

2-27-2012

Farnsworth v. State Appellant's Reply Brief Dckt. 38934

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

Recommended Citation

"Farnsworth v. State Appellant's Reply Brief Dckt. 38934" (2012). *Not Reported*. 385.
https://digitalcommons.law.uidaho.edu/not_reported/385

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.

Copy

Kevin Farnsworth #65100
Name

236 Radar Rd
Address

Cottawood, ID 83522
City, State, and Zip Code

IN THE APPELLATE COURT OF THE STATE OF IDAHO

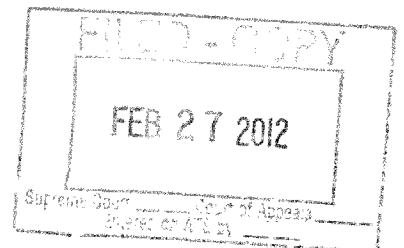
Case No: 38934-2011

AFFIDAVIT FOR APPELLANT REPLY BRIEF

Kevin Farnsworth
Plaintiff

vs.

State of Idaho
Defendant



Statement of the Facts and Course of the Proceedings.

- In the District Court, after receiving a notice of Appeal, (4-22-11) Mr. Farnsworth replied back to the courts, using the Paralegal office, legal mail services on 4-23-11 requesting for an extension and a request for Legal ~~Counsel~~ Counsel, within the 20 days of the Motion for Dismissal. For some reason, Judge Nye never received it.

- After receiving the Dismissal forms Mr. Farnsworth on 6-2-2011 put in a motion to Appeal Judgment of Dismissal for Post-Conviction Relief and an Appointment of Counsel, as well as an Affidavit to support a reversal of Dismissal. Judge Nye never made a judgment on motion. Which forced Mr. Farnsworth to file a notice of Appeal-Post Conviction, and Appointment of Counsel. Three times Appointment of Counsel was denied for reasons not known to Plaintiff/Appellant. Mr. Farnsworth feels that there was prejudice in the District Court level which prohibited him to have a fair hearing of his Post-Conviction.

Rebuttal to Argument

1.) State says:

Fournsworth is not entitled to have time spent on Rebuttal counted as time served on sentence.

Reply:

State uses the argument of Mathews v. State 122 Idaho 801, 807 839, P.2d 1215 1221 which is based on a more heinous charge of murder for a life sentence and no hearing on this individual case as per Muchow v. State, 149 ID 401, 402-303 128 P.3d 939-46 (2006)

Muchow was saying his probation started the day of arrest and stated his time would exceed the maximum because they excluded his probation on years - which would not exceed the maximum by law because Muchow's maximum was 5 years by law and he would only spend a total of 3 years. As for Mr. Fournsworth he was originally charged with an unburned sentence of 12 years. The maximum of sentence was 15 years by law. As a result of his extradition puts him past the 15 years by 3 years.

2.) State says

Fournsworth claim of ineffective assistance of counsel is also without merit

Reply:

In the use of argument from the state Taylor v. State 145 ID 866 187 P.3d 1241 (4th App. Dist.) Defendant had to show a reason of probably that an evidentiary hearing should have been held, and had an expert opinion before being sentenced.

Cash

In 2010 Mr. Farnsworth had requested an expert opinion from Dr. Lindsey to rebutte Dr. Xortov's claim that he wasn't still admissible to treatment. At the evidentiary hearing with Dr. Lindsey he said he couldn't make an case either way without a polygraph to determine the validity of the disturbing the peace violation. Mr. Farnsworth had repeatedly asked his attorney to have one set up even before the hearing and Attorney replied he advised against it and would drop his services if one was done. The reason of probably would have show Mr. Farnsworth truthfulness of the situation and show he was still admissible to treatment. Criminal law 641.13(7): Defendant asks attorney to appeal and attorney refuses. Defendant is deprived of effective counsel. ~~Defendant~~ Requirement is presumed. Mr. Farnsworth had also asked for his Rule 35 to be filed within the allotted 14 day of revocation by 3 different attorneys at the end of his original sentencing, his 1st revocations and 2nd revocations with no luck. State uses the Argument Kelly v. State 149 Iv 517, 522, 236 P3D 1271 1282 (2010) in that case Counsel failed to file Motion of suppression of evidence, which is similar to this case. The said counsel fails to meet the objective standard of effective Counsel. which falls in the Strickland Standard for the effective assistance of Counsel. 1) Trial Counsel's performance "fell below an objective standard of Reasonableness." 2) There is a reasonable probability that had for Counsel's unprofessional errors, that results of the proceeding would have been different. And Criminal law 641.13(7) Mandated effective assistance of counsel by Counsel's failure to hastily file an application of review

Conclusion

Mr. Farnsworth hopes a reduction of his sentence or credit for any time he had spent on probation during the 6 and 1/2 years would be applied.

- Under Criminal law 1191(c) 1208.1 (2)

- Determining whether sentence is longer than necessary to achieve goals of Deterrence, Rehabilitation, or Retribution and thus unreasonable. Courts consider Actual terms of Confinement imposed in light of Nature of Offense, Character of Offender and Protection of Society. Defendant bears burden of showing that his sentence is unreasonable in light of these criteria.

- In the (6) six and one half years (2) on probation, Mr Farnsworth

has worked hard on his Rehabilitation. Being only 2 months away from graduating his Treatment plans and Goals, a major part of his Rehabilitation. He maintained paying Resitution, Court cash

Fees and as well as Child Support during his years on probation

Mr. Farnsworth also maintained jobs, 1 full time and 1 part time

while attending College at the campus of Idaho State University.

which he was working on for a Degree in Marketing and Management.

And when Mr. Farnsworth had set backs, he never gave up to correct

his behavior.

- This being said Mr. Farnsworth doesn't need the longer sentence

to finish up his treatment and to finish his payments of his

Resitution to his victim and to the State of Idaho.

cont. from page 3

- Doing over half his original time on probation, Achieving more Goals of Deterrence doesn't seem reasonable. Since being charged for Sexual Abuse of a Minor 11 years ago. No further has there ever been any questions or signs of him committing the same type of offense. Mr. Farnsworth will always be under a microscope ever years after finishing his time because of his having to Registrate under the Provisions of being a Sex Offender. Which is a lifetime Goal of Deterrence of committing any crime.

[Signature]

2/22/12

Name

Date

State of Idaho

County of Idaho

} ss

Notary Public for Idaho: Rose Forsmann

Residing at: Cottonwood, Idaho

Commission Expires: 3/31/2014

