

7-7-2014

## Dotts v. Little Appellant's Brief Dckt. 42135

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MICHAEL DOTTS,  
PETITIONER-APPELLANT

VS.

WARDEN LITTLE,  
RESPONDENT.

SUPREME COURT No. 42135-2014  
ADA COUNTY No. 2014-7950

BRIEF OF APPELLANT

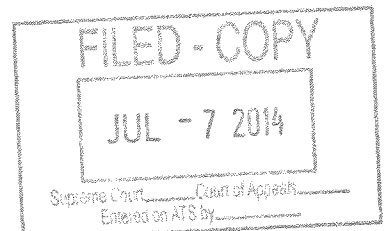
APPEAL FROM THE FOURTH DISTRICT COURT  
ADA COUNTY  
BOISE, IDAHO  
HONORABLE DANIEL C. HURLBUTT, JR.  
PRESIDING

ATTORNEY GENERAL  
STATE OF IDAHO  
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IN RE WELFARE OF R.S., 805 N.W.2d 44

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STATEMENT OF CASE

OVER FOURTEEN (14) YEARS AGO, ON JULY 3, 2000 DOTT'S WAS SENTENCED PURSUANT TO IDAHO CODE 19-2513 TO THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS. <sup>1</sup> UNDER THE JUDGMENT OF THE SENTENCING AUTHORITY, DOTT'S WAS REQUIRED TO REMAIN IN THE CUSTODY OF THE BOARD OF CORRECTIONS "NOT TO EXCEED TWELVE (12) YEARS, FIVE (5) YEARS OF THE UNIFIED SENTENCE WAS TO BE SERVED IN ACTUAL CONFINEMENT OR INCARCERATED, (SEE: C.R. Pgs. 000043 - 000046)

AFTER COMPLETING FIVE (5) YEARS OF ACTUAL CONFINEMENT AS MANDATED BY THE SENTENCING JUDGMENT AND IDAHO CODE 19-2513, DOTT'S WAS RELEASED FROM ACTUAL CONFINEMENT ON PAROLE PURSUANT TO THE AUTHORITY AS OUTLINED UNDER IDAHO CODE 20-223. (BEING RELEASED)

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<sup>1</sup> DOTT'S WAS CONVICTED OF VIOLATIONS OF IDAHO CODE 18-2408(2)(b) AND IDAHO CODE 18-3604. THE STATUTORY MAXIMUM PENALTY FOR EACH OF THESE CRIMES PROVIDES A PUNISHMENT TO THE CUSTODY OF THE BOARD OF CORRECTIONS WITH VOTER DISQUALIFICATION "NOT TO EXCEED (14) YEARS."

ON PAROLE AND AFTER VIOLATING, A TOTAL OF 1203 DAYS WERE FORFEITED ON EACH OF THE VIOLATION CASES. (SEE: C.R. pg. 000028)

ON SEVERAL INDEPENDENT OCCASIONS DOTTS REQUESTED THAT THE IDAHO COMMISSION OF PARDONS AND PAROLE REINSTATE THE FORFEITED PAROLE-TIME IN ORDER THAT HIS SENTENCE MATCH THE INTENT OF THE SENTENCING AUTHORITY OF NOT TO EXCEED (12) YEARS UNDER THE CUSTODY OF THE BOARD OF CORRECTIONS. (SEE: C.R. pgs. 000015 - 000027) THESE ATTEMPTS AT RESTORATION OF FORFEITED PAROLE-TIME WERE RUBBER-STAMPED DENIED.

UPON EXCEEDING THE (14) YEARS OF MAXIMUM CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS WITH VOTER DISQUALIFICATION, DOTTS FILED A PETITION FOR A WRIT OF HABEAS CORPUS CLAIMING THAT HIS CONTINUED CONFINEMENT, INCARCERATION, AND CUSTODY UNDER THE CONTROL, DIRECTION, AND MANAGEMENT OF THE BOARD OF CORRECTIONS WAS ILLEGAL AND VIOLATED THE PROSCRIPTIONS OF THE EIGHTH AND FOURTEENTH AMENDMENTS. (SEE: C.R. pg. 000008) DOTTS ALSO CLAIMED THAT THE IDAHO COMMISSION OF PARDONS AND PAROLE'S DECISION TO FORFEIT PAROLE-TIME WAS POLLUTED AND MOTIVATED BEHIND JOB SECURITY BIAS AND REPUBLICAN PARTY

POLITIC IN EXTENDING VOTER DISQUALIFICATION AGAINST OPPONENTS. <sup>-1/2</sup> (SEE C.R. pgs. 000009-000010).

