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State v. Wolfe Respondent's Brief Dckt. 41750

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

WILLIAM FRANKLIN WOLFE,

Defendant-Appellant.

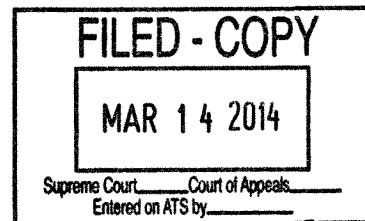
NO. 41750

RESPONDENT'S BRIEF
ON REVIEW

STATEMENT OF THE CASE

Nature of the Case

This case is on review from the Idaho Court of Appeals' opinion concluding that the district court did not err by dismissing, on procedural grounds, Wolfe's claim of superseding federal Indian jurisdiction. State v. Wolfe, 2013 Opinion 53S, Docket No. 38896 (Idaho App., Nov. 14, 2013)



Statement Of The Facts And Course Of The Proceedings

The Idaho Court of Appeals affirmed Wolfe's conviction for first-degree murder in 1984. State v. Wolfe, 107 Idaho 676, 691 P.2d 1291 (Ct. App. 1984). It affirmed the denial of Wolfe's first and first-successive petition for post-conviction relief in 1990. Wolfe v. State, 117 Idaho 645, 791 P.2d 26 (Ct. App. 1990). Wolfe first claimed that his victim was an Indian and that the murder occurred on "Indian country," and therefore the federal government had exclusive jurisdiction to prosecute his crime, in a Rule 35 motion filed in December of 2004 (R., vol. I, pp. 31-32) and a petition for post-conviction relief filed in February of 2005 (R., vol. I, pp. 3-8). The district court denied these claims on October 26, 2006. (R., vol. II, pp. 375-94.¹)

On April 4, 2011 Wolfe filed two motions: A "Motion to Notice Hearing [and] Request for Judicial Notice" asserting his Rule 35 motion had been "ripe before this court for ruling since 2004-2005" and asking for judicial notice of the criminal and post-conviction records (R., vol. II, p. 289) and a "Motion for Judicial Notice of New Idaho State Supreme Court Opinion In Support of Motion to Reconsider I.C.R. 35 Motion," requesting the district court to consider the opinion in State v. Lute, 150 Idaho 837, 840, 252 P.3d 1255, 1258 (2011) (R., vol. II, pp. 290-97). The district court denied "Mr. Wolf's [sic] request for a hearing on Motion for Relief pursuant to ICR 35 that he filed in December 2004" on the basis that the underlying motion had already been heard and denied. (R., vol. II, pp. 298-99.)

¹ A more thorough rendition of the procedures is set forth in the Respondent's briefat pages 1-2.

ISSUES ON REVIEW

The state rephrases the issues before the Court as follows:

1. Does this Court lack jurisdiction to consider Wolfe's claim of Indian jurisdiction because it was decided in the 2006 order, from which there was no timely appeal?
2. Did the district court lack jurisdiction to consider Wolfe's claims of Indian jurisdiction because they were raised decades after the final judgment?

ARGUMENT

I.

The District Court Properly Denied The Request For A Hearing On The Basis That The Motion Had Been Heard And Denied More Than Four Years Previously

A. Introduction

The only order before this Court on appeal, and therefore the only order over which this Court has appellate jurisdiction, is the district court order of April 29, 2011 denying Wolfe a hearing on his Rule 35 motion on the basis that the motion had been denied in 2006. Therefore, this Court's appellate jurisdiction is limited to review of the denial of the motion for a hearing on the previously denied Rule 35 motion. Review of that motion shows the district court did not err in denying Wolfe a hearing on the already denied Rule 35 motion.

B. Standard Of Review

"A question of jurisdiction is fundamental; it cannot be ignored when brought to [the appellate court's] attention and should be addressed prior to considering the merits of an appeal." State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003) (quoting H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987)). Whether a court has jurisdiction is a question of law, given free review. Kavajecz, 139 Idaho at 483, 80 P.3d at 1084.

