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Tapp v. State Appellant's Reply Brief Dckt. 40197

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

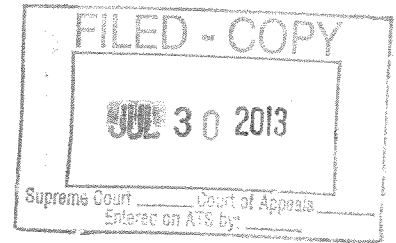
CHRISTOPHER C. TAPP,)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent-Respondent.)
_____)

S.Ct. No. 40197
Bonneville Co. No. CV-2002-6009

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Seventh
Judicial District of the State of Idaho
In and For the County of Bonneville

HONORABLE JOEL E. TINGEY,
District Judge



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I. TABLE OF AUTHORITIES

STATE CASES

Idaho Sch. For Equal Educ. Opportunity v. Idaho State Bd. Of Educ., 128 Idaho 276, 912 P.2d 644 (1996) 1

II. ARGUMENT IN REPLY

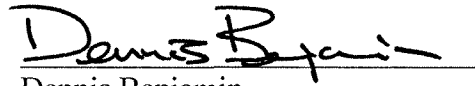
The DNA Petition Issue Will Become Moot When Mr. Tapp Files a New Petition Under a Different Case Number.

The state argues that the district court did not have jurisdiction to consider Mr. Tapp's DNA petition once the Notice of Appeal had been filed. State's Brief, pg. 39. It also writes that "Tapp's DNA petition should have initiated a new proceeding and was not properly filed in his post-conviction case." *Id.*, pg. 39, ft. 8. In light of the state's position on appeal and rather than continue to litigate this issue, Mr. Tapp has chosen to file a new DNA petition under a different case number in the district court. (As the state acknowledges, a petitioner may "at any time" file a DNA petition. *Id.*) Once that petition is filed, the issue presented in this appeal of whether the district court has jurisdiction to determine the substantive issues raised will be moot as it is not disputed by the state that a new DNA petition filed under a different case number would invest the district court with subject matter jurisdiction. *Id.* "The general rule of mootness doctrine is that, to be justiciable, an issue must present a real and substantial controversy that is capable of being concluded through a judicial decree of specific relief. *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996). Furthermore, the controversy must be live at the time of the court's hearing. *Id.* at 282, 912 P.2d at 650. Upon the filing of the new DNA petition, the issue here will no longer be alive and thus will become non-justiciable due to mootness. Mr. Tapp will alert the Court by letter once the new petition is filed.

III. CONCLUSION

Upon the filing of the new DNA petition, this Court should find that the issues regarding the former petition are moot.

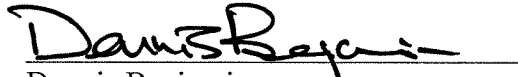
Respectfully submitted this 30th day of July, 2013.

A handwritten signature in black ink that reads "Dennis Benjamin". The signature is written in a cursive style and is positioned above a horizontal line.

Dennis Benjamin
Attorney for Christopher Tapp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2013, I caused two true and correct copies of the foregoing to be mailed to: Jessica Lorello, Deputy Attorney General, P.O. Box 83720, Boise, ID 83720-0010.


Dennis Benjamin