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Bottum v. Idaho State Police Appellant's Reply Brief Dckt. 39772

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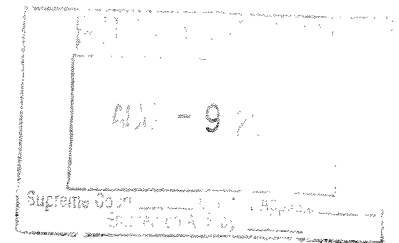
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IN THE SUPREME COURT OF THE STATE OF IDAHO

RANDALL PHILLIP BOTTUM,)
)
Petitioner-Appellant,)
)
vs.)
)
IDAHO STATE POLICE, BUREAU)
OF CRIMINAL IDENTIFICATION)
CENTRAL SEX OFFENDER)
REGISTRY,)
)
Respondent.)
_____)

Docket No. 39772-2012

REPLY BRIEF



Appeal from the District Court of the First Judicial District for Kootenai County

The Honorable Michael J. Griffin, District Judge, presiding.

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Rebuttal

Contrary to the state's assertion, the 2001 amendment to the SORA did not render the Appellant ineligible for relief from the registration requirements of the Act. That amendment only rendered someone ineligible if the offense of lewd conduct involved a victim less than twelve (12) years of age. In the Appellant's criminal case the named victim was over the age of twelve (12), and thus the Appellant was eligible to petition to be released from registration requirements in November, 2001.

The 2009 amendment, eliminating the "less than twelve (12)" qualifier for a lewd conduct charge, is the amendment which "retroactively" prohibits Appellant from being a candidate for relief. The 2009 amendment to the SORA is the legislation at issue in this case. The state's argument that amendments which change eligibility or impose time requirements on litigants that occur during the period of eligibility are effective and not considered retroactive has no application to the amendment questioned here.

Conclusion

The Appellant concedes that the Court has determined that the Ex Post Facto Clause does not prohibit retroactive application of amendments to the SORA as that clause is only applicable to criminal legislation, and the registration requirements of the SORA has been found to be "non-criminal" in nature. The Appellant has not advanced an Ex Post Facto Clause argument, either before this Court or at the District Court level.

Idaho Code Section 73-101, however, applies to both criminal and civil legislation, and

can not be analyzed as if it was simply a statutory codification of the Ex Post Facto Clause. It is plainly and clearly written: “No part of these compiled law is retroactive, unless expressly so declared.” Idaho Code Section 73-101.

There is no declaration in the 2009 amendment at issue that it is to be applied retroactively. This silence demonstrates an intent on the part of the Legislature that the changes it made to eligibility for relief from the registration requirements was not applicable to those already eligible, such as the Appellant. Appellant therefore renews his request that the decision of the District Court be reversed.

Respectfully submitted this ____ day of July, 2012.

FREDERICK G. LOATS
Attorney for Appellant

Certificate of Service

I hereby certify that two (2) copies of the Brief of Appellant were served upon Attorney for Respondent by mailing the same, postage pre-paid to Stephanie A. Altig, Lead Deputy Attorney General, Idaho State Police, 700 S. Stratford Drive, Meridian, Idaho 83642, this ____ day of June, 2012.

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