C. The district court did not err by denying a hearing on the previously denied Rule 35 motion

An appeal as a matter of right may be perfected "only by physically filing a notice of appeal ... within 42 days from the date evidenced by the filing stamp ... on any

judgment, order or decree of the district court appealable as a matter of right” I.A.R. 14(a) (emphasis added); see also I.C.R. 54.3; I.A.R. 21 (a timely filed notice of appeal is a prerequisite to appellate jurisdiction); State v. Thomas, 146 Idaho 592, 594, 199 P.3d 769, 771 (2008) (same). “A timely appeal is necessary to vest jurisdiction in this Court in order to review issues raised with respect to the action taken by the district court.” Dunlap v. Cassia Memorial Hosp. and Medical Ctr., 134 Idaho 233, 235, 999 P.2d 888, 890 (2000) (appeal timely from later order did not confer jurisdiction on a prior appealable order from which no timely appeal was taken).

Here there was no appeal within 42 days of the district court’s 2006 order denying Wolfe’s Indian jurisdiction claim, and therefore no review of the denial of Wolfe’s Rule 35 motion is possible on appeal. Wolfe’s appeal is timely only from the Order Dismissing Motion, filed April 29, 2011. (R., vol. II, pp. 298-301.) Thus, the only issues reviewable on appeal are those decided in the later order. Dunlap, 134 Idaho at 234-37, 999 P.2d at 889-92 (appeal timely from later order did not confer jurisdiction to review a prior appealable order from which no timely appeal was taken); State v. Schultz, 147 Idaho 675, 214 P.3d 661 (Ct. App. 2009) (appeal timely from amended order did not confer jurisdiction to review prior order from which no timely appeal was taken); State v. Huntsman, 146 Idaho 580, 583-84, 190 P.3d 155, 158-59 (Ct. App. 2009) (timely appeal from final order in re-filed criminal case did not confer jurisdiction for appellate review of order dismissing previous criminal case); Walton, Inc. v. Jensen, 132 Idaho 716, 719-20, 979 P.2d 118, 121-22 (Ct. App. 1999) (appeal timely from judgment regarding costs and fees did not grant appellate jurisdiction from previously filed judgment on damages that was not timely appealed).

The district court held in the 2006 order that Wolfe's claim of Indian jurisdiction could not be litigated on the merits because the judgment had become final and there was no procedural mechanism for allowing such a collateral attack. (R., vol. II, pp. 392-94.) Wolfe cannot challenge that holding on this appeal because this Court lacks appellate jurisdiction. Wolfe's motion to reconsider a five-year-old ruling does not confer appellate jurisdiction on this Court to address the merits decided in 2006. To hold otherwise is to deny finality for any order or judgment.

II.

The District Court Lacked Jurisdiction To Consider Wolfe's Claims Of Indian Jurisdiction Because They Were Raised Decades After The Final Judgment

A. Introduction

Even if this Court could address the propriety of the district court's conclusion that there was no existing procedural mechanism by which to litigate Wolfe's claim of superseding federal Indian jurisdiction, review shows that the district court was correct. Wolfe's assertion that procedural barriers to asserting his claim, such as *res judicata*, do not apply to his claim (Appellant's brief on review, pp. 10-30) notwithstanding, his claim of a right to litigate and re-litigate the question of jurisdiction in perpetuity is contrary to existing law. His argument does not withstand analysis. The trial court's jurisdiction was necessarily litigated in 1984. The judgment that resulted from that trial was affirmed on appeal and made final in 1986. Procedural mechanisms to litigate collateral, post-trial attacks on the judgment are very limited, and none apply to this case. Because there is no grant of jurisdiction to the court to litigate the factual issues underlying Wolfe's assertion of superseding federal Indian jurisdiction, the district court lacked jurisdiction to hear it.

