

10-3-2013

State v. Webb Respondent's Brief Dckt. 40414

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

Recommended Citation

"State v. Webb Respondent's Brief Dckt. 40414" (2013). *Not Reported*. 1134.
https://digitalcommons.law.uidaho.edu/not_reported/1134

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

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 40414
Plaintiff-Respondent,)	
)	Bannock Co. Case No.
vs.)	CR-2011-18996
)	
LONNY EARL WEBB,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

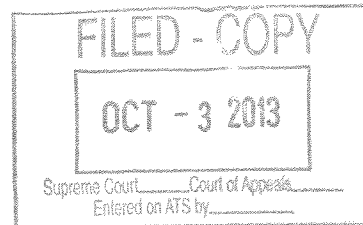
HONORABLE DAVID C. NYE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

STEPHEN D. THOMPSON
Attorney at Law
PO Box 1707
Ketchum, Idaho 83340
(208) 726-4518

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
PLAINTIFF-RESPONDENT

ATTORNEY FOR
DEFENDANT-APPELLANT

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 The Proceedings	1
ISSUE	3
ARGUMENT	4
The District Court Lacked Jurisdiction To Consider Webb's I.C.R. 33(c) Motion To Withdraw His Guilty Plea.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. The District Court Lacked Jurisdiction To Consider Webb's I.C.R. 33(c) Motion To Withdraw His Guilty Plea	4
CONCLUSION	6
CERTIFICATE OF SERVICE.....	7

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors</u> , 113 Idaho 646, 747 P.2d 55 (1987).....	4
<u>State v. Jakoski</u> , 139 Idaho 352, 79 P.3d 711 (2003)	4
<u>State v. Kavajecz</u> , 139 Idaho 482, 80 P.3d 1083 (2003).....	4
<u>State v. Peterson</u> , 148 Idaho 610, 226 P.3d 552 (Ct. App. 2010).....	5

STATEMENT OF THE CASE

Nature Of The Case

Lonny Earl Webb appeals from the district court's denial of his motion to withdraw his guilty plea to felony driving under the influence.

Statement Of The Facts And Course Of The Proceedings

An Idaho State Police Officer stopped Webb's vehicle for driving over the center line. (R., p.15.) Upon contact with the vehicle, the officer noted that Webb had glassy eyes, slurred speech, moved slowly and deliberately, and smelled of alcohol. (Id.) Webb then failed field sobriety tests. (Id.) The officer arrested Webb on suspicion of driving under the influence. (Id.) Webb refused to submit to a breathalyzer test, but a blood test revealed a BAC of .276. (Id.; PSI, p.17.)

Because Webb had at least one prior felony DUI conviction in the previous 15 years, the state charged him with felony driving under the influence. (R., pp.41-44; PSI, pp.3-9.) The state also charged Webb with the persistent violator sentencing enhancement. (R., pp.45-46.) Pursuant to plea agreement, Webb pled guilty to felony DUI, and the state agreed to dismiss the persistent violator sentencing enhancement. (R., pp.124-129; Tr., p.1, L.11 – p.8, L.3.) On May 21, 2012, the district court imposed a unified six-year sentence with four years fixed, to run concurrent with another DUI sentence. (R., pp.139-144; Tr., p.20, L.15 – p.21, L.17.) The court entered the judgment of conviction on May 22, 2012. (R., pp.139-144.)

On May 25, 2012, the Idaho State Police sent a letter to the Bannock County Prosecutor's Office disclosing that a recent analysis revealed that the blood sample obtained from Webb was not refrigerated for approximately one month prior to testing. (R., p.147.) The letter further explained, "[w]hile the preferred method of [blood] storage is refrigeration, room temperature storage does not invalidate the laboratory testing or results," and that based on its review of the literature and relevant scientific research, "any potential effects from this room temperature storage would be in the favor of [Webb]." (Id.)

Webb and the Bannock County Public Defender's Office became aware of the Idaho State Police disclosure by June 1, 2012. (R., p.145.) On July 5, 2012, Webb filed a motion to withdraw his guilty plea, on the basis of the disclosure. (R., pp.145-146.) Though the state had no objection to Webb withdrawing his guilty plea (Tr., p.30, Ls.3-10), the district court denied the motion. (R., pp.150-155). The district court concluded it lacked jurisdiction to consider Webb's motion because his conviction had already become final by the time he filed the motion. (Id.) In the alternative, the district court also concluded that even if it had jurisdiction to do so, it would deny the motion on its merits. (R., p.154.) Webb timely appealed. (R., pp.165-168.)