ON APRIL 30, 2014 THE HONORABLE DANIEL C. HURLBUTT, JR., SENIOR DISTRICT JUDGE ISSUED AN ORDER OF DISMISSAL PRIOR TO SERVICE; ON THAT SAME DATE A FINAL JUDGMENT WAS ENTERED DISMISSING THE ACTION, WITH PREJUDICE. (SEE: C.R. pgs. 000053-000058).

ON MAY 09, 2014 DOTTS FILED A TIMELY APPEAL FROM THE FINAL JUDGMENT. (SEE: C.R. pgs. 000059-000063). DOTTS SEEKS REVERSAL OF THE FINAL JUDGMENT WITH AN AWARD OF COSTS AND FEES.

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<sup>-1/2</sup> PURSUANT TO IDAHO CODE 20-210 THE REPUBLICAN PARTY GOVERNOR APPOINTS MEMBERS TO THE IDAHO COMMISSION OF PARDONS AND PAROLE BASED ON POLITICAL AFFILIATION, PAVING A PATH FOR DISCREET DISCRIMINATION AGAINST OPPONENTS BY EXTENDING VOTER DISQUALIFICATION THROUGH FORFEITURE.



## ISSUES

1.) CAN PUNISHMENT IN ANY FORM BE REGARDED AS CRUEL AND UNUSUAL IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONS IF A SENTENCE EXCEEDS THE LIMITS PRESCRIBED BY STATUTE?

2.) DOES THE COMBINED EFFECTS OF IDAHO CODE 20-210 AND IDAHO CODE 20-228 VIOLATE THE PROSCRIPTIONS OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION PROHIBITING ANY STATE FROM MAKING OR ENFORCING ANY LAW THAT ABRIDGES PRIVILEGES OR IMMUNITIES?

## ARGUMENTS

### I.

PUNISHMENT IN ANY FORM THAT EXCEEDS THE STATUTORY MAXIMUM PENALTY VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

ON THE 29<sup>TH</sup> DAY OF JULY, 2015 TIME CALCULATIONS OF THE IDAHO STATE DEPARTMENT OF CORRECTIONS HAS DOTTS' CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS EXPIRING. (SEE: C.R. PG. 000047). THIS TIME CALCULATION HAS THE BOARD OF CORRECTIONS EXERCISING CUSTODY OVER DOTTS 1203 DAYS BEYOND THE TIME RETRAINT OF THE SENTENCING JUDGMENT, AND APPROXIMATELY 420 DAYS BEYOND THE MAXIMUM PENALTY PRESCRIBED BY THE LEGISLATURE OF NOT TO EXCEED FOURTEEN (14) YEARS. (IDAHO CODE 18-2408(2)(a) AND IDAHO CODE 18-3604).

IN RETROSPECT, DOTTS WAS CONVICTED AND SENTENCED AFTER ENTRY OF GUILTY PLEAS TO THE CRIMES OF GRAND THEFT AND FORGERY. A VIOLATION OF THESE CRIMINAL OFFENSES AUTHORIZES A COURT TO IMPOSE A PENALTY

TO THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS WITH SUSPENSION OF VOTING PRIVILEGES. (IDAHO CODE 19-2513 AND IDAHO CODE 18-310).

BASED ON THIS AUTHORITY, THE SENTENCING COURT IMPOSED JUDGMENT MANDATING ACTUAL CONFINEMENT UNDER THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS FOR A FIXED PERIOD OF FIVE (5) YEARS FOLLOWED BY AN INDETERMINATE PORTION. <sup>13</sup> IN COMPLIANCE WITH THE SENTENCING COURTS RED LETTER MANDATE, DOTTS SUFFERED FIVE (5) YEARS OF ACTUAL CONFINEMENT UNTIL RELEASED ON PAROLE PURSUANT TO THE AUTHORITY OF IDAHO CODE 20-223.

EXAMINATION OF THIS CASE'S PERTINENT STATUTORY PROVISIONS UNDER THE LIGHT OF THE PARI MATERIA DOCTRINE REVEALS NO EXPRESS AUTHORITY IN IDAHO JURISPRUDENCE THAT SOFTENS

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<sup>13</sup> THE STATEMENT OF PURPOSE, RS 12299 C3, FOR THE 1986 AMENDMENT OF IDAHO CODE 19-2513 STATES IN UNEQUIVOCAL TERMS THAT IN NO CASE CAN THE AGGREGATE OF THE TWO SENTENCE TERMS EXCEED THE STATUTORY SENTENCING LIMITS.

