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## Corwin v. State Appellant's Reply Brief Dckt. 40618

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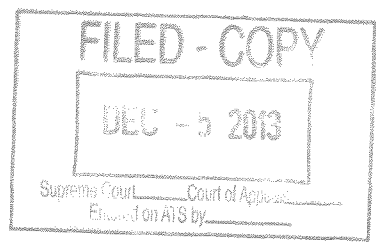
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IN THE SUPREME COURT OF IDAHO

LARRY DEAN CORWIN, )  
 )  
 Petitioner-Appellant, )  
 )  
 vs. )  
 )  
 STATE OF IDAHO, )  
 )  
 Respondent )  
 \_\_\_\_\_ )

Docket No. 40618-2013



\_\_\_\_\_  
REPLY BRIEF OF APPELLANT  
\_\_\_\_\_

APPEAL FROM THE DISTRICT COURT OF THE THIRD  
JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF CANYON

\_\_\_\_\_  
HONORABLE THOMAS J. RYAN  
DISTRICT JUDGE  
\_\_\_\_\_

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ARGUMENT IN REPLY

A. The District Court erred in its perception of the adjudicative facts as to why Corwin was legally innocent of a felony.

In his opening brief, Corwin defined his cause of action on post-conviction as an issue of how criminal evidence with a statute of limitations that has expired, cannot be admitted in a subsequent DUI criminal proceeding, as it violates substantial rights. Then how the court erred in concluding that Corwin's claim was the same as in State v. Lamb, 147 Idaho 133, 206 P.3d 497 (Ct.App.2009).

Entwined with that argument in contrast to Lamb, Corwin argued that the presumption of regularity that attaches to final judgments, makes it appropriate to assign to the state the same bar a defendant has if he attempts to use a recidivism hearing to challenge contractual findings of guilt. See "R", p.4, L. 17.

On appeal the Respondent in response argues that Corwin on appeal was claiming the District Court misinterpreted his argument by asserting that the statute's amendment violated the ex post facto clause, not the contracts clause. (Respondent's brief, p. 7) The Respondent, just as the District Court, are ignoring the claim raised by Corwin. Their argument is an evasive and disingenuous tactic that should be excluded from consideration, as they do not wish to dispute the question on appeal.

Corwin has not made a claim that he is being punished for DUIs he committed in 1997 and 1998. (Respondent's argument, p. 7) Corwin is and has always claimed that the state was barred by a statute of limitations set by the 1998 DUI statute and I.C. § 73-106 from using expired evidence. The question was posed as follows:

B. Is the use of expired criminal evidence by unreasonable application of a legislative act, reprehensible and objectionable to the interest of finality of constitutional conclusions of guilty pleas, the substantive due process doctrine, and the ex post facto clause?

Corwin herein corrects that question to exclude the ex post facto clause. The averments raised by petition for post-conviction related to an assertion that legal evidence that has a statute of limitations, where the period of time has expired, is inadmissible as evidence to enhance a misdemeanor charge to a felony. On appeal the crux of the question relates to the same cause.

C. The Evidence At Issue.

In 1998 Corwin in two separate occasions was convicted of misdemeanor DUIs. He accepted plea bargains in both cases, and voluntarily pled guilty knowing that I.C. § 18-8005 defined, created, and regulated his conduct as a violator of the DUI statute. The statute's intent to deter Corwin from committing another DUI as paraphrased here, described that if Corwin was found guilty of a subsequent violation within five years, those two convictions would be admitted as legal evidence at a recidivism hearing to enhance that conviction to a felony. The code further mandated the court give notice of the penalties that would be imposed. From this law two misdemeanor DUI convictions became legal evidence with an expiration date of five years.

From I.C. § 18-8005, one can only presume the legislature intended an expiration date on their sentencing objective. Therefore those two convictions in this case became "null" as legal evidence to any subsequent recidivism hearing after 2003. The significance

of that fact is that pursuant to the Idaho Rules of Evidence (I.R.E.) Rule 103(a), it was error to admit "null" evidence, and it further effected substantial rights of a party. A rule or law going towards this end does not go to the general issue of guilt, nor whether as a matter of law a conviction may be sustained. Corwin claims that the error he claims occurred affected the final judgments of two plea bargained convictions, the substantive due process doctrine, I.C. § 73-101, I.C. § 73-106, and I.R.E., rule 103(a).

