1-26-2015

State v. Moore Respondent's Brief Dckt. 42405

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 42405
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2002-1525
	)	
SCOTT ALAN MOORE,	)	
	)	
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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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Scott Alan Moore appeals from the district court's order denying his motion to amend the judgment of conviction entered upon his guilty plea to aiding and abetting a robbery.

Statement of Facts and Course of Proceedings

In June 2003, Moore pled guilty to aiding and abetting a robbery. (R., pp.54-57.) The district court imposed a unified sentence of five years with two years fixed, and retained jurisdiction for 180 days. (Id.) Following the period of retained jurisdiction, the district court suspended Moore's sentence and placed him on probation for five years. (R., pp.65-70.)

In May 2014, Moore moved the district court to amend his judgment of conviction pursuant to I.C. § 19-2604.[1] (R., pp.77-79.) The state prosecutor objected to the motion. (See R., p.81.) The district court denied the motion, concluding that I.C. § 19-2604(3) prevented it from amending Moore's judgment of conviction without the consent of the prosecutor. (R., pp.81-82.) Moore timely appealed. (R., pp.83-86.)

[1] Neither Moore's affidavit in support of his motion (which Moore referred to in his motion), nor the prosecutor's objection to it (which the district court referred to in its denial order), appear to be included in the appellate record. (See R., pp.77-89; 81-82.)

ISSUES

Moore states the issues on appeal as:

1. Does the Jurisdictional Requirement That Prosecutor Stipulate to Relief Sought Under Idaho Code § 19-2604 Violate Separation of Powers?

2. Does Idaho Code § 19-2604 Violate the Appellant's Equal Protection Rights Under the 14th Amendment of the United States Constitution and Article I Section 2 of the Idaho Constitution?

(Appellant's brief, p.3)

The state rephrases the issues on appeal as:

1. Has Moore failed to show that I.C. § 19-2604(3) violates the separation of powers provision of the Idaho Constitution?

2. Has Moore failed to show that I.C. § 19-2604(3) violates the equal protection clause of the United States or Idaho constitutions?

ARGUMENT

I.
Moore has Failed To Show That I.C. § 19-2604(3) Violates The Separation Of Powers Provision Of The Idaho Constitution

A. Introduction

For the first time on appeal, Moore contends that I.C. § 19-2604(3) violates the separation of powers provisions of the Idaho Constitution. (Appellant's brief, pp.4-6.) Moore's argument fails because I.C. § 19-2604(3) does not deprive either the legislative or judicial branches of any inherent or constitutional power that rightly pertains to those branches. Moore has therefore failed to demonstrate fundamental error.

B. Standard Of Review

Where the constitutionality of a statute is challenged, the appellate court reviews it *de novo*. State v. Korsen, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003). The party challenging the constitutionality of the statute must overcome a strong presumption of constitutionality and clearly show the invalidity of the statute. Id. The appellate court is obligated to seek a construction of a statute that upholds its constitutionality. Id. Additionally, "[i]t is a fundamental tenet of appellate law that a proper and timely objection must be made in the trial court before an issue is preserved for appeal." State v. Carlson, 134 Idaho 389, 398, 3 P.3d 67, 76 (Ct. App. 2000). The appellate courts of this state will only review unpreserved assertions of error under the fundamental error doctrine. State v. Perry, 150 Idaho 209, 226, 245 P.3d 961, 978 (2010).

C. Idaho Code § 19-2604(3) Does Not Deprive The Judiciary Of Any Of Its Inherent Or Constitutional Powers

Idaho Code § 19-2604(1) permits individuals who are on criminal probation to petition the district court, in certain prescribed circumstances, to set aside their conviction and dismiss the case, or to commute their sentence and amend a felony judgment of conviction to a misdemeanor. Idaho Code § 19-2604(2) permits individuals whose felony sentences had been suspended to the custody of the state board of correction during the first 365 days of the sentence to petition the district court, in certain prescribed circumstances, to commute their sentence and amend their judgment of conviction to a misdemeanor. In 2013, the legislature amended I.C. § 19-2604(3) and expanded the applicability of available relief as follows:

> (3) (a) In addition to the circumstances in which relief from a felony conviction may be granted under subsections (1) and (2) of this section, a defendant who has been convicted of a felony and who has been discharged from probation may apply to the sentencing court for a reduction of the conviction from a felony to a misdemeanor as provided in this subsection.
>
> (b) If less than five (5) years have elapsed since the defendant's discharge from probation, the application may be granted only if the prosecuting attorney stipulates to the reduction.
>
> (c) If at least five (5) years have elapsed since the defendant's discharge from probation, and if the defendant was convicted of any of the following offenses, the application may be granted only if the prosecuting attorney stipulates to the reduction: [List of applicable offenses, including robbery, I.C. § 18-6501].
>
> (d) The decision as to whether to grant such an application shall be in the discretion of the district court, provided that the application may be granted only if the court finds that:

> (i) The defendant has not been convicted of any felony committed after the conviction from which relief is sought;
>
> (ii) The defendant is not currently charged with any crime;
>
> (iii) There is good cause for granting the reduction in sentence; and
>
> (iv) In those cases where the stipulation of the prosecuting attorney is required under paragraph (b) or (c) of this subsection, the prosecuting attorney has so stipulated.
>
> (e) If the court grants the application, the court shall reduce the felony conviction to a misdemeanor and amend the judgment of conviction for a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to the judgment of conviction.

S.L. 2013, ch. 256, § 1, eff. July 1, 2013.

Therefore, following the effective date of this amendment to the statute, individuals convicted of robbery may, upon their discharge from probation, petition the district court to amend their conviction to a misdemeanor. I.C. § 19-2604(3). However, the district court may exercise its discretion and consider such a request only if the prosecutor stipulates to the reduction. Id.

Article II, § 1 of the Idaho Constitution distributes power to the three distinct departments of government, and provides that "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted." Article V, § 13 of the Idaho Constitution specifically prohibits the legislature from "depriv[ing] the judicial department of any power or jurisdiction which rightly pertains to it."

Further, while the Idaho Constitution does not expressly prohibit the delegation of legislative power, it has been interpreted to prevent it. See Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority, 96 Idaho 498, 508, 531 P.2d 588, 598 (1974) (citing State v. Purcell, 39 Idaho 642, 649, 228 P.796, 797 (1924) ("...except as authorized by the organic law, the legislative department cannot delegate any of its powers to *make laws* to any other body or authority")) (emphasis added).

For the first time on appeal, Moore contends that I.C. § 19-2604(3) violates the separation of powers provisions of the Idaho Constitution because it "unconstitutionally delegates lawmaking and/or judicial authority to the prosecutor by limiting relief to those defendants with whom the prosecuting attorney stipulates to relief." (Appellant's brief, p.5.) Because Moore failed to challenge the constitutionality of I.C. § 19-2604 below, he must demonstrate fundamental error. Perry, 150 Idaho at 226, 245 P.3d at 978. To do so, he must demonstrate: (1) a constitutional violation; (2) that the violation is clear and obvious without the need for additional information not contained in the appellate record; (3) and that prejudice resulted. Id. Moore has failed to make such a showing.

Idaho Code § 19-2604(3) does not deprive the judicial department of any inherent or constitutional power. The judicial department does not have the inherent or constitutional power to reduce felony convictions years after a defendant is discharged from probation. Indeed, to the contrary, it is well-settled in Idaho that a district court has *no jurisdiction* to amend or set aside a judgment once the judgment becomes final, either by expiration of the time for appeal or

affirmance of the judgment on appeal, unless a statute or rule extends its jurisdiction. State v. Jakoski, 139 Idaho 352, 354, 79 P.2d 711, 713 (2003).

Idaho Code § 19-2604(3) is such a statute that grants a district court the jurisdiction to amend an otherwise final judgment. The district court would not have this power absent this statute. Therefore, I.C. § 19-2604(3) does not "deprive" the district court of any power that "rightly pertains" to the judiciary, and instead merely attaches conditions precedent, including the stipulation of the prosecutor, to the grant of the power.

