

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	Supreme Court No. 20180444
)	
Plaintiff and Appellee,)	Criminal No. 18-2014-CR-01323
)	
vs.)	
)	
Dametrian Marcel Welch,)	
)	
Defendant and Appellant.)	

BRIEF OF DEFENDANT-APPELLANT DAMETRIAN MARCEL WELCH

Appeal from the Order dated December 3, 2018

In District Court, Grand Forks County, State of North Dakota

The Honorable Donald Hager

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STATEMENT OF THE ISSUES

¶ 1 Whether the District Court abused its discretion when it amended the judgment to state Criminal Facilitation to Murder instead of Criminal Facilitation.

STATEMENT OF THE CASE

¶ 2 This is an appeal of the Northeast Central Judicial District's Order Granting in Part Defendant's Motion to Amend Criminal Judgment and Criminal Record, dated December 3, 2018. (App. 27.) Welch was charged with Murder, a class AA felony, and Conspiracy to Commit Burglary, a class B felony. (App. 8.) Welch ultimately pled guilty to Criminal Facilitation to Murder, a class C felony, and Burglary, a class B felony. (App. 10.) However, Judgment was entered against Welch based upon Murder, a class C felony, and Burglary, a class B felony. (App. 14.) Welch moved the Court to correct the Judgment to indicate Count I to read Criminal Facilitation, not Murder. (App. 17.) The State agreed in part arguing the Judgment should reflect Criminal Facilitation, however it should reflect Criminal Facilitation to Murder. (App. 18, 21.) The Court ordered the Judgment to indicate Criminal Facilitation to Murder. (App. 42.)

STATEMENT OF FACTS

¶ 3 On June 26, 2014, Dametrian Welch ("Welch") was charged with the following: Murder in violation of N.D.C.C. § 12.1-16-01(1)(c) and 12.1-32-01(1), a class AA felony and Conspiracy to Commit Burglary in violation of N.D.C.C. § 12.1-06-04, 12.1-22-02(1), 12.1-32-02(2) and 12.1-32-01(3), a class B felony. (App. 8.) On March 11, 2015, the parties entered into a plea agreement where in exchange for Welch to plead guilty, the State would amend the Murder charge to Criminal Facilitation to Murder, a class C felony, and Burglary charge to remain a class B felony. (App. 10.) The State Amended

the Information and Judgment was entered on July 29, 2015. (App. 12, 14.) The Amended Information charged Welch with Criminal Facilitation to Murder, in violation of sections 12.1-06-02, 12.1-16-01(1)(c), and 12.1-32-01(4) of the North Dakota Century Code, and Conspiracy to Commit burglary, in violation of sections 12.1-06-04, 12.1-22-02(1) and 12.1-32-01(3) of the North Dakota Century Code. (App. 12.) Judgment entered indicated the disposition of Murder in violation of N.D.C.C. § 12.1-16-01(1), a class C felony, and Conspiracy to Commit Burglary, in violation of N.D.C.C. § 12.1-06-04, a class B felony. (App. 14.)

¶4 On May 24, 2017, Welch moved for a reduction of sentence under 35(a), with the North Dakota Rules of Criminal Procedure. (App. 17.) The State opposed the motion arguing the motion was untimely. (App. 18.) On June 24, 2017, the Court denied the motion as being untimely in accordance with Rule 35 of the North Dakota Rules of Criminal Procedure. (App. 20.)

¶5 On September 17, 2018, the State voluntarily motioned the Court titling the motion “State’s Response to Defendant’s Rule 35 Request” and argued the following:

¶1 The State is in receipt of the Defendant’s request to correct a clerical error in the above-referenced case. The Defendant indicates that he was convicted of facilitation of murder and not murder.

¶2 Pursuant to a Plea Agreement, the Defendant entered a guilty plea to Criminal Facilitation to Murder on July 29, 2015. The two applicable statutes include N.D.C.C. § 12.1-06-02 and § 12.1-16-01(1)(c). The Criminal Judgment is correct in regards to the level of the offense which would be a Class C Felony with respect to Count 1.

¶3 For clarification purposes, the State would not object to the Court amending the Criminal Judgment to include the Facilitation statute N.D.C.C. § 12.1-06-04. However, the murder statute should also be listed as that was the crime that he was facilitating. The Facilitation statute clarifies that the criminal offense of murder, a Class AA Felony, would be reduced to a Class C Felony. The murder statute must also be listed as these two statutes are read in conjunction with each other to determine the appropriate offense level that should be assessed. The State further would

not object to the Court amending the description of the offense that the Defendant pled guilty to and to reflect “Criminal Facilitation to Murder”.

¶4 The State has attached State’s Exhibit 1 – Criminal Judgment, State’s Exhibit 2 – Amended Information, and State’s Exhibit 3 – the signed written Plea Agreement.

(App. 21.)