Trial counsel preserved this issue for appeal; but he as well as appellate counsel were ineffective in their representation of this claim. Appellate counsel and post-conviction counsel both abdicated this claim, while trial counsel presented an inapt argument and adverse cases.

Corwin contends that application of the 2006 amendment to I.C. § 18-8005, cannot encompass retroactively, legal evidence that was "null." Such an act infringes on the finality interest of judgments of guilty pleas. More, it offends the substantive due process doctrine, I.C. §§ 73-101 and 73-106, which protect individuals by preventing governments from creating or applying statutes that are "manifestly unjust and oppressive" in their retroactive effect.

#### D. The Finality Of Judgments And Guilty Pleas.

Corwin asserts the presumption of regularity that attaches to final judgments makes it appropriate to assign to the State the same bar a defendant has if he attempts to use a recidivism hearing to challenge contractual findings of guilt.

The United States Supreme Court and the Idaho Courts have

held that a defendant has no right to collaterally attack the constitutional validity of prior DUI convictions used to support a charge of felony DUI. See State v. Weber, 140 Idaho 89, 90 P.3d 497 (Ct.App.2004). In this case Corwin contends the State should not have been allowed to use Corwin's two prior convictions. That conduct infringed on conclusive decisions of constitutional rights. Just as Corwin has no right to challenge the validity of his two guilty pleas, because they are final, the State also has not acquired a right to permeate the finality of those judgments by application of the 2006 amended DUI statute. It is unjust to allow one party to penetrate constitutional conclusions, and deny the other a claim that this new law compromises the validity of two voluntary guilty pleas.

Corwin therefore asserts the same considerations the United States Supreme Court highlighted in Custis v. United States, 511 U.S. 485 (1994), in limiting collateral attacks on guilty pleas should apply.

"The interest in promoting the finality of judgments provides additional support for our constitutional conclusion. As we have explained, "[i]nroads on the concept of finality tend to undermine confidence in the integrity of our procedures" and inevitably delay and impair the orderly administration of justice. United States v. Addonizio, 442 U.S. 178, 184, n.11, 99 S.Ct. 2235, 2240, n.11, 60 L.Ed.2d 805 (1979). We later noted in Parke v. Raley, 506 U.S. 20, 113 S.Ct. 517, 517, 121 L.Ed.2d 391 (1992), that principles of finality associated with habeas corpus actions apply with at least equal force when a defendant seeks to attack a previous conviction used for sentencing. By challenging the previous conviction, the defendant is asking a district court "to deprive [the] [state-court] judgment of [its] normal force and effect in a proceeding that ha[s] an independent purpose other than to overturn the prior judgment." Id. at 30, 113 S.Ct., at 523. These principles bear extra weight in cases in



which the prior conviction, such as one challenged by Custis, are based on guilty pleas, because when a guilty plea is at issue, "the concern with finality served by the limitation on collateral attack has special force." United States v. Timmreck, 441 U.S. 780, 784, 99 S.Ct. 2085, 2087, 60 L.Ed.2d 634 (1979)(footnote omitted)."

In regard to promoting the finality of judgments, I.C. § 73-106 directs as follows:

"No action or proceeding commenced before the compiled laws take effect, and no right accrued, is effected by their provisions, but the proceeding therein must conform to the requirements of the compiled laws as far as applicable."

A plea that is entered with a full understanding of what the plea connotes and its consequences is a valid plea. E.g. Ray v. State, 133 Idaho 96, 99 (1999); Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

Corwin thus contends the integrity of such judgments can't be compromised by retroactive application of the 2006 amended DUI statute. The State did not acquire a right to permeate the finality of Corwin's two prior judgments by this change in the law. The United States Supreme Court and Idaho Courts have adopted the interest finality serves on limiting defendants from attacking guilty pleas through collateral proceedings. Why not legal evidence that emerge from guilty pleas, which further had a statute of limitations and that had expired?