ISSUE

Webb states the issues on appeal as:

- A. Did the district court err when it determined that it did not have jurisdiction to hear Mr. Webb's motion to withdraw [his] guilty plea?
- B. Did the district court abuse its discretion and err when it denied Mr. Webb's motion to withdraw his [plea] of guilty?

(Appellant's brief, p.2.)

The state rephrases the issue as:

Did the district court correctly conclude that it lacked jurisdiction to consider Webb's I.C.R. 33(c) motion to withdraw his guilty plea?

ARGUMENT

The District Court Lacked Jurisdiction To Consider Webb's I.C.R. 33(c) Motion To Withdraw His Guilty Plea

A. Introduction

Webb contends that the district court erred in dismissing his I.C.R. 33(c) motion to withdraw his guilty plea. (See generally Appellant's brief.) However, because Webb's judgment of conviction had already become final by the time he filed his motion, and because I.R.C. 33(c) did not extend the court's jurisdiction, the district court lacked jurisdiction to consider the motion.

B. Standard Of Review

"A question of jurisdiction is fundamental; it cannot be ignored when brought to [the appellate courts'] 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 Consider Webb's I.C.R. 33(c) Motion To Withdraw His Guilty Plea

"Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714

(2003). With regards to motions to withdraw guilty pleas, the Idaho Supreme Court held:

Rule 33(c) of the Idaho Criminal Rules does not include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea. Jakoski was sentenced on December 12, 1994, and the judgment was entered on December 22, 1994. He did not appeal the judgment, and it therefore became final 42 days later. Thereafter, the district court no longer had jurisdiction to hear a motion to withdraw Jakoski's guilty plea [filed almost six years after the judgment was entered].

Id. See also State v. Peterson, 148 Idaho 610, 614, 226 P.3d 552, 556 (Ct. App. 2010) (holding that the trial court lacked jurisdiction to entertain motion to withdraw guilty plea because the judgment of conviction had become final upon Court of Appeals' issuance of a remittitur two months before defendant filed his motion).

In this case, the district court entered Webb's judgment of conviction on May 22, 2013. (R., pp.139-144.) Webb did not appeal the judgment, which therefore became final 42 days later, on July 3, 2013. Despite being aware of the Idaho State Police disclosure by June 1, 2013, Webb did not move to withdraw his guilty plea until July 5, 2013.¹ (R., pp.145-146.) By this time, the district court lost jurisdiction to hear the motion.

On appeal, Webb acknowledges Jakoski and does not dispute that his conviction became final prior to the filing of his motion to withdraw his guilty plea.

¹ Webb also apparently did not file a petition for post-conviction relief, in which he could attempt to show he was entitled to relief due to "evidence of material facts, not previously presented and heard that requires vacation of the conviction or sentence in the interest of justice." I.C. § 19-4901(4).

(Appellant's brief, pp.2-5.) Nonetheless, Webb contends that because I.C.R. 34 expressly permits a defendant to move for a *new trial* upon newly discovered evidence within two years of the final judgment, then "I.C.R. 33 should be read to allow a similar time frame under similar circumstances." (Appellant's brief, p.2.) However, as the Idaho Supreme Court made clear in Jakoski, a district court's jurisdiction over a case ends when the judgment becomes final, "[a]bsent a statute or rule extending its jurisdiction." While I.C.R. 34 expressly extends a district court's jurisdiction in some circumstances, that rule is not applicable to Webb. The rule Webb actually invoked, I.C.R. 33(c), does not extend the court's jurisdiction.

Because the district court did not have jurisdiction to consider, grant, or deny Webb's I.C.R. 33(c) motion withdraw his guilty plea at the time he made it, the district court's order denying his motion must be affirmed.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Webb's motion to withdraw his guilty plea.

DATED this 3rd day of October, 2013.



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of October, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by placing a copy in the United States mail, postage prepaid, addressed to:

STEPHEN D. THOMPSON
Conflict Appellate Public Defender
PO Box 1707
Ketchum, Idaho 83340



MARK W. OLSON
Deputy Attorney General

MWO/pm