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Sweat v. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 76 (October 5, 2017)

Shannon Zahm

University of Nevada, Las Vegas -- William S. Boyd School of Law

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CRIMINAL PROCEDURE: DOUBLE JEOPARDY CLAUSE

Summary

The Double Jeopardy Clause does not protect a defendant from prosecution of any original charges when the defendant accepts a plea agreement for a lesser-included offense and then fails to comply with all the terms of the agreement. The Court ultimately determined that a defendant waives his double jeopardy rights when he pleads guilty and fails to comply with the remaining terms of the agreement.

Background

On May 9, 2016, the State of Nevada charged Lonnie Sweat with battery constituting domestic violence—a category C felony. After negotiating a plea agreement with the State to drop the charge of battery constituting domestic violence, Sweat accepted a plea agreement. Sweat agreed to plead guilty in justice court to a misdemeanor, and plead guilty in district court to a felony.

Sweat pleaded guilty in justice court; in district court, however, he refused to plead guilty. So, the State filed an amended information, which reinstated the battery the original felony battery charge. Sweat filed a motion to dismiss—that the district court denied—holding that “plea agreements are subject to contract principles and that Sweat violated the spirit of negotiations by renegeing on the plea agreement.”

Sweat, then, petitioned the Nevada Supreme Court for a writ of prohibition, claiming that the Double Jeopardy Clause protects him from prosecution for the felony offense in district court. But the Court disagreed.

Discussion

Sweat’s petition should be entertained

The Court exercised its discretion in granting Sweat’s writ of prohibition because Sweat’s petition raised an important issue of law. The important issue of law that needed clarification was “whether a defendant’s conviction on a lesser misdemeanor offense in the justice court, as part of a plea agreement with the State, precludes prosecution on a greater felony offense where the defendant has withdrawn from the plea agreement with the State.” Therefore, the Court entertained Sweat’s petition.

The misdemeanor battery constituting domestic violence conviction is a lesser-included offense of the felony domestic violence charge.

The Double Jeopardy Clause “protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction,

¹ By Shannon Zahm

and (3) multiple punishments for the same offense.”² A second prosecution for the same offense, at issue here, occurs when the elements of one offense are entirely integrated within the elements of the second offense.³ The Court found that the misdemeanor battery constituting domestic violence conviction constitutes a lesser included offense of the felony domestic violence charge and thus “the Double Jeopardy Clause prohibits a prosecution for both offenses.”⁴

Sweat waived his double jeopardy claim by accepting a plea agreement and subsequently failing to comply with his obligations under the agreement.

Although the Court found that the misdemeanor offense Sweat pleaded guilty to is a lesser-included offense of the felony charge, the Court held that by Sweat pleading guilty and subsequently failing to comply with the terms of the agreement, the Double Jeopardy Clause did not prohibit the State from prosecuting Sweat for the felony.

The United States Supreme Court held in *Ricketts v. Adamson* that even though a plea agreement may not explicitly mention the double jeopardy clause or waiver of the double jeopardy rights under the clause, “the Double Jeopardy Clause does not relieve a defendant from the consequences of his voluntary choice [to breach the agreement].”⁵ Under the plea agreement, Sweat agreed to plead guilty (1) in justice court to a misdemeanor; and (2) in district court to a felony. But Sweat failed at (2) when he refused to plead guilty to a felony in district court. Thus, relying on the Supreme Court’s holding in *Ricketts*, the Nevada Supreme Court reasoned that Sweat waived his double jeopardy rights when he failed to comply with (2).

Conclusion

A defendant, who voluntarily fails to comply with the terms of a plea agreement, waives his double jeopardy right to be prosecuted of the original offense.

² Jackson v. State, 128 Nev. 598, 604, 291 P.3d 1274, 1278; *see generally* U.S. CONST. amend. V; NEV. CONST. art. 1, § 8.

³ *See* Estes v. State, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006) (“To determine the existence of a lesser-included offense, this court looks to whether the offense in question cannot be committed without committing the lesser offense.” (internal quotation marks omitted)); *see also* Barton v. State, 117 Nev. 686, 692, 30 P.3d 1103, 1107 (2001), *overruled on other grounds by* Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006).

⁴ United States v. Dixon, 509 U.S. 688, 696 (1993) (internal quotation marks omitted); *see also* Estes, 122 Nev. at 1143, 146 P.3d at 1127.

⁵ *Ricketts v. Adamson*, 483 U.S. 1, 10–11 (1987) (internal quotation marks and citation omitted). *See also* Dutton v. State, 970 P.2d 925, 932, 935 (Alaska Ct. App. 1999) (noting that a defendant may relinquish his double jeopardy rights by his conduct even though the waiver was not explicitly outlined in the plea agreement); State v. De Nistor, 694 P.2d 237, 242 (Ariz. 1985) (stating that a defendant waives a double jeopardy defense if after the court accepts the guilty plea the defendant moves to withdraw his plea, and the withdrawal is granted).