OR ABROGATES LEGISLATIVE INTENT OR TRUTH IN SENTENCING BEHIND IDAHO CODE 18-2408 (2)(a), IDAHO CODE 18-3604, AND IDAHO CODE 19-2513 WHEN CROSS-FERTALIZED.

IN PLAIN, CLEAR, AND UNAMBIGUOUS LANGUAGE, THESE STATUTORY PROVISIONS LEAVE NO ROOM FOR CONSTRUCTION. (WHERE THE LANGUAGE OF A PENAL STATUTE IS CLEAR, PLAIN, AND UNAMBIGUOUS, THERE IS NO OCCASION FOR CONSTRUCTION OF THE STATUTE, AND A COURT MUST GIVE EFFECT TO THE STATUTE AS WRITTEN, WITHOUT ENGAGING IN STATUTORY CONSTRUCTION. STATE V. JEPPESEN, 138 IDAHO 71, 57 P.3d 782).

THEY SAY WHAT THEY MEAN, AND MEAN WHAT THEY SAY! A SENTENCE OF CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS FOR THE CRIMES OF GRAND THEFT OR FORGERY "CANNOT" EXCEED FOURTEEN (14) YEARS.

ASSUMING ARGUENDO, THAT OPPOSING COUNSEL WILL DEPLOY IDAHO CODE 20-228 IN AN ATTEMPT TO USURP, SOFTEN, OR NEGATE THE LEGISLATURE'S MANDATE THAT THE SENTENCE OF DOTTS, "IN NO CASE EXCEED THE STATUTORY LIMITS" OF FOURTEEN (14) YEARS IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS, THE COURT SHOULD TAKE NOTE THAT THE TITLE OF THE AMENDATORY ACT

THAT AWARDED FORFEITURE POWER DISCRETION TO THE IDAHO COMMISSION OF PARDONS AND PAROLE IS SILENT AS TO ANY LANGUAGE THAT SOFTENED OR ABROGATED LEGISLATIVE INTENT THAT CUSTODY TO THE BOARD OF CORRECTIONS NOT EXCEED FOURTEEN (14) YEARS. (SEE: FEDERATED PUBLICATIONS INC. v. IDAHO BUSINESS REVIEW INC., 146 IDAHO 207, 192 P.3d 1031; STATE v. DOLAN, 13 IDAHO 693, 92 P. 995; HAMMOND v. BINGHAM, 83 IDAHO 314, 362 P.2d 1078. MOREOVER, ANY AMBIGUITY CREATED THROUGH THE AMENDATORY FORFEITURE PROVISIONS OF IDAHO CODE 20-228 THAT LEAVES THIS COURT SIMPLY GUESSING AS TO WHAT THE LEGISLATURE INTENDED, SHOULD BE RESOLVED FAVORING THE ARGUMENT OF DOTTS USING THE DOCTRINE OF LENITY. BARBER v. THOMAS, 130 S.CE. 2499; MARACICH v. SPEARS, 133 S.CE. 2191. (ESPECIALLY IN THE INTERPRETATION OF A CRIMINAL STATUTE . . . , COURTS CANNOT GIVE THE TEXT A MEANING THAT IS DIFFERENT FROM ITS ORDINARY, AND ACCEPTED MEANING, AND THAT DISFAVORS THE DEFENDANT.)). BURRAGE v. U.S., 134 S.CE. 881.

IN LIGHT OF THE FOREGOING, IT'S REASONABLE TO HYPOTHESIZE THAT THE FORFEITURE POWER OF IDAHO CODE 20-228 CAN WORK TO NEGATE THE IMPOSED PUNISHMENT OF A SENTENCING

COURT, WINTER V. STATE, 117 IDAHO 103, 285 P.2d 667, BUT TO POSTULATE THAT SAME REASONING INTO AN ATTEMPT TO ABROGATE A MANDATE OF THE LEGISLATURE ABSENT AN EXPRESS AUTHORIZATION BY THAT BRANCH OF GOVERNMENT DEFIES LOGIC. IN SHORT, THE IDAHO COMMISSION OF PARDONS AND PAROLE HAS THE STATUTORY DISCRETION TO FORFEIT PAROLE-TIME, BUT THAT DISCRETIONARY POWER DOES NOT EXIST WHERE IT EXTENDS CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS BEYOND THE STATUTORY MAXIMUM PENALTY PRESCRIBED BY THE IDAHO STATE LEGISLATURE. <sup>4</sup> HAD IT BEEN THE WILL OF THE LEGISLATURE TO EXTEND CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS BEYOND THE STATUTORY MAXIMUM PENALTY THROUGH

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<sup>4</sup> IN CONTRAST TO GIBSON V. BENNET, 141 IDAHO 270, 108 P.3d 417, DOTTS IS NOT ARGUING CONSTITUTIONAL VIOLATIONS RELATIVE TO AN ABROGATION OF THE SENTENCING COURT'S JUDGMENT THROUGH FORFEITURE OF TIME SPENT ON PAROLE. (SEE: C.R.000054).

