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State v. Lee Respondent's Brief Dckt. 40330

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40330
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2001-12154
)	
DAVID LEROY LEE,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

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

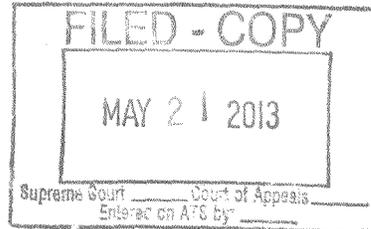
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STATEMENT OF THE CASE

Nature of the Case

David Leroy Lee appeals from the district court's order denying his motion to strike surplus language from the judgment of acquittal entered after the Idaho Supreme Court vacated his conviction for failing to register as a sex offender.

Statement of Facts and Course of Proceedings

As a result of a prior conviction for lewd conduct with a minor, Lee is required to register as a sex offender and to bi-annually confirm his address with the sex offender registry (the "Registry"). State v. Lee, 153 Idaho 559, ___, 286 P.3d 537, 538 (2012). In October 2001, Lee avoided the registration requirement by absconding parole and, ultimately, leaving the country. Id. He was arrested in Belize in May 2009 and was thereafter extradited to Idaho, where the state charged him with failing to register as a sex offender in violation of I.C. § 18-8309. Lee, 153 Idaho at ___, 286 P.3d at 538. Following a trial, a jury found Lee guilty of the charge. Id. The Idaho Supreme Court overturned the conviction, however, holding there was insufficient evidence presented at trial to support the jury's finding that Lee violated the registration requirements of I.C. § 18-8309 which, the Court held, only required Lee to notify the Registry of a change of address within Idaho or to another state, not to another country. Lee, 153 Idaho at ___, 286 P.3d at 539-40. The Court therefore vacated the judgment of conviction and remanded the case to the district court "with instructions for the entry of a judgment of acquittal." Id. at ___, 286 P.3d at 541.

On remand, the district court entered a "Judgment of Acquittal After Remand," the body of which states:

The defendant was convicted after a trial by jury of the offense of Failing to Register as a Sex Offender. He registered in Idaho, cut off his ankle monitor and fled and was eventually located in Belize after traveling in the United States. The Court of Appeals affirmed the conviction by its Opinion No. 38 filed June 29, 2011. The Supreme Court overturned that decision by its Opinion No. 109 filed July 5, 2012. Based upon the Supreme Court's decision and a remittitur having entered, the verdict of the jury is vacated and a judgment of acquittal is entered. Because he is a serious pedophile, it is hoped that the authorities will be able to keep a closer watch on him in the future. As mandated, a judgment of acquittal is entered.

(R., p.7.)

Lee thereafter filed a "Motion To Strike Surplusage In Judgment Of Acquittal After Remittitur," requesting the district court to remove the following language from the judgment of acquittal: "Because he is a serious pedophile, it is hoped that authorities will be able to keep closer watch on him in the future." (R., pp.8-15.) In support of his motion, Lee argued that the district court lacked both subject matter jurisdiction and authority under I.A.R. 38 to make "any findings of fact about Mr. Lee and his level of risk" or "to give any veiled orders to the 'authorities' on how to properly supervise him." (R., pp.9-13.) Alternatively, Lee argued that the inclusion of the challenged language in the judgment of acquittal violated his right to due process. (R., pp.13-14.) The district court denied Lee's motion to strike, reasoning:

The Court entered the Judgment of Acquittal as required by the remittitur. He prevailed on appeal because of the Supreme Court's interpretation of the statute but after he had been sentenced, after he had a presentence report prepared and he had been given an opportunity to challenge all the information

contained in that report so he was afforded due process. He is subject to a duty to register which pre-existed this case. Presumably, the Parole Board will have access to all of the information generated as a result of the defendant's prior offenses. The record is abundantly clear that the defendant is a risk to children. The Motion to Strike is denied.

(R., p.16.) Lee timely appealed. (R., pp.117-20.)