B. Standard Of Review

Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. A Court's Jurisdiction To Hear A Criminal Defendant's Post-Judgment Collateral Attack On The Jury's Finding Of Jurisdiction Is Limited, And No Such Jurisdiction Exists In This Case

"Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." State v. Jakoski, 139 Idaho 352, 354, 79 P.3d 711, 713 (2003); see also State v. Johnson, 152 Idaho 41, 47, 266 P.3d 1146, 1152 (2011). Jurisdiction, meaning that the defendant committed a prosecutable act within the state of Idaho, must be proved at trial. I.C. § 19-301; State v. Doyle, 121 Idaho 911, 914, 828 P.2d 1316, 1319 (1992). The judgment in Wolfe's criminal case, and hence the jury's finding of jurisdiction, was entered in 1982 (see R., vol. I, p. 85) and affirmed on appeal in 1984, State v. Wolfe, 107 Idaho 676, 691 P.2d 1291 (Ct. App. 1984). Thus, the jury's verdict, including its finding of jurisdiction, became final in 1984. Review of the applicable law shows that no statute or rule extended the district court's jurisdiction to litigate Wolfe's factual claims that his victim was an Indian and that his crime occurred in Indian Country, the predicates to his jurisdictional argument.

States have "inherent jurisdiction on reservations" that may be "stripped by Congress." Nevada v. Hicks, 533 U.S. 353, 365 (2001). Idaho's statutes recognize a lack of jurisdiction where the public offense "is by law cognizable exclusively in the courts of the United States." I.C. § 19-301. Federal law, in turn, provides that crimes

by non-Indians against Indians in “Indian country” fall within the “exclusive jurisdiction of the United States.” 18 U.S.C. § 1152.² Where an issue of Indian jurisdiction has been raised in a case, the state bears the ultimate burden of “sustain[ing] the jurisdiction of the court by evidence.” State v. Allan, 100 Idaho 918, 607 P.2d 920k, 607 P.2d 426, 428 (1980). Although in Idaho the state ultimately bears the burden of proving the facts regarding Indian jurisdiction during the trial, applicable law supports placing on the defendant the burden of raising the jurisdictional exception. See State v. Verdugo, 901 P.2d 1165 (Ariz. App. 1995) (and cases cited) (holding that it is defendant who must prove exception to jurisdiction); State v. Francis, 563 A.2d 249, 251-53 (Vermont 1989) (and cases cited) (state has “initial burden” of proving criminal act in state, whereupon defendant bears burden of proving exclusive federal Indian jurisdiction); State v. Stasso, 563 P.2d 562, 565 (Mont. 1977) (“Prima facie, all persons within this state are subject to its criminal laws and come within the jurisdiction of its courts. If an exception exists it must be shown by the defendant.”). This is because the state is not “compelled to allege in every indictment or information negations of every conceivable exception to state court jurisdiction.” Verdugo, 901 P.2d at 1168. C.f. State v. Lute, 150 Idaho

² It is “well settled” that States have criminal jurisdiction over Indians for crimes committed off the reservation. Hicks, 533 U.S. at 362. Likewise, a criminal act by a non-Indian defendant against a non-Indian victim is outside the scope of federal Indian jurisdiction. Solem v. Bartlett, 465 U.S. 463, 465 n.2 (1984) (“Within Indian country, State jurisdiction is limited to crimes by non-Indians against non-Indians.”); Draper v. United States, 164 U.S. 240 (1896). Therefore, Wolfe’s crime is within the scope of federal Indian jurisdiction only if he or his victim or both were Indians as defined by law, and the crime occurred in “Indian country.” See, e.g., Hagen v. Utah, 510 U.S. 399 (1994) (although crime by Indian occurred within traditional boundary of reservation, act of Congress opening the area to white settlement meant the crime was not within “Indian country” and therefore State of Utah had criminal jurisdiction).

837, 840, 252 P.3d 1255, 1258 (2011) (“The information, indictment, or complaint alleging an offense was committed within the State of Idaho confers subject matter jurisdiction upon the court.” (internal citations omitted)); State v. Moore, 148 Idaho 887, 894-95, 231 P.3d 532, 539-40 (2010) (employing shifting burdens in context of proof of prior conviction; after state establishes fact of prior conviction, defendant must present evidence of constitutional challenge to validity of judgment, whereupon the state has burden of proving constitutional validity). Thus, a question of superseding federal Indian jurisdiction should be raised by the defendant and litigated at trial.³

Wolfe apparently did not raise this claim before or during the trial, where the state proved and the jury found that the State of Idaho had criminal jurisdiction. Nor did he challenge the jury’s jurisdictional finding through a motion for a new trial, I.C. § 19-2406, or upon any timely petition for post conviction relief, I.C. § 19-4902. See Wolfe v. State, 117 Idaho 645, 791 P.2d 26 (Ct. App. 1990). Instead, Wolfe attempted to raise his claim of federal Indian jurisdiction through an untimely third successive petition for post-conviction relief and an I.C.R. 35 motion filed years after the judgment became final.⁴ Neither of these procedural mechanisms extended the district court’s post-judgment jurisdiction to litigate the factual predicates of Wolfe’s claim of superseding federal jurisdiction.