¶6 The Defendant responded arguing that the Judgment should indicate Criminal Facilitation and Burglary only, as that is what the Defendant entered into when he entered the plea agreement. (App. 23.) The Defendant further asserted that the Judgment should only read Criminal Facilitation, and not Criminal Facilitation to Murder as “[t]here is no law requiring, or allowing, additional criminal statutes to be ‘listed’ on a criminal conviction for sake of ‘clarity.’ The only things that should or could be listed on the criminal judgment are the actual crimes for which a person is convicted.” (App. 23.)

¶7 A hearing was held on November 29, 2018, where the Defendant argued that the record, specifically the Judgment, should reflect what Welch pled guilty to by statute, and nothing more. (App. 27; Tr. P. 3-5, Ins. 22-7; Nov. 29, 2018.) The State argued that Welch pled guilty to Criminal Facilitation to Murder, as outlined in the plea agreement, therefore if there is any correction to be made to the Judgment, it should reflect the docket entries, amended information charging Welch with criminal facilitation to murder, and the plea agreement. (App. 27; Tr. P. 7-9, Ins. 23-3; Nov. 29, 2018.) The Court acknowledged that the Judgment does not recite the correct century code section for Criminal Facilitation, and ordered the following:

It’s the Court’s order, though, today pursuant to Rule 36 that that is a clerical error as to the fact of what charge Number 1 was amended to because they kept the original statute when they amended it which pops it up again as murder as a C felony. So it should be amended, Count Number 1, in the Judgment to 12.1-06-02 criminal facilitation and we will define it as to muter to justify the C felony.

(App. 27; Tr. p. 5, Ins. 22-24; p. 14, Ins. 2-9; Nov. 29, 2018.) On December 3, 2018, the Court entered an order for a corrected judgment to indicate Count 1 as Criminal Facilitation to Murder. (App. 42.) Welch filed a notice of appeal on December 12, 2018. (App. 46.)

LAW AND ARGUMENT

I. The Standard of Review.

¶8 This Court has held when reviewing a district court's decision to amend a judgment, it is subject to an abuse of discretion standard. State v. Peterson, 2016 ND 192, ¶8, 886 N.W.2d 71. "A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law." Id. (citing State v. Moos, 2008 ND 228, ¶ 30, 758 N.W.2d 674).

II. Whether the District Court abused its discretion when it ordered the judgment to state Criminal Facilitation to Murder instead of Criminal Facilitation.

¶9 Rule 36 of the North Dakota Rules of Criminal Procedure allows a court to correct a clerical error in a judgment or an error in the record arising from oversight or omission. N.D.R.Crim.P. 36. See Peltier v. State, 2013 ND 246, ¶5, 841 N.W.2d 236.

The explanatory notes to N.D.R.Crim.P. 36 state, " Rule 36 is adapted from and contains language identical to Fed.R.Crim.P. 36. The rule is also similar to N.D.R.Civ.P. 60(a) and provides for correction of clerical error at any time." The text of N.D.R.Crim.P. 36 provides, " After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." The explanatory notes indicate N.D.R.Crim.P. 36 is limited in scope to correction of clerical errors or errors of oversight or omission and does not apply to correction of errors of substance. As the explanatory note to N.D.R.Crim.P. 36 states,

"[a] clerical error involves a failure to record accurately a statement made or action taken by the court or one of the parties."

State v. Peterson, 2016 ND 192, ¶ 17, 886 N.W.2d 71. "A clerical error includes a failure to accurately record action taken by the court." Peltier v. State, 2013 ND 246, ¶ 5, 841 N.W.2d 236 (citing N.D.R.Crim.P. 36, Explanatory Note).

¶10 In the present case, Welch was originally charged with Murder under sections N.D.C.C. § 12.1-16-01(1)(c) and 12.1-32-01(1). (App. 8.) According to the plea agreement, Welch pled guilty to Criminal Facilitation to Murder, and no statutes were listed. (App. 10.) The Amended Information charges Welch with Criminal Facilitation to Murder, in violation of sections 12.1-06-02, 12.1-16-01(1)(c), and 12.1-32-01(4). (App. 12.) The Court ordered the Judgment to be amended to read "Criminal Facilitation to Murder." (App. 42.) However, the Criminal Facilitation statute, section 12.1-06-02 to the North Dakota Century Code provides as follows:

12.1-06-02. Criminal facilitation.

A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.

The Criminal Facilitation statute states that a person is guilty of "Criminal Facilitation" not "Criminal Facilitation to [something specific]", the statute is not titled "Criminal Facilitation to Murder," and there is no specific statute in the North Dakota Century Code titled or stating "Criminal Facilitation to Murder" is a title of a crime. Welch's Judgment cannot state a crime for which there is no specific statute. Welch's Judgment cannot

include the additional phrase, not found in the Century Code, “to murder,” and may affect his ability to obtain employment, housing, medical care, etc. in the future. (App. 42.)

CONCLUSION

¶11 The Appellant respectfully requests this Court reverse the District Court’s decision and remand for Judgment to be entered stating Count I is Criminal Facilitation, only.

Dated 25th day of March, 2019.

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CERTIFICATE OF SERVICE

True and correct copies of ***BRIEF OF APPELLANT*** and ***APPENDIX OF APPELLANT*** was e-mailed to the following this 25th day of March, 2019:

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