IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Cindy Williams, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070286-CA F I L E D (May 30, 2008) 2008 UT App 195

Second District, Ogden Department, 061904033
The Honorable Parley R. Baldwin

Attorneys: Dee W. Smith, Ogden, for Appellant
Teral L. Tree, Ogden, for Appellee

Before Judges Bench, Davis, and McHugh.

DAVIS, Judge:

Defendant Cindy Williams appeals her convictions of two misdemeanor charges, arguing that the district court should have granted her motion to withdraw her guilty plea. She claims that she did not enter her plea voluntarily because she did not understand that the obligation of "the State" to remain silent during her sentencing did not prevent Adult Probation and Parole (AP&P) from making a sentencing recommendation to the court. We will disturb the district court's finding that Williams voluntarily entered her plea only if such finding is clearly erroneous. See State v. Benvenuto, 1999 UT 60, ¶ 10, 983 P.2d 556.[1]

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[1]Williams argues that because the district court must strictly comply with rule 11 of the Utah Rules of Criminal Procedure, the issue here is a question of law reviewed for correctness. Although that is the appropriate standard of review for issues of strict compliance, see State v. Benvenuto, 1999 UT 60, ¶ 10, 983 P.2d 556, the issue before us is not such an issue. Williams points to no specific provision of rule 11 that the district court did not follow. She correctly states that the district court must not accept the plea unless it is entered voluntarily, see Utah R. Crim. P. 11(e)(2), but she concedes that

(continued...)

This case is controlled by State v. Thurston, 781 P.2d 1296 (Utah Ct. App. 1989). Williams argues that the issue in Thurston was limited to whether the plea agreement was breached when AP&P made a recommendation contrary to that of the prosecutor, and that Thurston did not address the issue of whether the defendant entered his plea voluntarily. But it is clear from the language of Thurston that the voluntariness issue was also before the court: "[Thurston] asserts that his guilty plea was involuntarily entered and should be stricken because he entered the plea in reliance upon the State's recommendation of probation rather than incarceration, and that his reliance was misplaced because of the inconsistency of the State's recommendations." Id. at 1301. In ruling upon that issue, the Thurston court determined that the defendant's subjective belief was not enough to allow withdrawal and that the defendant could not have reasonably held an "'exaggerated belief in the benefits of his plea'" because of his dialogue with the district court judge, in which the judge clarified that he was not bound by any recommendations and that he could impose up to the maximum penalty allowed by law. Id. at 1302 (quoting State v. Copeland, 765 P.2d 1266, 1275 (Utah 1988)).

Here, the record shows that similar clarifications were made concerning the consequences of the guilty plea. The district court questioned Williams regarding the Statement of Defendant in Support of Guilty Plea,[2] making sure that she had had the chance to review the document in detail and elaborating on the constitutional rights that she would be waiving through her plea.

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[1](...continued)
"the trial court made the finding that [she] voluntarily entered into the guilty plea." Williams also states that the district court must assure that a defendant understands the rights that she is waiving, yet Williams admits that "the trial court went through a complete [r]ule 11 colloquy." The only problem that Williams discusses regarding the district court's actions is its failure to ascertain whether she correctly understood the term "the State." We see no authority, and Williams directs us to none, supporting the assertion that an explanation of the term "the State" is required to strictly comply with rule 11. Thus, the issue is not whether the district court strictly complied with the specific requirements contained in rule 11, but rather, whether the court erroneously found that Williams entered her plea voluntarily.

[2]Under rule 11, such a statement may be used to assure that a defendant understands her rights and waives her rights voluntarily, so long as the district court "establishe[s] that the defendant has read, understood, and acknowledged the contents of the statement." Utah R. Crim. P. 11(e); see also State v. Mora, 2003 UT App 117, ¶ 19, 69 P.3d 838.

The Statement of Defendant stated that the plea bargain was "between [Williams] and the prosecuting attorney"; that Williams knew that a guilty plea subjected her to the maximum penalties for the crime; and that Williams understood that any sentencing concession made by the prosecution was not binding on the judge. Further, immediately after Williams entered her plea, the judge, knowing that "the State" had agreed to remain silent during sentencing, stated that he would be requesting a presentence report from AP&P; yet Williams did not object to this or ask for clarification on the matter. Thus, we determine that Williams could not have reasonably held an exaggerated belief in the benefits of her plea and that the district court did not abuse its discretion in denying her motion to withdraw her guilty plea.

Affirmed.[3]

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James Z. Davis, Judge

WE CONCUR:

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Russell W. Bench, Judge

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Carolyn B. McHugh, Judge

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[3]We take this opportunity to emphasize the guidance given in Thurston to prosecutors, which was guidance apparently not followed in this case, in an effort to eliminate any misunderstanding in future cases:

> To establish beyond doubt that the defendant understands the benefits of his bargain, it is advisable for the prosecutor to explain to the defendant during plea bargain negotiations that any recommendation he makes is his and no one else's; that other branches of the State, including the investigating police department, may make contrary recommendations; and that the court is not bound by any of the recommendations it receives in making its sentencing determination.

State v. Thurston, 781 P.2d 1296, 1301 n.4 (Utah Ct. App. 1989).