

11-1-2011

State v. Smith Appellant's Brief Dckt. 38710

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Smith Appellant's Brief Dckt. 38710" (2011). *Not Reported*. 284.
https://digitalcommons.law.uidaho.edu/not_reported/284

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 38710
)
 v.)
)
 TERRILL JAMES SMITH,) APPELLANT'S BRIEF
)
 Defendant-Appellant.)
 _____)

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE MICHAEL R. MCLAUGHLIN
District Judge

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867

ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender
I.S.B. # 6555
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

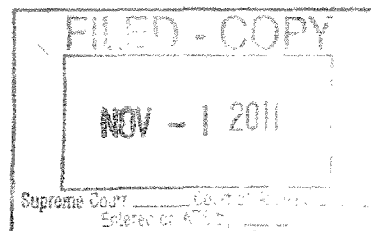


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL.....	3
ARGUMENT	4
The District Court Erred In Denying Mr. Smith’s Motion To Dismiss	4
A. Introduction	4
B. The District Court Erred In Denying Mr. Smith’s Motion To Dismiss	4
CONCLUSION.....	5
CERTIFICATE OF MAILING	6

TABLE OF AUTHORITIES

Cases

State v. Loomis, 146 Idaho 700 (2009)..... 4

Statutes

I.C. § 19-3605..... 4, 5

STATEMENT OF THE CASE

Nature of the Case

Terrill Smith entered a conditional plea of guilty to felony driving under the influence (*hereinafter*, DUI) of alcohol, preserving the right to appeal the district court's denial of his motion to dismiss. The district court imposed a unified sentence of ten years, with one year fixed, upon Mr. Smith. On appeal, Mr. Smith asserts that the district court erred in denying his motion to dismiss.

Statement of the Facts and Course of Proceedings

In October of 2003, Mr. Smith entered a plea of guilty to misdemeanor DUI. (R., p.91.) Then in 2006, Mr. Smith was arrested for a second misdemeanor DUI. (R., pp.86-87.) On January 1, 2008, Mr. Smith entered a written plea of guilty to his second misdemeanor DUI. (R., p.92.) On March 14, 2008, Mr. Smith was arrested for a third DUI. (R., p.93.) On March 17, 2008, the State filed a Complaint, alleging that Mr. Smith's most recent arrest constituted a felony DUI. (R., pp.93-94.) On April 30, 2008, Mr. Smith filed a Motion to Withdraw Defendant's Tender of Plea of Guilty Before Acceptance by the Court, Reinstate Plea of Not Guilty, and Request to Vacate Sentencing Hearing and Request Jury Trial to be Scheduled. (R., pp.95-96.) After Mr. Smith filed his motion to withdraw the written plea of guilty to the second misdemeanor DUI; the State moved to dismiss the Complaint alleging felony DUI. (R., pp.75-77, 86-89.)

Mr. Smith was convicted and sentenced on his second DUI on June 15, 2010. (R., p.87.) On June 28, 2010, the State filed a new Complaint, charging Mr. Smith with felony DUI for the March 14, 2008, DUI arrest. (R., pp.6-7.) Following a preliminary

hearing, the case was bound over to the district court and an Information was filed, charging Mr. Smith with felony DUI. (R., pp.56-57, 61-62.) Defense counsel for Mr. Smith then filed a Motion to Dismiss Information, arguing that once Mr. Smith withdrew his written guilty plea to the second misdemeanor DUI, the third DUI could no longer constitute a felony. (R., pp.75-77; 1/19/11 Tr., p.5, L.15 – p.8, L.12.) As a result, when the State dismissed the March 17th Complaint, it was dismissing a misdemeanor, which cannot be refiled under I.C. § 19-3506. (1/19/11 Tr., p.5, L.15 – p.8, L.12.) The district court disagreed and denied Mr. Smith's motion to dismiss. (1/19/11 Tr., p.13, Ls.2-11; R., p.116.)