³ Such a claim may also be appropriately raised in a pre-trial motion to dismiss. See I.R.E. 12 (issues capable of determination without trial may be raised before the trial by motion).

⁴ A motion for a new trial based on newly discovered evidence must be filed within two years. I.C. § 19-2407; I.C.R. 34.

The Uniform Post-Conviction Procedure Act provides a one-year statute of limitations, I.C. § 19-4902(a), and furthermore provides that all claims are to be brought in the “original, supplemental or amended application,” I.C. § 19-4908. Because Wolfe’s untimely third successive petition was procedurally barred under this Act, the UPCPA did not “extend[] the jurisdiction of the trial court for the purpose of hearing” the factual claims underlying Wolfe’s collateral attack on the judgment. Jakoski, 139 Idaho at 354, 79 P.3d at 714.

Rule 35 provides that “a sentence that is illegal from the face of the record” may be corrected “at any time.” I.C.R. 35. Although the “from the face of the record” is new language, even before any amendment the Rule was “narrowly interpreted” as disallowing the litigation of “significant questions of fact” that would “require an evidentiary hearing.” State v. Clements, 148 Idaho 82, 86, 218 P.3d 1143, 1147 (2009). “Rule 35 is not a vehicle designed to reexamine the facts underlying the case.” Id. The factual underpinnings of the Indian jurisdiction question raised by Wolfe (whether the victim was an Indian as defined by law and whether the crime occurred in Indian country) are not decipherable from the face of the criminal case record and raise significant questions of fact that would require an evidentiary hearing. Thus, Rule 35 did not “extend[] the jurisdiction of the trial court for the purpose of hearing” the factual claims underlying Wolfe’s collateral attack on the judgment. Jakoski, 139 Idaho at 354, 79 P.3d at 714.

The time to raise and litigate questions of superseding federal Indian jurisdiction is generally at or before trial. There are procedural mechanisms by which a claim of Indian jurisdiction might be raised and litigated post-trial, including a motion for new trial


(if based on newly discovered evidence, for example) or a petition under the UPCPA (raising claims of ineffective assistance of counsel, again by way of example). These post-trial mechanisms to raise and litigate these factual questions are not limitless, however. Rather, claims must be brought within specific time limits under the UPCPA and Rule 35 is not a mechanism for litigating the facts of the case. Because Wolfe did not bring his claim within these time limits and his claim is not appropriately addressed under Rule 35, he has failed to show “a statute or rule extending [the trial court’s] jurisdiction” to litigate the facts underlying his jurisdictional claim. Jakoski, 139 Idaho at 354, 79 P.3d at 713.

Wolf asserts that Rule 35 allows him to collaterally attack his judgment by claiming and litigating superseding federal Indian jurisdiction. (See generally Appellant’s brief; Appellant’s brief in support of review.) As shown above, Rule 35 does not provide for the litigation of the factual predicates of Wolfe’s claim, namely whether the victim was Indian and whether the crime occurred in “Indian country.” Wolfe has therefore failed to demonstrate that the district court had jurisdiction to litigate his claims of superseding federal Indian jurisdiction.

CONCLUSION

The state respectfully requests this Court to affirm the order of the district court denying a hearing on Wolfe’s claims of superseding federal Indian jurisdiction.

DATED this 14th day of April, 2014.

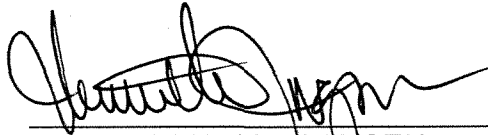

KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of April, 2014, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

SARAH E. TOMPKINS
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.

A handwritten signature in black ink, appearing to read 'Kenneth K. Jorgensen', written over a horizontal line.

KENNETH K. JORGENSEN
Deputy Attorney General