Supreme Court
State of North Dakota

20110086

State,
Plaintiff-Appellee

case No. 20110086

v.

Steven Evans
Defendant-Appellant

Supplemental
Appellants Brief

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IN THE OFFICE OF THE
CLERK OF SUPREME COURT

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The appellant of this appeal entered into an agreement with the State of ND. to plead guilty to a first charge if the second charge would be run concurrent with first charge. The state agreed and an order was entered accordingly Thereafter, upon the finality of the second charge the state ordered the second charge be run consecutive with the first and to secure additional punishment.

Questions Presented

1) Is the original Plea binding upon the State and appellant?
2) Was the appellants federal constitutional right to be free from double jeopardy violated?
3) Was appellant's 14th Amendment rights violated when the state Failed to comply with the first final order?
4) In 08-09-K-0539 Why was 180 days to commence on Dec 3, 2009 concurrent?

I

Is the plea binding upon the State and appellant?

Standard of Review

A plea agreement is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment. See Boykin v. Alabama, 395 US at 242 citing Kercheval v. United States, 274 US 220, 223, 71 L. Ed 1009, 1012, 47 S.Ct. 582. admissibility of a confession must be based on a "reliable determination on the voluntariness issue which satisfies the Constitutional rights of the defendant." Jackson v. Denno, 378 US 368, 387, 12 L. Ed 2d 908, 84 S. Ct. 1774, 1 ALR 3d 1205. The requirement that the prosecution spread on the record the prerequisites of a valid waiver. The Question of an effective waiver of a federal Constitutional in a proceeding is of course governed by Federal Standards. Douglas v. Alabama, 380 US 415, 422. a defendant must have a full understanding of what the plea connotes and its consequences. The Court Fastened upon the State, as a matter of federal Constitutional law, the rigid prophylactic requirements of Rule 11 of the Federal Rules of Criminal Procedure.. in this case, the guilty plea was involuntary because it was made without knowledge of the consequences, and the due Process clause of the Fourteenth Amendment requires the outright ~~[illegible]~~ reversal of ~~petitioner~~ Appellant's Conviction, or have his judgment vacated because ~~there~~ it was involuntary admissions of guilt. There is no evidence to show the plea agreement was voluntarily made, nor intelligent and understanding because the State breached its agreement for concurrent ~~[illegible]~~ sentence.

II

Whether the appellants federal Constitutional Rights to be free from double Jeopordy violated because of the subsequent Sentence.

Standard of Review

The double Jeopardy Clause of the fifth Amendment protects against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. North Carolina v. Pearce, 395 US 711, 717, 23 L. Ed 2d 656, 98 S. Ct. 2072 (1969). The double Jeopardy clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment. J. Bishop, New criminal law 1051 (8th ed 1892); Brown v. Ohio, 432 US 161, 53 L. Ed 2d 187, 92 S. Ct. 2221 n 3 (1977); A defendant is placed in Jeopardy once he is put to trial and without his concent he cannot be tried again. See Wade v. Hunter, 336 U.S. 684, 93 L. Ed 974, 69 S. Ct. 834; Kepner v. United States, 195 US 100, 128, 49 L. Ed 114, 124, 24 S. Ct. 797, 1 Ann Cas 655; Green v. United States, 355 US 184. This prevents a prosecutor or Judge from subjecting a defendant to a second prosecution by discounting or discontinuing the trial when it appears that Jury might not convict. Green Supra at 355 US 188. and serves principally as a restraint on courts and prosecutors, but Courts may not impose more than one punishment for the Same offense and prosecutors may not attempt to secure that punishment in more than one trial.

See Gore v. United States, 357 US 386. Where successive prosecutions are at stake, the guarantee serves "a constitutional policy of finality for the defendant's benefit." United States v. Jorn, 400 US 470, 479, 27 L. Ed 2d 543, 91 S.Ct. 547 (1971). That policy protects the accused from... attempts to secure additional punishment after a prior conviction and sentence. Green v. United States, 355 US 184, 187-88, 2 L. Ed 2d 199, 78 S.Ct. 221. The established test to determine whether two offenses are sufficiently distinguishable to permit the imposition of cumulative punishment was stated in Blackburger v. United States, 284 US 299, 304, 76 L. Ed 306, 52 S. Ct. 180 (1932):

> "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether EACH provision requires proof of a fact which the other does not..."

Where the judge is forbidden to impose cumulative punishment for two crimes at the end of a single proceedings, the prosecutor is forbidden to strive for the same result in successive proceedings. Morey v. Commonwealth, 108 Mass 433, 434 (1871).

> "where... a person has been tried and convicted for a crime which has various incidents included in it, he cannot be a second time tried for one of those incidents without being twice put in jeopardy for the same offense."

In re Nielson, 131 US at 188, 33 L. Ed 118, 9 S.Ct. 672 (1889).

Whatever the sequence may be, the Fifth Amendment forbids successive prosecution and cumulative punishment for a greater and lesser included offense.

In this case, the Court ordered its sentence in the State's Case to run concurrent. The State thereafter through another Court order, the Same Cases, to run cumulatively with each other thereby increasing punishment of the Appellant and thereby violating the original plea agreement, overriding the original Court Order, and violating double Jeopardy of the Fifth Amendment to the U.S. Constitution and appellant's fundamental due process rights of the Fourteenth Amendment.

Conclusion

The First Judgment was final 30 days after Sentence. Thereafter, the state again caused another Judgment to be entered that violate the plea agreement and violate the Appellant's fundamental Constitutional rights and therefore is void.

This Court Should remand an opinion consistent with Appellant's Rights.

Steve Evans 6-30-11
Evans, Appellant

PS. #4) In 08-09-K-0539 (attached) Judge ordered 180 days on Count II, commencing at 12 Noon on the 3rd day of Dec, 2009. Then that time would be done by now! Not added onto my 3 years concurrent, from first charge. Kidder County Please fix that for me as so ordered.