12-5-2011

Farnsworth v. State Appellant's Brief Dckt. 38934

Kevin Farnsworth #65100
Full Name/Prisoner Name
IDOC No. 65100
236 Radar Rd
Cottonwood, Id
83522
Complete Mailing Address

In the Supreme Court in and for the State of ID

Kevin Farnsworth,

Plaintiff/Petitioner,

vs.

State of Idaho,

Defendant/Respondent.

Case No. 38934-2011
Dist 2011-10847

AFFIDAVIT OF

Appellant's Brief

STATE OF IDAHO)
) ss
County of Idaho)

Kevin Farnsworth, after first being duly sworn upon his/her oath, deposes and says as follows:

Appellants Brief

Issue

Mr. Farnsworth is seeking relief from his length of indeterminate time of Sentence. He has spent 6½ years on probation doing the programs that was asked of him, as well as, stay in contact with the Idaho Department of Corrections monthly, paying cost of Supervision and paying his fines and restitution. Mr. Farnsworth feels that this partly warrents relief from his overall sentence, because it would extend his sentence past the maximum set by law. He has also tried with his previous attorneys to seek relief but they advoided his request as a proper time line set by the State. The attorneys had also neglected to inform him of the direct consequences of the pleading of guilty

Sentence would exceed maximum set by law

In 2001, Mr. Farnsworth, plead guilty to Sexual Abuse of a Minor under 16 and sentenced to 4 years fixed and 8 years indeterminate. The sentence was suspended and placed on probation for 10 years after a retained jurisdiction program was completed. His supervision was revoked by the department of Corrections in July of 2009 and was upheld by Judge Nye in February of 2010. His Sentence of 2001 was thrown out and resentenced a ~~second~~ third time in 2010. So instead of a sentence being expired in 2013, it was extended to 2019. That would make his total time under the care of the Department of Corrections to a total of 18 years. The maximum set by law is a total of 15 years, and his sentence now extends that by 3 years and 6 years by his original sentence. This would constitute Double Jeopardy, serving time twice for the same crime. Which violates Appellants Constitutional rights under those terms.

- Appellant asserts that there is no legal cause to hold him past his original Sentence from 2001 that will in 2013. Except to punish him beyond the time limit set forth by law and force him to undergo Constitutional violations, such as Double Jeopardy. He is also suggesting that time on probation was under the care of the Department of Corrections and not that of the courts.
- When a Sentencing Judge suspends an Sentence and then reintroduces a Sentence at a later date, he is in fact extending max time under law. If Suspended Sentence would follow under "installments" if Sentence was reintroduced and extended the convicted party's Sentence. Under same provisions as Welte v. McDonnell 415 U.S 539 (1974) ~~Ex parte~~ Ex parte Morris, 626 So. 2d 745 (Tex. Crim app 1982) (en bank)

