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State v. Sanchez-Castro Appellant's Brief Dckt. 40603

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 40603
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2011-
v.)	12115
)	
JUAN LUIS SANCHEZ-CASTRO,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

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

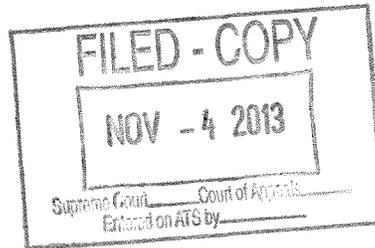
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STATEMENT OF THE CASE

Nature of the Case

Juan Luis Sanchez-Castro appeals from the judgment of conviction for trafficking in methamphetamine and conspiracy to traffic in methamphetamine entered against him following a jury trial. On appeal, he asserts that his conviction for trafficking in methamphetamine, based on the same course of conduct underlying the conspiracy to traffic in methamphetamine conviction, cannot stand under the plain language of Idaho Code § 37-2732B and principles of double jeopardy.

Statement of the Facts and Course of Proceedings

Juan Luis Sanchez-Castro was charged by Indictment with conspiracy to traffic in methamphetamine (by possessing 400 grams or more) and trafficking in methamphetamine (by possessing 400 grams or more) for conduct that purportedly occurred on or between August 3 and August 5, 2011. (R., pp.21-24.) Following a jury trial, Mr. Sanchez-Castro was convicted of trafficking in methamphetamine in an amount greater than 400 grams and conspiracy to traffic in methamphetamine in an amount greater than 400 grams for which he was sentenced to concurrent, unified terms of fifteen years, with ten years fixed.¹ (R., pp.164-67.) Mr. Sanchez-Castro filed a timely Notice of Appeal. (R., p.178.)

¹ Separate assessments were imposed for each count, as were separate fines of \$25,000 each. (R., pp.166-67.)

ISSUE

Under the plain language of Idaho Code § 37-2732B and principles of double jeopardy, can a defendant be convicted and sentenced for both a conspiracy under subsection (b) and the completed act under subsection (a) when both charges arise out of the same course of conduct?

ARGUMENT

Under The Plain Language Of Idaho Code § 37-2732B And Principles Of Double Jeopardy, Mr. Sanchez-Castro Cannot Be Convicted And Sentenced For Both Conspiracy And The Completed Act When Both Charges Arise Out Of The Same Course Of Conduct

A. Introduction

Mr. Sanchez-Castro asserts that his convictions and sentences for both conspiracy to traffic in 400 or more grams of methamphetamine under Idaho Code § 37-2732B(b) and for trafficking in 400 or more grams of methamphetamine under Idaho Code § 37-2732B(a) arising out of the same course of conduct cannot stand because the plain language of the statute, and the principles of double jeopardy, does not allow for such a result. As such, and for the reasons set forth below, his conviction and sentence for violating Idaho Code § 37-2732B(a) must be vacated.

B. Under The Plain Language Of Idaho Code § 37-2732B And Principles Of Double Jeopardy, Mr. Sanchez-Castro Cannot Be Convicted And Sentenced For Both Conspiracy And The Completed Act When Both Charges Arise Out Of The Same Course Of Conduct

Mr. Sanchez-Castro was charged by Indictment as follows:

COUNT I

That the Defendant, JUAN LUIS SANCHEZ-CASTRO, on or between August 3rd, 2011 and August 5th, 2011, both dates being approximate and inclusive, within Ada and Twin Falls County [sic], State of Idaho, and elsewhere, the Defendants, ALFRONSO MIRANDA-COTA, JUAN LUIS SANCHEZ-CASTRO, JOSE LUIS LIMON-RAMIREZ, JAMES JOSEPH DELANEY together with MARIO ALEJANDRO GARCIA and other unnamed or unknown people did willfully and knowingly combine, conspire, confederate and agree to traffic in a controlled substance, by knowingly possessing methamphetamine, to wit: in excess of four-hundred (400) grams or more of methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of methamphetamine.

. . . [omitting alleged overt acts]

COUNT II

That the Defendant, JUAN LUIS SANCHEZ-CASTRO, on or about the 5th day of August, 2011, in the County [sic] of Ada and Twin Falls, State of Idaho, along with others, was knowingly in actual or constructive possession of Methamphetamine, to-wit: four hundred (400) grams or more of Methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of methamphetamine.

(R., pp.22-23.)

Mr. Sanchez-Castro was convicted of both trafficking in methamphetamine in an amount greater than 400 grams for possessing 400 grams or more of a methamphetamine or a mixture containing a detectable amount of methamphetamine, and conspiracy to traffic in 400 grams or more of methamphetamine or a mixture containing a detectable amount of methamphetamine for the same course of conduct.

(R., pp.21-24, 164-67, *see generally* Tr.)