FORFEITURE OF TIME SPENT ON PAROLE, IT WAS REQUIRED BY DUE PROCESS TO EXPRESSLY SAY SO. JUDICIAL LEGISLATION CANNOT CREATE THROUGH STATUTORY CONSTRUCTION SOMETHING THAT JUST ISNT THERE. WALKER V. HENSLEY TRUCKING, 107 IDAHO 572, 691 P.2d 1187; IN RE WELFARE OF R.S., 805 N.W.2d 44 (MINN. 2011); CONAWAY V. STATE, 108 Md. App. 475, 672 A.2d 162 (1996), (WHERE THE LANGUAGE OF A STATUTE IS CLEAR AND UNAMBIGUOUS, A COURT MAY NOT EITHER ADD OR DELETE WORDS TO MAKE THE STATUTE REFLECT AN INTENT NOT EVIDENCED IN THAT LANGUAGE IN ORDER TO AVOID A HARSH RESULT).

## II.

THE COMBINED FORCE AND EFFECTS  
OF IDAHO CODE 20-210 AND IDAHO  
CODE 20-228 VIOLATE THE PRO-  
SCRIPTIONS OF THE FOURTEENTH  
AMENDMENT OF THE FEDERAL  
CONSTITUTION PROHIBITING ANY  
STATE FROM MAKING OR ENFORCING  
ANY LAW THAT ABRIDGES PRIVILEGES  
OR IMMUNITIES.

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, SECTION 1 STATES IN PERTINENT PART: . . . "NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES. . . ."

THE PRIVILEGES AND IMMUNITIES OF THE FOURTEENTH AMENDMENT HAVE BEEN CONSTRUED BY THE UNITED STATES SUPREME COURT TO INCLUDE SUFFRAGE AND POLITICAL AFFILIATION UNINFRINGED.

ARTICLE VI, SECTION 3, IDAHO CONSTITUTION, ALONG WITH IDAHO CODE 18-310 et. seq. PROHIBIT



ANY PERSON, WHO HAS BEEN CONVICTED OF A FELONY WHILE CONFINED IN PRISON OR WHILE IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS FROM VOTING, SERVING AS A JUROR, OR HOLDING ANY CIVIL OFFICE.

THE FELONIES FOR WHICH DOTTS STANDS CONVICTED OF CARRY MAXIMUM PENALTIES OF NOT TO EXCEED FOURTEEN (14) YEARS IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS WITH VOTING DISQUALIFICATION. (IDAHO CODE 18-310 et seq., IDAHO CODE 18-2408(2)(a); IDAHO CODE 18-3604).

UNDER IDAHO LAW, ALL CIVIL DISABILITIES ARE RESTORED UPON EXPIRATION OF CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS. (IDAHO CODE 18-310(1)), IN THE CASE OF DOTTS, VOTER DISQUALIFICATION LIKE CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS WAS IN NO CASE MEANT TO EXCEED THE STATUTORY MAXIMUM OF FOURTEEN (14) YEARS.

DOTTS BEING AN OPPONENT OF THE REPUBLICAN PARTY WENT BEFORE A STACKED DECK OF REPUBLICAN PARTY MEMBERS OF THE IDAHO COMMISSION OF PARDONS AND PAROLE FOR VIOLATING THE CONDITIONS

OF PAROLE, THE REPUBLICAN PARTY MAJORITY, MADE THE DECISION TO FORFEIT THE TIME DOTT'S SPENT ON PAROLE UNDER ITS AUTHORITY OF IDAHO CODE 20-228. THE FORFEITURE OF TIME SPENT ON PAROLE HAS WORKED TO EXTEND CUSTODY TO THE IDAHO STATE BOARD OF CORRECTIONS BEYOND THE STATUTORILY MAXIMUM PENALTY OF FOURTEEN (14) YEARS.