ISSUES

Lee states the issues on appeal as:

1. Did the district court err when it denied Mr. Lee's motion to strike surplus language declaring him to be "a serious pedophile" in need of "closer watch" by the authorities from the judgment of acquittal because, under the language of the remittitur, it lacked subject matter jurisdiction to make such factual findings?
2. Did the district court abuse its discretion when it denied Mr. Lee's motion to strike surplus language declaring him to be "a serious pedophile" in need of "closer watch" by the authorities from the judgment of acquittal because, in doing so, it failed to act consistently with the legal standards applicable on remand?
3. Did the district court violate Mr. Lee's right to procedural due process when, without notice or a hearing, it declared him to be "a serious pedophile" in need of "closer watch" by the authorities?

(Appellant's brief, p.4.)

The state rephrases the issues as:

1. Has Lee failed to show that the district court exceeded its subject matter jurisdiction and/or the authority granted to it by I.A.R. 38 by including in the judgment of acquittal language that, while superfluous, has no legally binding effect?
2. Has Lee failed to establish any right to procedural due process in relation to the district court's statement that Lee is "a serious pedophile" where such statement was based on Lee's pre-existing duty to register as a sex offender resulting from his prior conviction for lewd conduct with a minor?

ARGUMENT

I.

Lee Has Failed To Show That The District Court Lacked Jurisdiction And/Or Authority Under I.A.R. 38 To Include In The Judgment Of Acquittal Language That, While Superfluous, Has No Legally Binding Effect

A. Introduction

Lee challenges the denial of his motion to strike, arguing as he did below that the district court lacked subject matter jurisdiction and/or authority under I.A.R. 38 to include in the judgment of acquittal language that Lee “is a serious pedophile” over whom the district court “hoped that the authorities will be able to keep a closer watch ... in the future.” (Appellant’s brief, pp.5-8.) Lee’s argument fails. The district court complied with the Idaho Supreme Court’s directive to enter a judgment of acquittal, and it did not exceed its jurisdiction and/or authority under I.A.R. 38 by including in that judgment of acquittal language, that while superfluous, has no legally binding effect.

B. Standard Of Review

“A claim that the district court lacked subject matter jurisdiction presents a question of law over which [the appellate courts] exercise free review.” State v. Peterson, 153 Idaho 157, 160, 280 P.3d 184, 187 (2012) (citing State v. Savage, 145 Idaho 756, 758, 185 P.3d 268, 270 (Ct. App. 2008); State v. Parvin, 137 Idaho 783, 785, 53 P.3d 834, 836 (Ct. App. 2002)).

C. The District Court Did Not Exceed Its Jurisdiction And/Or Authority Under I.A.R. 38 By Including In The Judgment Of Acquittal Superfluous Language With No Legally Binding Effect

On remand from an opinion of the Idaho Supreme Court, the trial court has jurisdiction to carry out the directive of the appellate court and may take additional action only “if the action concerns a matter that is a subsidiary issue fairly comprised in the disposition of the case.” Walters v. Industrial Indemnity Co. of Idaho, 130 Idaho 836, 838, 949 P.2d 223, 225 (1997) (citing J.R. Simplot Co. v. Chemetics International, Inc., 130 Idaho 255, 258, 939 P.2d 574, 577 (1997)); accord State v. Hosey, 134 Idaho 883, 886, 11 P.3d 1101, 1104 (2000); Hummer v. Evans, 132 Idaho 830, 833, 979 P.2d 1188, 1191 (1999). “Where the appellate court remands a cause with directions to enter judgment for one of the parties, the judgment of the appellate court is a final judgment in the cause, and the entry thereof in the lower court is a purely ministerial act.” Mountain Home Lumber Co. v. Swartwout, 33 Idaho 737, 197 P. 1027 (1921), quoted in Hummer, 132 Idaho at 833, 979 P.2d at 1191; Walters, 130 Idaho at 837, 949 P.2d at 224. “A trial court has no authority to enter any judgment or order not in conformity with the order of the appellate court.” Id.