#### E. The Substantive Due Process Connection.

Corwin acknowledges that "null" evidence that is admitted pursuant to new law, does not fall within the categorical descriptions of ex post fact laws; but such an act is retrospective law that violates substantial rights.

Corwin thus argues that erroneous admission of legal evidence, which were elements needed to enhance a misdemeanor charge to a felony violated substantial rights. Corwin declares he had a right to equal protection of fundamental rights. Corwin contends that where a statute of limitations exist on legal evidence, that component has to be considered in the inquiry.

The fact that the United States Supreme Court has "repeatedly upheld recidivism statutes "against contentions that they violate constitutional strictures dealing with double jeopardy, ex post facto laws, cruel and unusual punishment, due process, equal protection, and privileges and immunities," Parke v. Raley, 506 U.S. 20, 27, 113 S.Ct. 517, 522, 121 L.Ed.2d 391 (1992), does not mean that law is static. Circumstances of a case can have a valid interest in those decisions. See Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)(life sentence without parole imposed under recidivism statute violated Eighth Amendment when current conviction was for passing a bad check and prior offenses were similarly minor.)

In this case the two contractual findings of guilt involved, became legal evidence, competent and material to a subsequent recidivist DUI hearing. That fact was the final component of the consequences for driving under the influence. Those two convictions would exist for five years as competent legal evidence. In 2003 the five years came and went. The legal consequences of those two DUIs changed and became "null," expunged by statutory law, and no longer admissible evidence to any subsequent violation of the DUI statute.

There are substantial rights effected by admission of "null" evidence at a recidivist hearing, other than the rights involved in the interest of promoting finality of judgment issues. The Idaho Supreme Court has held that "null" evidence is inadmissible to enhance a charge. See State v. Barwick, 94 Idaho 139 (1971). Corwin asserts one has to acknowledge that it is the effect, not the form of the law that determines whether it violates substantial rights. In this case the amended statute cannot be retroactively applied to "null" legal evidence that was expunged by statute in 2003, long before the change occurred.

Corwin contends that retroactive application of the new law, took away and impaired rights acquired under the 1998 DUI statute and created a new obligation. See Ohlinger v. United States, 135 F.Supp. 40 (D.Idaho1955)(The court defined "a retroactive, law, in the legal sense, is one that takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past.") See also I.C. §§ 73-101 and 73-106.

In this case to resurrect "null" legal evidence after the relevant statute of limitations had expired, is to eliminate a conclusive presumption forbidding admissibility of this evidence, to aggravate a crime on a quantum of evidence where that quantum, at quantum, at the time the new law was enacted, was legally inadmissible. This error authorized a court to receive evidence which a court would not previously accepted as proof to enhance a charge.


Corwin asserts that the Eighth Amendment, substantive due process, I.C. §§ 73-101 and 73-106 protected him from cruel and unusual punishment, caused by an unfair judicial proceeding, by preventing the state from applying enacted laws with manifestly unjust and oppressive retroactive effects.

#### CONCLUSION

In this case judgment of constitutional conclusions were at rest and final. It is undisputed Corwin performed as mandated by law and plea agreements. The state and Corwin both received the benefits of their bargain, and the legislature received its five years deterrence of its sentencing objective. It would therefore be unjust to allow one party to permeate what were valid guilty pleas under the constitutions.

Further, the substantive due process doctrine, the Eighth Amendment, I.C. §§ 73-101 and 73-106, plus I.R.E., 103(b) prohibit admission of "null" evidence. The substantive due process doctrine requires the judiciary to apply a legislative act fairly. The essence of substantive due process is protection from unreasonable action. Black's Law Dictionary, Sixth Edition, 13th Reprint 1998.

DATED this 3rd day of December, 2013.

  
Larry Dean Corwin  
Petitioner-Appellant


CERTIFICATION

I, Larry Dean Corwing HEREBY CERTIFY that I did tender to the Idaho Correctional Center, legal mailing system, a copy of Petitioner-Appellant's Reply Brief postage prepaid to the following:

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