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Cobell v. State Appellant's Reply Brief Dckt. 41108

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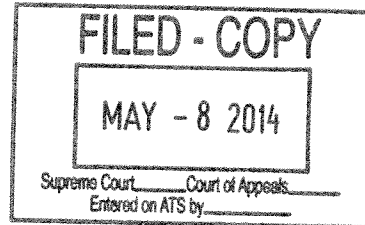
Cobell 84171

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Idaho Supreme Court
Court of Appeals

No. 41108

CV- 2011- 14415

Cobell

+

State

Reply of Appellant
to Brief of Respondent

Comes now Eugene Ray Cobell, Pro-se and In-
formally.

The Appellant does allege the only primary
issue comes from the Second Petition of 7-26-11,
page 2. par. 3. and page 7. Cause and prejudice.

Clerks Record 014, (2) [the] "Petition" is in reality, a Motion for Permission to file a successive petition;

however, this council never brought to the court the Petitioner's claims of Cause and Prejudice,

and clerks Record, 023, "Mr. Cobell has offered essentially no rebuttal . . . ;"

the District Court thus making no merits ruling on the cause and prejudice argument.

The Appellant now is before this Court of Appeals, to seek the Merits Ruling, (id) a Declaratory Remedy and remand.

This could be construed as a modified Res-judicata Claim of unfinished business from *Evenskiy v. State* 136 Idaho 189 (2006)

Though this Court found no access to courts violation in 136 Idaho because the individual

was able to timely file a pro-forma form;

however the appellant has alleged there was not a completed judicial notice, of 136 Idaho II. B., (2) Access to courts,

The Cause and Prejudice argument of the Petition for permission / Petition for Post Conviction relief was based upon U. S. Fourteenth Amendment Due Process Notices Doctrine and as a fair and just Notice of Rights, ..., and Opportunity to respond.

The State Response has abandoned this issue of Cause and Prejudice in Petition and Appellant Brief;

they don't - attorney for want a ruling on this issue,

This is because *Evenson*, 136 II. B. (2) relies on the State Decision of Bounds 430 U.S.

a prison must provide a law library for inmates,
and a legal assistance program for literacy challenges,
see also Older Americans Act §.

upheld in *Lendquist v. Ida. Bd of Corr.*, 776
7.2d F51, 851-56 (9th Cir 1987) with consent decree,
and affirmed in *Gomey v. Vernon*, U.S. Dist. Ct.
CV-91-299-S-LMB, 16 Dec. 1993 Order.

In *Ballo III*, CV-81-1165-S-ESL., (2003) 2007,
DKT 585, the court reviewed the standards
for a state to terminate and be relieved of a duty
imposed by a court mandate.

The State of Idaho has never filed and received a
court order relieving the state of its duties.

It is unlikely the State could terminate Bonds
430 U.S.

However the record shows the State did remove
the law library and legal assistance program.

So raised in the second Petition pg 2,
par. 3.; pg. 7. Cause and Prejudice,

fully preserved, id into the appeal,
and the State has abandoned defenses
upon this issue.

The Civil Rights Act of 1960, finds the
State has committed a "Criminal Obstruction
of Justice" by the violation of the Court
Mandates of Bounds, 430 U.S.; Lendquist
776 F.2d, Gomez 20-91, and
the spirit, intent, and language of *Evans*
136 Idaho, (etc).

Prejudice is Presumed! The *Stare Decisis* and
Resjudicata, establish a non-rebuttable presump-
tion; that set in *Stare Decisis* or *Resjudicata* should
generally not be re-litigated, 156 P.2d 340, 345; and
298 U.S. 38, 94.

Here-upon,

This Court may issue an "opinion or judgment beforehand or without due examination" 232 P.2d 949, 958, leading to a fixed anticipatory judgment, as contradistinguished from those opinions that may yield to evidence; 82 S.E. 777, 780.

1. The Appellant never had a fair and just opportunity to proceed with a first Post Conviction; or
2. a second Post Conviction,
3. That as a "needy persons" Fla. C. §19.851, (3) he should have been granted counsel, to overcome an equal protection issue, and
4. To overcome the unlawful state created barriers.
5. The second Petition raised a genuine medical issue requiring an evidencing, and
6. The Petitioner should be allowed to file a new Post Conviction to raise all issues, and

have a fair opportunity to a full review
of every issue he has

7) This court may put such weight as
would be appropriate to the fact the
appellant may also have not had a fair
and just opportunity in a denied
appeal.

Please - appellant prays for this court
not to reward the unlawful conduct
of the state by ruling against himself

Eugene Whell

Respectfully

this 6th day of MAY 2014

True and correct copy

mailed to State Attorney General

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