Supreme Court
North Dakota

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SUPREME COURT MAR 14 2011

20110047

Dale Gress,
Appellant,

v.

Case No. 20110047

State of North Dakota,
Appellee.

FILED
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MAR 11 2011

STATE OF NORTH DAKOTA

Brief Of Appellant

Dale Gress
Dale Gress, Appellant
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III
Statement of Issues

The appellant Gross made application to withdraw his guilty plea. The trial, in a small section of the Motion, circled an area denying appellant's application and denying due process rights of the appellant.

IV
Issues presented

1. Whether the trial Court met due process standards to consider the voluntaryness of Appellant's guilty plea?

2. Whether the trial Court abused its discretion in its (order) entered denying Petitioner's post Conviction Claim?

3. Whether there exist sufficient evidence to deny a Constitutional Claim of falty plea agreement as to its Knowingly, intelligently, and its voluntaryness, when it was entered and accepted by the Court and Appellant?

V

Argument - Standard of Review

Admissibility of a confession in evidence at a criminal trial must be based on a reliable determination on voluntariness which satisfies the Constitutional rights of the defendant. Jackson v. Denno, 378 U.S. 368, 378, 12 L. Ed 2d 908, 84 S.Ct. 1774. A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; Nothing remains to give judgment and determine punishment. Kercheval v. United States, 274 U.S. 220, 223, 71 L. Ed 2d 1009, 1012, 47 S. Ct. 582. The admissibility of a confession Must be based on a reliable determination of the voluntariness issue which satisfies the Constitutional rights of the defendant. Jackson v. Denno, 387 U.S. 386, 387, 12 L. Ed 2d 908, 922, 84 S.Ct. 1774. Ignorance, incomprehension, coerion, terror, inducement, subtile, or blatant threats might be a perfect cover-up of unconstitutionality. The Question of an effective waiver of a federal Constitutional Rights in a proceedings is governed by federal Standards. Douglas v. Alabama, 380 U.S. 415, 422, 13 L. Ed 2d 934, 938, 85 S.Ct. 1074. Several federal Constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a State criminal trial. First is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the State by reason of the Fourteenth Amendment. Molly v. Hogan, 378 US 1, 12 L. Ed 2d 653, 84 S.Ct. 1489. Second is the right to trial by Jury. Duncan v. Louisiana, 391 U.S. 145, 20 L. Ed 2d 491, 88 S.Ct. 1444. Third is the right to confront one's accusers. Pointer v. Texas, 380 U.S. 400, 13 L. Ed 2d 923, 85 S.Ct. 1065.

The U.S. Supreme Court fastened upon the States, as a matter of federal Constitutional law, the rigid prophylactic requirements of Rule 11 of the Federal Rules of Criminal Procedure. Holliday v. United States, 394 U.S. 831, 23 L. Ed 2d 16, 89 S. Ct. 1478 (1969). The appellant's guilty plea was involuntary and made without personal knowledge of the consequences, as his plea was corced and made in ignorance of the consequences. The appellant was entitled to a hearing on his allegations that his guilty plea was involuntary to determine the truth to those allegations. See Waley v. Johnson, 316 U.S. 101, 86 L. Ed 2d 1302, 62 S. Ct. 964. See Boykin v. Alabama, 395 U.S. 238, 23 L. Ed 2d 274, 89 S. Ct. 1709 as to defendant's Boykin Rights on plea agreements; Machibroda v. United States, 368 U.S. 487, 7 L. Ed 2d 473, 82 S. Ct. 510. The Appellant is entitled to a reversal as the trial Court failed to comply in every respect, and aspect, with the procedure for accepting a guilty plea as prescribed in Rule 11 of the Federal Rules of Criminal Procedure, and the Appellant's plea agreement must be set aside. See McCarthy v. United States, 394 U.S. 459, 22 L. Ed 2d 418, 89 S. Ct. 1166 (1969). The Fourteenth Amendment due process clause entitled Appellant to post Conviction remedies to attact his plea's voluntariness and to correct Constitutional defects in his plea agreement-conviction. The appellant challenges the Constitutionality of the process by which the trial judge accepted Appellant's guilty plea because Appellant did Not Knowingly, intelligently, and voluntarily, enter into the plea agreement in this Case. The trial Court abused its discretion by failing to allow a hearing to present evidence on the voluntarily acceptance of the plea.

Conclusion

Wherefore, the appellant pray his post-conviction claims be remanded to the trial Court for an evidentary hearing as appellant may enter evidence as to his voluntary nature of his guilty plea and to give oral testimony as to these facts.

Dale Gress

Dale Gress

Jurisdiction

Jurisdiction is invoked pursuant to North Dakota Constitution Allowing Criminal Appeals and Supreme Court Rule 12 (a)(2). Timely Notice of Appeal was filed with trial Court.

Certification

This is to certify that I do not have access to internet to provide a electronic copy of this brief to the Court.

Certificate of Service

This is to certify a true copy of the Appellant's brief has this day been placed into the institutional Mail and addressed to:

Jacob Rodenbiker
Assistant State's Attorney
514 E. Thayer Avenue
Bismarck, N.D. 58501

on this 11 day of March, 2011.

Dale Gross

Dale Gross, Appellant.