Likewise, Moore has failed to demonstrate that I.C. § 19-2604(3) improperly divests the legislature of any of its own inherent or constitutional powers. The power granted to the prosecutor by I.C. § 19-2604(3) is not a power to define an offense, or to make laws, or to perform any other inherently legislative function. Instead, I.C. § 19-2604(3) simply grants the prosecutor the limited power to stipulate to, or to veto, an individual's attempt to obtain a reduction of his felony sentence, where the individual is otherwise eligible to petition for such relief under the criteria set forth in that statute. This does not amount to an unconstitutional delegation of exclusively legislative power.

Idaho Code § 19-2604(3) does not unconstitutionally divest power of either the judiciary or legislative branches. Moore has therefore failed to meet his burden to demonstrate clear and obvious constitutional error. This Court should therefore affirm the district court's order denying his motion to amend his judgment.

II.
Moore Has Failed To Show That I.C. § 19-2604(3) Violates The Equal Protection Clause Of The United States Or Idaho Constitutions

A. Introduction

For the first time on appeal, Moore contends that I.C. § 19-2604(3) violates the equal protection clauses of the United States and Idaho constitutions. (Appellant's brief, pp.6-11.) Moore's claim fails because he has failed to identify any unconstitutionally discriminatory classification in the language of I.C. § 19-2604(3), and because he has failed to allege or demonstrate that the prosecutor's decision not to stipulate to his petition for relief was motivated by some improper purpose. Moore has therefore failed to demonstrate fundamental error.

B. Standard Of Review

Where the constitutionality of a statute is challenged, the appellate court reviews it *de novo*. Korsen, 138 Idaho at 711, 69 P.3d at 131. The party challenging the constitutionality of the statute must overcome a strong presumption of constitutionality and clearly show the invalidity of the statute. Id. The appellate court is obligated to seek a construction of a statute that upholds its constitutionality. Id. Additionally, "[i]t is a fundamental tenet of appellate law that a proper and timely objection must be made in the trial court before an issue is preserved for appeal." Carlson, 134 Idaho at 398, 3 P.3d at 76. The appellate courts of this state will only review unpreserved assertions of error under the fundamental error doctrine. Perry, 150 Idaho at 226, 245 P.3d at 978.

C. Idaho Code § 19-2604(3) Does Not Violate The Equal Protection Clause Of Either The United States Or Idaho Constitutions

The Supreme Court of the United States "has long held that a classification neither involving fundamental rights nor proceedings along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." Armour v. City of Indianapolis, Ind., ___ U.S.___, 132 S.Ct. 2073, 2079-2080 (2012) (internal quotes and citations omitted, ellipse original). Thus, the "first step in an equal protection analysis is to identify the classification at issue." Bagley v. Thomason, 155 Idaho 193, 198, 307 P.3d 1219, 1224 (2013) (internal quotes and citations omitted). Where a party claiming an equal protection violation has failed to identify a classification, the Court will not review that claim because "this Court does not consider issues not supported by argument or authority." Id. (internal quotes and citations omitted).

The exercise of prosecutorial discretion is subject to constitutional constraints under the Equal Protection Clause: "the decision to prosecute may not be 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.'" Wayte v. United States, 470 U.S. 598, 608 (1985) (citations omitted). This standard requires that an accused "show both that the [alleged selective] enforcement [decision] had a discriminatory effect and that it was motivated by a discriminatory purpose." Id. See Snowden v. Hughes, 321 U.S. 1, 8 (1974) (to prevail on equal protection claim that facially neutral statute is being applied unequally, "intentional or purposeful discrimination" must be shown). In the absence of evidence the prosecutor deliberately chose to

exercise its discretion in a certain manner because of the individual's religion or some other improper factor, the prosecutor's "conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." Oyler v. Boles, 368 U.S. 448, 456 (1962); see also United States v. Batchelder, 442 U.S. 114 (1979). Courts have applied these and related principles to both a prosecutor's inherent charging discretion, and more limited discretion granted it by state statutes through the legislature. See e.g. Manduley v. Superior Court, 27 Cal.4th 537, 567-573 (Cal. 2002); State v. Lindsey, 554 N.W.2d 215, 222-224 (Wis. App. 1996); Davis v. Municipal Court, 757 P.2d 11, 25-26 (Cal. 1988); State v. Hartsook, 21 N.E.3d 617, 628-631 (Ohio App. 2014).

