court determines it is not consistent i.e. (plea agreement) with the interests of justice, the court[s]hall on the record inform the appellant and the prosecutor that they are not bound by the agreement and that the appellant may withdraw his plea of guilty."

This document and its language are unconstitutional as it omitted the correct language: "I fully understand that my plea is binding on me if [a]ccepted by the [c]ourt." This omission of the correct language forces the appellant to enter into and adhere to an "unintelligent and unknowing waiver of his rights."

It is the duty of the prosecutor and the court to be completely comprised of the agreements they enter into and to protect the rights of the appellant as it does the rights of the plaintiff.

ARGUMENT & Authorities

A APPELLANT CANNOT be FORCED to GIVE UP his INALIENABLE right to CHALLENGE the VALIDITY OF the PLEA AGREEMENT. Yet the STANDARD BOILERPLATE LANGUAGE CONTAINED AND used IN the 1995 PLEA AGREEMENT COMPLETELY disregarded the rights OF the APPELLANT by FORCING AN "AFFIRMATIVE AGREEMENT" AND removing the right to CONTEST the PLEA AGREEMENT AS IN the INSTANT MATTER where the APPELLANT had CLEARLY "Disputed" the CRIMINAL history used to sentence him under the POAA. (SUPPORTED by section (b) OF the 1995 PLEA AGREEMENT).

CONCLUSION.

APPELLANT humbly request this HONORABLE court to GRANT him AN "EVIDENTIARY HEARING." THE AFOREMENTIONED ISSUES CONTAINED IN this STATEMENT OF ADDITIONAL GROUNDS; To determine A CORRECTIVE POSTURE resulting IN the VERY LEAST; "WITHDRAWAL OF the 1995 PLEA AGREEMENT."

DATED: MARCH 4th, 2019

anthony D. Davis
ANTHONY D. DAVIS