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State v. Lute Respondent's Brief Dckt. 39252

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39252
)	
vs.)	
)	
DANIEL FRANCIS LUTE,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

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

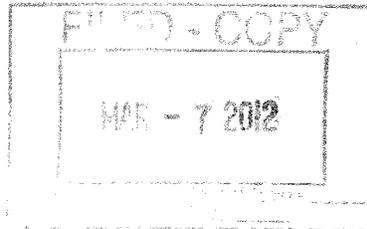
HONORABLE RONALD J. WILPER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Daniel Francis Lute appeals from the denial of his request that the district court expunge Idaho Department of Correction records.

Statement Of The Facts And Course Of The Proceedings

Lute successfully challenged his conviction for battery with intent to commit a serious felony on the basis that the district court lacked jurisdiction because the term of the grand jury that indicted Lute had expired. State v. Lute, 150 Idaho 837, 252 P.3d 1255 (2011). The Idaho Supreme Court remanded to the district court “with instructions to vacate Lute’s conviction on the basis that no valid indictment or information was returned in the case.” Id. at 841, 252 P.3d at 1259. On remand the district court entered the order vacating Lute’s judgment of conviction as required by the Idaho Supreme Court. (R., p. 6.)

About three months after the district court entered the order vacating the judgment, Lute sent the district court a letter “requesting that the Court order the Department of Correction to discontinue its use of a certain presentence investigation report that was prepared in connection with the conviction entered in this matter which was later ordered vacated by the Idaho Supreme Court.” (R., pp. 8, 11.) Deciding to treat the letter as a motion, the district court denied the request on the basis that action by the court would have “no additional purpose.” (R., pp. 12-13.) Lute filed a timely appeal from the district court’s order. (R., pp. 15-17.)

ISSUE

Lute's statement of the issues is not quoted here. It can be found in the Appellant's brief at pages 2, 4. The state submits the issue on appeal as:

Has Lute failed to show error in the denial of his request to expunge Idaho Department of Correction records because the district court lacked jurisdiction to grant his request?

ARGUMENT

The District Court Lacked Jurisdiction To Grant Lute's Request

A. Introduction

The district court lacked jurisdiction to grant Lute's request for three reasons. First, the district court had no statutory authority to "expunge" Department of Correction records. Second, the district court had obtained no jurisdiction over the Idaho Department of Correction. Finally, the district court also lacked jurisdiction because this case had been finally determined and ended weeks before Lute filed his letter.

B. Standard Of Review

"A question of jurisdiction is fundamental; it cannot be ignored when brought to [the appellate court's] attention and should be addressed prior to considering the merits of an appeal." State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003) (quoting H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987)). Whether a court has jurisdiction is a question of law, given free review. Kavajecz, 139 Idaho at 483, 80 P.3d at 1084.

C. The District Court Lacked Jurisdiction To Grant Lute's Request

The district court lacked subject matter jurisdiction. "Subject matter jurisdiction is the power to determine cases over a general type or class of dispute." Lute, 150 Idaho at 840, 252 P.3d at 1258. Because the Idaho Department of Correction is a department in the executive branch of government,

separation of powers requires that, in the absence of a legislative act to the contrary, courts have “no authority to determine the department’s record retention policies.” State v. Moore, 150 Idaho 17, 20, 244 P.3d 161, 164 (2010). Because Lute has not sued the Department pursuant to a statute giving the courts the ability to determine what records the Department can or cannot keep, the district court in this case lacked subject matter jurisdiction to grant the request in Lute’s letter.

The district court also lacked personal jurisdiction. “Personal jurisdiction refers to the court’s authority to adjudicate the claim as to the person [and] means either that a party has appeared ... [or] has otherwise waived service of process, or that process has properly issued and been served on such party.” Hooper v. State, 150 Idaho 497, 500, 248 P.3d 748, 751 (2011) (quotations omitted). Here Lute merely mailed a letter to the district court. Nothing in the record suggests that Lute properly made the Department of Correction a party to a lawsuit such that the district court acquired jurisdiction to order it to do anything.

Finally, it is well established that a district court loses jurisdiction in a case once it is fully litigated and a final order is entered, absent some law extending the court’s jurisdiction. State v. Johnson, 152 Idaho 41, ___, 266 P.3d 1146, 1152-53 (2011) (no jurisdiction in criminal case to entertain motion for removal from sex-offender registry); State v. Hartwig, 150 Idaho 326, 329, 246 P.3d 979, 982 (2011) (no jurisdiction to motion to grant motion for reconsideration after order became final); State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714

(2003) (no jurisdiction to consider motion to withdraw guilty plea after judgment became final). Here the district court entered an order vacating the judgment of conviction on April 28, 2011. (R., p. 6.) That order became final on June 9, 2011, when no appeal was filed within 42 days. I.A.R. 14(a). The district court received Lute's letter on July 21, 2011. (R., p. 8; see also R., p. 11 (copy of letter, dated "7-18-11").) Because this case was final several weeks before Lute even wrote his letter, the district court lacked jurisdiction to entertain any invitation to action within Lute's letter.

The district court lacked jurisdiction to grant any "request[] that [the district] Court order the Idaho Department of Correction to expunge [Lute's] record." (R., p. 12.) As set forth above, there has been no showing that the legislature has granted the court authority to determine what records the Department may or may not keep; no showing that the court had obtained jurisdiction over the Department; and no showing that the court retained jurisdiction after final resolution of the case. The district court's order denying relief should be affirmed for lack of any jurisdiction to grant it.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of Lute's request to expunge Department of Correction records.

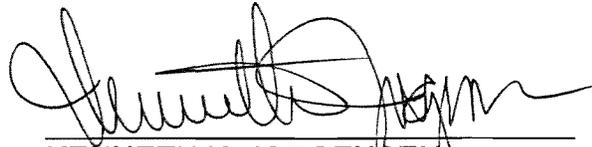
DATED this 7th day of March, 2012.


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of March, 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

DANIEL LUTE
IDOC #18805
ICC-A
PO Box 70010
Boise, Idaho 83707



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm