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State v. Helmuth Appellant's Reply Brief Dckt. 37175

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	NO. 37175
)	
vs.)	
)	
PHILLIP DAVID HELMUTH,)	
)	
Defendant-Respondent.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE DARLA S. WILLIAMSON

District Judge

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**ATTORNEY FOR
DEFENDANT-RESPONDENT**

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ARGUMENT IN REPLY

The District Court Erred When It Granted Helmuth's Motion To Dismiss

A. Introduction

The district court erred when it granted Helmuth's motion to dismiss, concluding that he was not required to register as a sex offender because I.C. § 18-8304(1)(d) did not apply to out-of-state convictions. (R., pp. 109-14.) The district court erred because the plain, unambiguous language of the statute applies to Helmuth. The disputed language in I.C. § 18-8304(1)(d) reads, "a crime covered in this chapter." Helmuth asserts that the district court was correct in its ruling, arguing that a "crime covered in this chapter" does not include out-of-state convictions. (Respondent's brief, pp. 4-7.) The state contends that a "crime covered in this chapter" includes crimes committed both in-state and out-of-state.

B. The District Court Erred When It Granted Helmuth's Motion To Dismiss

Helmuth argues that the language in subsection (d) that reads "a crime covered in this chapter" does not include out-of-state convictions. (Respondent's brief, pp. 5-6.) He asserts that by "stating that the crime must be 'covered in this chapter,' and because the only crimes covered in chapter 83 are listed in subsection 1(a)," the statute applies only to crimes committed in Idaho. (Id.) This is incorrect. The offenses listed in subsection (1)(a) are incorporated by reference into subsections (1)(b) and (1)(c) by the plain language of the statute and thus out-of-state crimes are "crimes covered in this chapter."

The state's position that I.C. § 19-2604(1)(d) applies to out-of-state offenses is bolstered by the Idaho Supreme Court's opinion in Idaho v. Yeoman, 2010 Opinion No. 88, Idaho Supreme Court Docket No. 35689-2008 (July 26, 2010). In Yeoman, the defendant asserted that he was not required to register as sex offender under subsection (c) of I.C. § 19-2604 because, he reasoned, I.C. § 19-2604(1)(c) only applied to those convictions that occurred on or after July 1, 1993. Id. at 2. The Supreme Court disagreed, holding

When construing Idaho Code § 18-8304 as a whole, subsection (1)(c) is not limited to crimes for which the person was convicted on or after July 1, 1993. Subsection (1)(c) incorporates by reference "the *offenses* listed in subsection (1)(a) of this section." (Emphasis added.) Subsection (1)(a) applies to any person who "[o]n or after July 1, 1993, is *convicted* of the crime, or an attempt, a solicitation or a conspiracy to commit a crime provided for in section ... 18-6101 (rape, but excluding 18-6101(1) ...)." (Emphasis added.) Subsection (1)(c) does not incorporate by reference the *convictions* listed in subsection (1)(a); it incorporates by reference the *offenses* listed."

Id. at 4 (emphasis in original).

Subsection (1)(a) lists the Idaho crimes for which sex offender registration is required. Subsections (b) and (c) require registration if an individual commits an out-of-state *crime* that is substantially similar to those *offenses* listed in subsection (a). As clarified by Yeoman, subsections (b) and (c) incorporate by reference the *offenses* listed in (1)(a), not the actual crimes. Yeoman, 2010 Opinion No. 88, at 4. Because the chapter applies to anyone who has been convicted of an out-of-state "crime" that is "substantially equivalent to the offenses listed" in subsection (1)(a), such out-of-state conviction is a crime "covered in this chapter." Thus, subsection (1)(d), which requires an individual to

register if he has been “found guilty of a crime covered in this chapter” and meets other qualifying criteria, applies to out-of-state convictions.

Further, Helmuth’s proposed interpretation renders subsections (b) and (c) a nullity. See Belt v. Belt, 106 Idaho 426, 431, 679 P.2d 1144, 1149 (1984) (construction of a statute should be adopted which does not deprive provisions of the statute of their meaning). Subsections (b) and (c) require an individual to register if he “has been convicted of any crime ... that is substantially equivalent to the offenses listed in subsection (1)(a)” and meets other qualifying criteria. Under Helmuth’s proposed interpretation, a “substantially equivalent” offense in subsection (b) or (c) is not a crime covered in the chapter. If a subsection (b) or (c) “substantially equivalent” crime isn’t a “crime covered in this chapter,” then no one who is convicted of an out-of-state crime could be required to register, rendering subsections (b) and (c) a nullity.

Helmuth is required to register as a sex offender. The district court erred in dismissing the information against Helmuth based on an incorrect interpretation of the law and should be reversed.

CONCLUSION

The state respectfully requests that the district court’s order dismissing the state’s information be reversed.

DATED this 2nd day of August, 2010.


ELIZABETH A. KOECKERITZ
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August 2010, I served a true and correct copy of the APPELLANT'S REPLY ON APPEAL by causing a copy addressed to:

JUSTIN CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

To be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office


ELIZABETH A. KOECKERITZ
Deputy Attorney General

EAK/pm