PURSUANT TO THE CONSTITUTIONAL AND STATUTORILY MANDATE OF ARTICLE VI, SECTION 3, IDAHO CONSTITUTION, AND IDAHO CODE 18-310, DOTT'S IS PREVENTED FROM PARTICIPATING IN THE NATIONAL OR LOCAL POLITICAL PROCESS AS AN OPPONENT OF THE REPUBLICAN PARTY WHILE IN PRISON AND/OR WHILE IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS. ABSENT THE POLITICAL BIAS CONNOTATION OR OPPORTUNITY TO PRACTICE DISCREET POLITICAL DISCRIMINATIONS THROUGH THE POLITICALLY AFFILIATED APPOINTMENTS OF IDAHO CODE 20-210, DOTT'S WOULD NO LONGER BE IN PRISON, OR IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS.

CLEARLY, THE POLITICALLY MOTIVATED APPOINTMENTS TO THE IDAHO COMMISSION

OF PARDONS AND PAROLE, ALONG WITH IDAHO CODE 20-228 ARE IDAHO'S ATTEMPT AT MAKING AND ENFORCING LAWS THAT ABRIDGE PRIVILEGES AND IMMUNITIES. PURSUANT TO IDAHO CODE 18-2408(2)(a) AND IDAHO CODE 18-3604 WHEN CROSS-FERTILIZED WITH IDAHO CODE 18-310, DOTTS SHOULD BE ABLE TO REGISTER AND VOTE, (SEE: C.R. pg. 000050)<sup>15</sup>, BUT FOR IDAHO CODE 20-210 AND IDAHO CODE 20-228 INFRINGING ON HIS RIGHTS AS A CITIZEN OF THE UNITED STATES AND AS A CITIZEN OF THIS STATE, HIS VOICE WOULD BE HEARD.

BEING THAT IDAHO CODE 20-210 AND IDAHO CODE 20-228, COLLECTIVELY OR RESPECTIVELY, ACT TO ABRIDGE DOTTS' RIGHT TO PARTICIPATE IN LOCAL AND NATIONAL ELECTIONS THROUGH THE FORFEITURE POWERS, THEY ARE NULL, VOID AND UNENFORCEABLE *ab initio*. AS SUCH, THE FORFEITURE

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<sup>15</sup> THE RESPONSE FROM THE SECRETARY OF STATE WAS SIMPLY A PHOTO COPY OF IDAHO CODE 18-310 AND ARTICLE VI, SECTION 3 OF THE IDAHO STATE CONSTITUTION.

OF TIME SPENT ON PAROLE HAS NO FORCE OR EFFECT UNDER THE PROSCRIPTIONS OF THE FOURTEENTH (14) AMENDMENT TO THE UNITED STATES CONSTITUTION. ✓6

### CONCLUSION

UNDEIR EITHER ARGUMENT ADVANCED BY DOTTS, THE FORFEITURE POWER OF THE IDAHO COMMISSION OF PARDONS AND PAROLE WHICH EXTENDS CUSTODY TO IDAHO STATE BOARD OF CORRECTIONS WITH VOTER DISQUALIFICATION IS FLAWED BY THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. HAVING BEEN IN THE CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS SUFFERING VOTER DISQUALIFICATION CONTINUOUSLY EXCEEDING FOURTEEN (14) YEARS, IT IS PRAYED THAT THIS

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✓6 PURSUANT TO IDAHO CODE 9-101(2) JUDICIAL NOTICE IS REQUESTED OF ESTABLISHED LAW RELATIVE TO THE ISSUE AND ARGUMENT OF DOTTS, BEING AN ARGUMENT OF FIRST IMPRESSION COUPLED WITH DOTTS' ACCESS TO INADEQUATE LEGAL RESEARCH RESOURCES.

HONORABLE COURT REVERSE THE LOWER COURT  
DECISION DENYING RELIEF WITH INSTRUCTIONS  
TO RELEASE DOTTS FORTHWITH FROM THE  
CUSTODY OF THE IDAHO STATE BOARD OF  
CORRECTIONS WITH CIVIL RIGHTS RESTORATION.

ADDITIONALLY, DOTTS IS REQUESTING  
REIMBURSEMENT OF DISTRICT COURT FILING FEE  
AND THE COST OF THE CLERKS RECORD ON APPEAL  
WITH REASONABLE PARALEGAL WAGES FOR RESEARCH  
AND BRIEF WRITING

DATED THIS 2 DAY OF JULY, 2014.

Michael Dotts

MICHAEL DOTTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THE ATTORNEY GENERAL  
OF IDAHO WAS SERVED WITH TWO (2) COPIES OF THE  
FOREGOING BRIEF OF APPELLANT THIS 2 DAY OF JULY, 2014  
AT P.O. BOX 83720 BOISE, IDAHO 83720.

Michael Dotts

MICHAEL DOTTS