The principle that, on remand, a trial court must comply with the mandate of the reviewing court is also embodied in Idaho Appellate Rule 38(c). That rule requires a trial court, upon receiving a remittitur issued upon a final appellate opinion, to “forthwith comply with the directive of the opinion.” I.A.R. 38(c); State v. Bosier, 149 Idaho 664, 667, 239 P.3d 462, 465 (Ct. App. 2010).

In Lee's prior appeal, the Idaho Supreme Court vacated Lee's conviction and remanded the case to the district court with directions to enter a judgment of acquittal. State v. Lee, 153 Idaho 559, ___, 286 P.3d 537, 541 (2012). Upon receiving the remittitur, which specifically ordered the trial court to "forthwith comply with the directive of the Opinion" (#39107 Remittitur), the trial court entered a judgment acquitting Lee of failing to register as a sex offender (R., p.7). The court thus complied with the Idaho Supreme Court's directive.

Lee concedes the trial court had jurisdiction on remand to enter the judgment of acquittal. (Appellant's brief, pp.5-7.) He argues, however, that the trial court exceeded its jurisdiction and/or authority under I.A.R. 38 by including in the judgment of acquittal the language: "Because [Lee] is a serious pedophile, it is hoped that the authorities will be able to keep a closer watch on him in the future." (Id.) The state agrees the challenged language is superfluous; however, it is precisely because the language is superfluous and, ultimately, of no legal effect, that it is not jurisdictionally barred.

In all the cases Lee relies on for the proposition that, on remand, a trial court cannot take any action beyond that directed by the appellate court, the trial court was either asked to take or actually took some action that was not only beyond that specifically directed by the appellate court, but was also of legal significance to the case. See Hosey, 134 Idaho at 885-86, 11 P.3d at 1103-04 (on remand from appellate opinion directing reconsideration of suppression issue, district court had jurisdiction to consider defendant's motion to withdraw guilty plea because effect of appellate court's ruling under terms of plea

agreement was necessarily subsidiary to appellate court's directive on remand where defendant entered conditional plea); Hummer, 132 Idaho at 832-33, 979 P.2d at 1190-91 (trial court lacked jurisdiction on remand from opinion directing entry of an amended judgment to consider plaintiff's renewed request for attorney fees); Walters, 130 Idaho at 837-38, 949 P.2d at 224-25 (on remand from appellate opinion reversing trial court's order denying motion to dismiss, trial court had no jurisdiction to consider plaintiff's motion to amend complaint). Lee has not cited any case, and the state is not aware of any, that holds a trial court exceeds its jurisdiction and/or authority under a remittitur by including in a judgment or order it was specifically directed to enter language that, while extraneous, is ultimately of no legal effect.

In this case, the trial court took no legally significant action beyond that specifically directed by the Idaho Supreme Court. As required both by the Court's opinion and the remittitur that followed, the trial court entered a judgment of acquittal. That the trial court included in the judgment of acquittal its own view of the risk Lee poses to society does not demonstrate that the court exceeded its jurisdiction. The trial court's assessment was based on its own view of the record (see R., p.16); it was not an order, "veiled" or otherwise, that would compel law enforcement to take any particular action in its continued supervision of Lee (see R., pp.11-12 (defense counsel arguing in support of motion to strike that challenged language in judgment of acquittal constituted a "veiled order[]" to the 'authorities' on how to properly supervise [Lee])).

Because the language Lee challenges is of no legal significance, the district court did not exceed its jurisdiction and/or authority under I.A.R. 38 by including it in the judgment of acquittal. Lee has failed to establish any basis for reversal.

II.

Lee Has Failed To Establish Any Right To Procedural Due Process In Relation To The District Court's Statement That Lee Is A "Serious Pedophile"

A. Introduction

Lee argues that, even if the trial court did not exceed its jurisdiction and/or authority under I.A.R. 38, it nevertheless "violated his right to procedural due process when it declared him to be 'a serious pedophile' in need of 'closer watch' by the authorities." (Appellant's brief, pp.9-11.) Correct application of procedural due process principles to the facts of this case shows Lee's argument to be without merit.