In this case, for the first time on appeal, Moore asserts that I.C. § 19-2604(3) violates the equal protection clauses of the United States and Idaho constitutions by treating individuals with whom the prosecutor has stipulated for relief differently from those whom the prosecutor has declined to enter a stipulation with. (Appellant's brief, pp.6-11.) Again, because Moore failed to challenge the constitutionality of I.C. § 19-2604 in the district court, he must demonstrate fundamental error. Perry, 150 Idaho at 226, 245 P.3d at 978. To do so, he must demonstrate: (1) a constitutional violation; (2) that the violation is clear and obvious without the need for additional information not contained in the appellate record; (3) and that prejudice resulted. Id. Moore cannot make such a showing.

While Moore frames his equal protection challenge as one to I.C. § 19-2604(3), he does not appear to take issue with any of the classifications made by

the language of the statute itself - such as the specific crime an individual was convicted of, or the number of years that have passed since the individual has been discharged from probation. (See Appellant's brief, pp.6-11.) Instead, Moore's challenge centers around the statutory requirement that prosecutors stipulate to any I.C. § 19-2604(3) request for relief before a district court may consider it. (See id.) This is not a requirement or "classification" subject to a statutory equal protection analysis because it is not a classification created by the statute. Indeed, all individuals who meet the criteria enumerated in I.C. § 19-2604(3) are *equally* subject to the prosecutor's discretion whether to stipulate to their request to amend their felony judgment of conviction. Any unequal treatment of such individuals is based not upon the statutory language of I.C. § 19-2604(3), but from the decisions of individual prosecutors. See Manduley, 27 Cal.4th at 567-573 (holding that state statute's grant of prosecutorial discretion to file charges against some minors but not others did not violate equal protection clause where all charged minors were equally subject to such discretion); Beanblossom v. State, 637 N.E.2d 1345, 1346-1349 (Ind. App. 1994) (holding that state statute requiring trial court to obtain prosecutor's approval before modifying convicted defendant's sentence did not violate equal protection principles where appellant argued statute divided individuals into two classes – those with whom the prosecutor stipulated to relief, and those with whom the prosecutor did not). Because Moore has failed to identify a classification actually created by the language of the statute, he cannot show error, let alone clear and obvious constitutional error as required by the fundamental error doctrine.

To the extent this Court construes Moore's argument as instead attacking the prosecutor's *action* in declining to stipulate to the amending of his judgment of conviction in *this case*, he has still failed to demonstrate an equal protection violation. Moore has not attempted to show that he was singled out based upon some improper criteria. Instead, he appears to assert that the mere *possibility* of disperate treatment created by I.C. § 19-2604(3) offends the equal protection clause. However, Moore has failed to cite any authority standing for the proposition that a statute's mere grant of discretionary prosecutorial power constitutes a *de facto* equal protection violation. Therefore, Moore has failed to demonstrate an equal protection violation, let alone a clear and obvious one, as required by Perry.

Idaho Code § 19-2604(3) does not violate the equal protection clauses of the United States or Idaho constitutions.[2] Moore has therefore failed to meet his burden to demonstrate clear and obvious constitutional error. This Court should therefore affirm the district court's order denying his motion to amend his judgment.

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[2] Moore asserts that equal protection challenges made under the Idaho Constitution differ from those made under the United States Constitution in only one respect relevant to his challenge - that under the Idaho Constitution, a court applies a "means-based scrutiny" "where the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute." (Appellant's brief, pp.7-8 (citing State v. Mowrey, 134 Idaho 751, 755, 9 P.3d 1217, 1221 (2000) (other citations omitted)). The state asserts that the Idaho Constitution equal protection clause's "means-based scrutiny" is not applicable to this case because Moore has failed to challenge any discriminatory statutory classification made by the actual language of I.C § 19-2604(3), let alone one that is "apparent on its face."

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Moore's motion to amend the judgment of conviction entered upon his guilty plea to aiding and abetting a robbery.

DATED this 26th day of January 2015

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 26th day of January, 2015, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

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