Mr. Smith then entered a conditional plea of guilty to felony DUI, preserving the right to appeal the district court's denial of Mr. Smith's motion to dismiss. (R., pp.107-113, 117-118.) At sentencing, the State asked the district court to impose a unified sentence of ten years, with one year fixed. (2/23/11 Tr., p.5, Ls.19-23.) Defense counsel agreed that one year fixed was appropriate, but left the indeterminate portion of the sentence to the district court's discretion. (2/23/11 Tr., p.6, Ls.16-25.) The district court imposed a unified sentence of ten years, with one year fixed, upon Mr. Smith. (R., pp.120-122.) Mr. Smith filed a Notice of Appeal timely from the district court's judgment of conviction. (R., pp.124-125.)

ISSUE

Did the district court err in denying Mr. Smith's motion to dismiss?

ARGUMENT

The District Court Erred In Denying Mr. Smith's Motion To Dismiss

A. Introduction

As argued in the district court, Mr. Smith asserts that once he withdrew his written plea of guilty to the second misdemeanor DUI, the factual predicate making the third DUI a felony no longer existed and it then became a misdemeanor. As a result, pursuant to I.C. § 19-3506, the State was not permitted to refile the third DUI because it cannot refile a previously dismissed misdemeanor.

B. The District Court Erred In Denying Mr. Smith's Motion To Dismiss

Defense counsel for Mr. Smith filed a Motion to Dismiss Information, arguing that once Mr. Smith withdrew his written guilty plea to the second misdemeanor DUI, the third DUI could no longer constitute a felony. (R., pp.75-77; 1/19/11 Tr., p.5, L.15 – p.8, L.12.) As a result, when the State dismissed the March 17th Complaint, it was dismissing a misdemeanor, which cannot be refiled under I.C. § 19-3506. (1/19/11 Tr., p.5, L.15 – p.8, L.12.) Idaho Code § 19-3506 provides, in relevant portion, “An order for the dismissal of an action...is a bar to any other prosecution for the same offense, if it is a misdemeanor; but is not a bar if the offense is a felony.” I.C. § 19-3506. On appeal, Mr. Smith continues to assert, as raised by trial counsel, and preserved through a conditional plea of guilty, that once the factual predicate making the third DUI a felony was removed, it became a misdemeanor.¹ (See 1/19/11 Tr., p.5, L.15 – p.8, L.12.) As such, when the State dismissed the third DUI, it was not permitted

¹ Mr. Smith is mindful that the State is permitted to refile felony offenses pursuant to I.C. § 19-3605. See *State v. Loomis*, 146 Idaho 700 (2009).

to refile it. See I.C. 19-3506. Accordingly, Mr. Smith asserts that the district court erred in denying his motion to dismiss.

CONCLUSION

Mr. Smith respectfully requests that this Court vacate the district court's order denying his motion to dismiss and remand for further proceedings.

DATED this 1st day of November, 2011.



ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of November, 2011, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

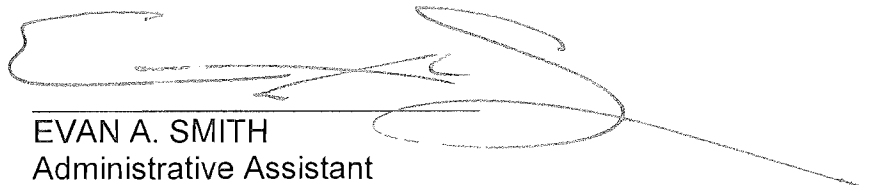
TERRILL JAMES SMITH
4414 IRVING
BOISE ID 83706

MICHAEL R MCLAUGHLIN
DISTRICT COURT JUDGE
E-MAILED BRIEF

VERNON K SMITH
ATTORNEY AT LAW
1900 W MAIN STREET
BOISE ID 83702

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to the Attorney General's office at the Supreme Court.



EVAN A. SMITH
Administrative Assistant

EDF/eas