In Wolfe v. McDonnell 415 U.S. 539 (1974); Ex parte Morris, 626 Sw. 2d 745 (Tex. Crim app 1982)(En Banc) The Court of Appeals held that..." Sentence must be continuous and a prisoner or inmate can not be required to serve out his sentence in installments, unless an escape or premature release can be proven..."
Under provisions of Idaho § 19-2513, Sentencing Judge does set the max amount of punishment to be served under the care and Control of Board of Corrections, when Starting and length of time (or how many years) not to exceed so much length of time (or years) Probation is still served under the care and Control of the Board of Corrections and not care and control of the Courts, even when the Sentence of prison is suspended. Suspended Sentences could be shown to force an "installment plan" and not made Sentence a Continuous part of max sentence a prisoner of the State was given. In Berger v. Spaulding 881 F.2d 719 721 (9th Cir. 1989) Court held that "a prisoner has a statutory right to an accurate computation of his time and a mandatory completion date."
- In Dunne v. Keohane, 14 F.3d 355 (7th Cir 1994) reversed and upheld. "where a prisoner is released on parole, is a change of manner of punishment only" One can argue that the same is true of probation, and should not be considered a suspended Sentence, because it allows the convicted party to serve his/her sentence under conditions other than the penitentary same as parole. Opinion Number 94.3 in said case by Larry Echohawk (Idaho) July 1994 which reiterates allowing to serve sentence under other conditions other than penitentary.
- In the final reason
US v. Melody Supra 977 F.2d at (1099), Shields v. Bete 370 F.2d 1003, 1006 (5th Cir 1967) Also in White v. Pearlman 42. F.2d 788 (10th Cir. 1930) Ex parte v. Eley 90 AL C76 130, PAC 821 (App 1913) and in Re: Strickler v. Kan 700, 33, P.2c 620 (1893)
- A Sentence runs continuously from the time which the defendant surrenders to begin serving it. The Government is not permitted to delay the commencement of the sentence by releasing the convicted party for a time and then remissioning him, there by delaying indefinitly the expiration of his debt to society and his re-integration into free community. Punishment on the installment plan is strictly forbidden and direct violations of a persons civil rights under the Guarantees of the Constitutional Admendments of the United States of America

Ineffective Assistance of Counsel

After Appellant was sentenced in 2001, Appellant had asked his public defender to file a rule 35 to seek reduction of his lengthy sentence. The public defender never filed the Rule 35 as requested. Then again, in 2010 when probation was revoked and sentence was re-imposed Appellant had asked his attorney to file his rule 35 within the proper 14 days Again his request went unheard. Appellant wrote Judge Kiye within the allotted time of 14 days and explained how he asked his attorney to file his rule 35 and he refused. Rule 35 wasn't filed for close to 6 months later, which is effecting the validity of proper time filing.

In the Appellants revocation hearings, Appellant had asked his attorney to set up a polygraph, which was a standard practice of probation and parole when violation was asserted, to help disprove the allegations of his violations. Probation and parole refused to do so, as this case as they have done, with the treatment provider, before. Polygraphs are used with sex offenders case loads to help determine if violations and accusation are true. Appellant's Attorney again refused to help out with this and stated I would have to let him so and attain another attorney even after accepting future payments of service.

Third, an attorney has an duty to inform his/her client of legal rules and consequences, including direct consequences of a guilty plea. To the Appellants knowledge and understanding this would include differences in explanation of the sentences that would be imposed. So to say its not in a clients right to be properly informed to know what will be of legal rules and consequences of his pleading of guilty, would seem to be careless. What should be the responsibility of legal rules and consequences that an Attorney should disclose to his client. Does his job end after saying good luck in prison/probation or should he be held to explain the differences. If you hire some one to fix a water pipe, your expection is he dig up the ground, replace the pipe, and replace the ground. If He fixed the pipe and not replaced the ground and not inform the client he wouldn't, seems to be the same as pleading guilty and attorney not inform the consequences directly affiliated with the accepting of probation or prison-

~~Conclusion~~

Appellant hopes that you find in any favor of relief weather in full or in part. He has spent over half his sentence doing what was asked of him, legally, financially, and objectively with minor discrepetions which caused his revocation of probation. He had hoped his attorneys would have been more active in proper filing of appeals and informed him correctly of the differences of the accepting of probation. With all that went on over the last 10 years and being credited with 4 of them which he has been incarcerated for, I would hope to see some type of relief for appellant in fair judgement and fair justice.

Appellant

State of Idaho
County of Idaho

Subscribed to before me this 1st December 2017

LAURA ASHFORD NOTARY PUBLIC STATE OF IDAHO

Notary
Exp: July 26 2017

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1 day of December 20 11, I mailed a true and correct copy of Appellant's Brief AFFIDAVIT via prison mail system for processing to the U.S. mail system to:

~~Clerk of the Courts~~ Deputy A.G.
~~P.O. Box 83~~ 1299 N. Orchard Suite 110
Boise, ID 83720

Signature