

7-20-2011

Cole v. Posey Appellant's Brief Dckt. 38646

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IDAHO SUPREME COURT

IDAHO COURT OF APPEALS

Kelly Cole,
Respondent,

Plaintiff-

vs.

State of Idaho
Appellant,

Defendant-

Docket No. 38646-2011
APPELLANT'S BRIEF

APPELLANT'S BRIEF

APPEAL from the District Court of the Third Judicial

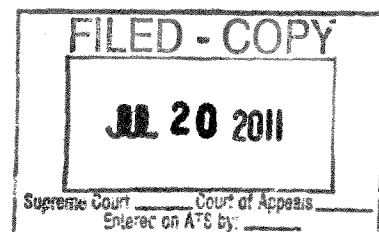
District of Idaho, in and for Payette County

Honorable Susan E. Weibe, District Judge, presiding

Kelly Cole, Pro-Se
Residing at Council, Idaho
For Appellant,

David Lee Posey
Residing at Payette, Idaho
For Respondent

APPELLANT'S BRIEF - 1



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STATEMENT OF THE CASE

- i. Nature of case. This case is a civil case.
- ii Course of Proceedings.
 - 1. Complaint and demand for jury trial, foiled 8/24/10
 - 2. Amended complaint and demand for jury trial filed 1/27/11
 - 3. Response to motion to dismiss, filed 1/27/11
 - 4. Order dismissing case, filed 2/9/11
 - 5. Notice of appeal, filed 3/18/11

iii. Statement of Facts:

1. That the plaintiff is a defendant in a criminal action in Adams
2. County starting in July 2004, to current time. Case 2004-4421.
(R2, Par 1)
3. The plaintiff was charged with Domestic Battery and resisting and
obstructing an officer.(R2, Par. 2)
- 3 The defendant in this case, David Posey, was assigned to
plaintiff's criminal case on about May 12, 2006, as a Public
Defender. (R3, L1)
4. The case went to trial on Aug. 30, 2006. (R4, Par.4)
- 5, The plaintiff was found guilty of obstructing an officer, with a
judgment of \$1,000.00 fine, 48 hours in jail, 24 months
unsupervised probation and 180 days of suspended jail time.
(R4 Par.10)
6. On Sept. 27, 2006, defendant filed a Notice of Appeal to the
District Court.
7. On July 10, 2007, the District Court entered its Memorandum
Decision on Appeal from Magistrate Division.
8. On August 21, 2007, defendant filed a Notice fo Appeal to the
Idaho Court of Appeals.
9. On August 25, 2007, opinion from Court of Appeals.

Issues on Appeal

1. Did Judge Wiebe error on which date the Statute of Limitations starts in Id. Code, 5-219(4)

Points and Authorities

I.C. 5-219(4) Ford versus Lovan, Court of Appeals Unpublished Opinion Number 423), I.C.R. 54.3

Argument

- A. Issue 1. Did Judge Wiebe error on which date the Statute of Limitations starts in Id. Code, 5-219(4).

Judge Wiebe finds damages did occur when the trial was commenced on August 30, 2006. Trans.P.5 L.10-11. The decision was appealed and became final and binding on August 25, 2010 when Mr. Posey failed to appeal this decision within 42 days, Trans. P.4, L.6. Criminal Rule 54.3.

Judge Weibe cites Ford v. Lovan, Court of Appeals Unpublished Opinion No. 423, in her oral decision. This authority clearly states the Supreme Court's dismissal of his appeal in November 2004 on acceptable start date for the 2 year Statute of Limitations to start.

Conclusion

The damages complained of by the plaintiff of this case only became final after the Court of Appeals decision on August 25, 11008 and this action filed on August 24, 2010 complies with the Statutes of Limitation in I.C. 5-219(4).

I respectfully request this court reverse Judge Wiebe's decision to dismiss
this case.

Kelly Cole
7/20/11

CERTIFICATE OF SERVICE

I hereby certify that two correct copies of the foregoing Appellant's Brief
on Appeal were mailed on David Lee Posey on July 20, 2011.

Respectfully submitted on July 20, 2011.

Kelly Cole

Kelly Cole
Pro-se