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Cantrell, 139 Idaho 409, 411, 80 P.3d 345, 347 (Ct. App. 2003). A claim that a defendant's due process rights were violated is a question of law, subject to free review. State v. Gilpin, 132 Idaho 643, 649, 977 P.2d 905, 911 (Ct. App. 1999).

C. Lee Has Failed To Establish Any Violation Of His Right To Procedural Due Process

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Procedural due process requires that, except in extraordinary circumstances, “a person, whose protected rights are being adjudicated,” must receive notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.” State v. Smith, 146 Idaho 822, 828, 203 P.3d 1221, 1227 (2009) (citations omitted). “Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.” Id. at 826, 203 P.3d at 1226 (quoting Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)). However, where an individual “has already had a procedurally safeguarded opportunity to contest” a particular finding, no additional process is due. Id. at 828, 203 P.3d at 1227 (quoting Conn. Dep’t of Pub. Safety v. Doe, 538 U.S. 1, 7 (2003)).

Applying the foregoing principles in Smith, the Idaho Supreme Court struck down as violative of procedural due process a statutory scheme governing the designation of convicted sex offenders as violent sexual predators (VSP). Smith, 146 Idaho at 828, 203 P.3d at 1227. Specifically, the Court held that because designation as a VSP was based on a factual determination of probable future conduct and resulted in heightened and continuing legal obligations and registration requirements, due process required that an offender be afforded notice and a meaningful opportunity to challenge that designation. Id. The Court

was careful, however, to distinguish “Idaho’s VSP system from a sex offender registry based solely on the fact of conviction of a predicate offense,” explaining that, “[a]s to the latter, the United States Supreme Court has concluded that sex offender registration laws do not violate the offender’s procedural due process rights, noting the offender ‘has already had a procedurally safeguarded opportunity to contest’ the charge.” Id. (quoting Doe, 538 U.S. at 7).

Relying on Smith, Lee argues as he did below that, by labeling him a “serious pedophile” over whom the trial court hoped “authorities will be able to keep a closer watch ... in the future,” the district court placed upon him a “badge of infamy” that triggered his right to procedural due process. (Appellant’s brief, pp.10-11.) Lee is incorrect for two reasons.

First, unlike Smith, whose VSP “badge of infamy” was based on a factual determination of future conduct, Lee has not been given any badge of designation not already fairly attributed to him as a result of his prior conviction for lewd conduct with a minor under 16 and the resulting requirement that he register as a sex offender. Indeed, as noted by the district court in its order denying Lee’s motion to strike, Lee has already been afforded notice and an opportunity to be heard and to contest the facts giving rise to his prior convictions and his duty to register. (See R., p.16 (noting Lee was provided presentence report and had opportunity to challenge all information contained therein).)

Second, also unlike the VSP designation at issue in Smith, the district court’s statement that Lee is a “serious pedophile” and its expressed “hope” that authorities will supervise him more closely in the future does not impose upon

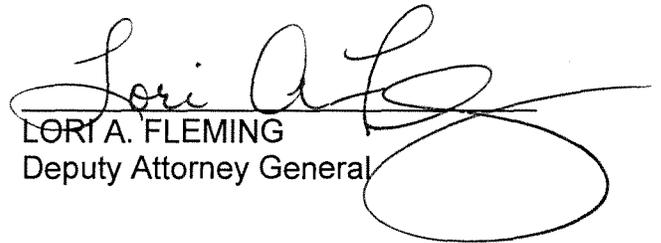
Lee any burden or consequence beyond that already required by his pre-existing duty to register. The statement was merely *dicta* and did not purport or operate to adjudicate any of Lee's protected rights.

The district court's statement that Lee is a "serious pedophile" was not a new factual finding and does not deprive, or even threaten to deprive, Lee of any life, liberty or property not already at stake by virtue of his prior convictions. As such, Lee has failed to demonstrate that his right to procedural due process is even implicated, much less violated, by the inclusion of that statement in the judgment of acquittal.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Lee's motion to strike.

DATED this 21st day of May 2013.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of May 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
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.


LORI A. FLEMING
Deputy Attorney General

LAF/pm