Idaho Code § 37-2732B, in relevant part, provides:

(a)(4) Any person . . . who is knowingly in actual or constructive possession of twenty-eight (28) grams or more of methamphetamine or amphetamine or of any mixture or substance containing a detectable amount of methamphetamine or amphetamine is guilty of a felony, which felony shall be known as “trafficking in methamphetamine or amphetamine.” If the quantity involved:

...

(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000).

...

(b) Any person who agrees, conspires, combines or confederates with another person or solicits another person to commit any act prohibited in subsection (a) of this section is guilty of a felony and is punishable *as if he had actually committed such prohibited act.*

I.C. § 37-2732B (emphasis added).

“In construing a statute, the words of the statute must be given their plain, usual and ordinary meaning.” *Sherwood v. Carter*, 110 Idaho 246, 254 (1991) (citations omitted), *overruled on other grounds by Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889 (2011). “It is a well settled principal [sic] of law that criminal statutes must be strictly construed” in favor of the individual. *State v. Thompson*, 101 Idaho 430, 437 (1980) (citations omitted). “Where ambiguity exists as to the elements or potential sanctions of a crime, this Court will strictly construe the criminal statute in favor of the defendant.” *State v. Rhode*, 133 Idaho 459, 462 (1999) (citing *Thompson*). Something cannot be a crime if it does not carry with it the possibility of a sentence of incarceration. I.C. § 18-111 (“A felony is a crime which is punishable with death or by imprisonment in the state prison. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100) and for which no period of incarceration may be imposed. Every other crime is a misdemeanor.”)

Under the plain language of subsection (b) of the statute, Mr. Sanchez-Castro cannot be punished for both the completed offense identified in subsection (a) of the statute and conspiracy to commit the completed offense. Since he cannot be punished for both a completed violation of subsection (a) and a conspiracy, under subsection (b), to violate subsection (a), Mr. Sanchez-Castro cannot be convicted and sentenced for both offenses.

The Idaho Supreme Court has explained that “an offense is an included offense if it is alleged in the information as a means or element of the commission of the higher offense.” *State v. Anderson*, 82 Idaho 293, 301 (1960). This Court has held that, given the language in *Anderson*, this State has adopted “the ‘indictment’ or ‘pleading’ theory” which “expands the traditional ‘statutory’ theory of a lesser included offense for the

purpose of determining whether there is double jeopardy.” *State v. Pizzuto*, 119 Idaho 742, 756 (1991) (citations and footnote omitted), *overruled on other grounds by State v. Card*, 121 Idaho 425, 432 (1991). “The prohibition against double jeopardy has been held to mean that a defendant may not be convicted of both a greater and lesser included offense.” *Id.* (citing *Brown v. Ohio*, 432 U.S. 161, 164; *Sivak v. State*, 112 Idaho 197 (1986); *State v. Thompson*, 101 Idaho 430 (1980); *State v. McCormick*, 100 Idaho 111 (1979)). This includes “protect[ion] against multiple punishments for the same offense.” *Id.* (citing *Brown*).

In both Counts I and II, Mr. Sanchez-Castro was alleged to have committed the relevant offenses by possessing 400 or more grams of methamphetamine or a mixture or substance containing a detectable amount of methamphetamine. In addition to concurrent prison sentences, Mr. Sanchez-Castro was ordered to pay separate \$25,000 fines for each count, as well as separate statutory assessments. (R., pp.166-67.) Under the principles of double jeopardy identified by this Court in the cases cited *supra*, Mr. Sanchez-Castro’s convictions under subsections (a) and (b) should merge into a single conviction for violating the “greater” offense of conspiracy as prohibited by subsection (b).²

² Mr. Sanchez-Castro asserts that the “greater” offense is the conspiracy under subsection (b) because it arguably requires proof of more conduct than simple trafficking under subsection (a). See *State v. Gallatin*, 106 Idaho 564, 569-70 (Ct. App. 1984) (finding that when sentencing for both the conspiracy and completed crime which carry the same sentence are prohibited, the conviction for the completed crime should be set aside in order to deter people from entering into conspiracies). In the end, it doesn’t matter which of Mr. Sanchez-Castro’s convictions and sentences is vacated, as each subsection prescribes the same punishment.

CONCLUSION

For the reasons set forth herein, Mr. Sanchez-Castro respectfully requests that this Court vacate his conviction as to Count II, and remand this matter with instructions that the district court prepare an amended judgment of conviction which deletes the conviction and sentence for Count II.

DATED this 4th day of November, 2013.


SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

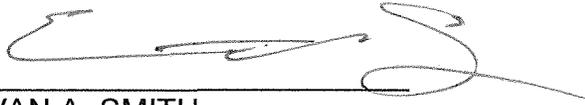
I HEREBY CERTIFY that on this 4th day of November, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
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