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Rich v. State Appellant's Brief Dckt. 42515

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD RICH,)	
)	No. 42515
Petitioner-Appellant,)	
)	(District Court No. CVOC13-21434)
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
)	
)	

APPEAL FROM THE DISTRICT COURT OF THE FOURTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR ADA COUNTY
THE HONORABLE LYNN G. NORTON, DISTRICT JUDGE

APPELLANT'S OPENING BRIEF

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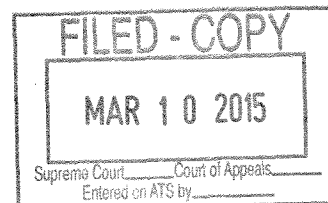


TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES	ii
STATEMENT OF THE CASE	1
ISSUES PRESENTED ON APPEAL	2
DID THE DISTRICT COURT ERR IN RULING THAT RICH LACKS STANDING TO BRING HIS PETITION FOR DECLARATORY JUDGMENT?	
ARGUMENT	2
CONCLUSION	6

TABLE OF CASES AND AUTHORITIES

CONSTITUTIONAL PROVISIONS

<i>United States Constitution, Amendment II</i>	4-5
<i>Idaho Const. art. I, §11</i>	5
<i>Idaho Const. art. V, § 2</i>	5
<i>Idaho Const. art. V, § 9</i>	5
<i>Idaho Const. art. V, § 13</i>	5

IDAHO CASES

<i>Abolafia v. Reeves</i> , 152 Idaho 898, 277 P.3d 345 (Idaho 2012)	3
<i>Bagley v. Thomason</i> 149 Idaho 806, 241 P.3d 979 (Idaho 2010)	3
<i>Doe v. Doe</i> , 155 Idaho 660, 315 P. 3 rd 848 (Idaho 2013)	3
<i>Doe v. Roe</i> , 142 Idaho 202, 127 P.3d 105 (Idaho 2005)	3
<i>Fields v. State</i> , 155 Idaho 532 , 314 P.3d 587 (Idaho 2013)	2
<i>Scona, Inc. v. Green Willow Trust</i> , 133 Idaho 283, 985 P.2d 1145 (Idaho 1999)	3
<i>Wasden v. State Bd. of Land Comr's</i> , 280 P. 3 rd 693, 153 Idaho 196 (Idaho 2012)	5

FEDERAL CASES

<i>District of Columbia v. Heller</i> , 554 U.S. 570, 128 S.Ct. 2783 (2008)	5
<i>McDonald v. City of Chicago</i> , –U.S.–, 130 S.Ct. 3020, 3042 (2010)	5

IDAHO STATUTES

I.C. § 1-701	5
I.C. §19-2604	1

FEDERAL STATUTES

18 U.S.C. §922(g)(1)	4
18 U.S.C. §921(a)(20)(B)	4

I. STATEMENT OF THE CASE

A. Nature of the Case

Petitioner/Appellant Todd Rich appeals from the judgment of the District Court dismissing his Petition for Declaratory Judgment. The District Court held that Rich lacked standing to bring his Petition for Declaratory Judgment.

B. Procedural History and Uncontroverted Facts.

In 1992 Rich pled guilty to Rape, IDAHO CODE §18-6101, and was sentenced to retained jurisdiction. (R55-56) After successfully completing his rider, his sentence was suspended and he was placed on probation for a period of six years. (R 10) Rich successfully completed his probation in 2004. (*Id.*) Thereafter, he moved for reduction of the charge to a misdemeanor pursuant to I.C. §19-2604.¹ (*Id.*) The Court granted the Motion, and in so doing ordered that "the judgment is hereby deemed a misdemeanor conviction, thereby restoring the Petitioner to his civil rights." (R 10, 30, 55)

Rich later became a resident of Pennsylvania. (R 31) He sought clarification from the Pennsylvania State Police concerning his status as a person who could lawfully bear a firearm in that state. On February 5, 2013, a Pennsylvania Administrative Law Judge ruled that under Pennsylvania law Rich was a prohibited person by virtue of his Idaho conviction. (R 52).

On November 29, 2013, Rich filed the declaratory judgment action which is the subject of this appeal. (R 4-6) Rich alleged that the Order of May 20, 2004, restored his right to bear arms. (*Id.*) Rich asked the District Court to enter a judgment declaring that Rich "may lawfully

¹This was prior to the 2006 amendment to Section 19-2604, which added subsection (4). Under the current version of this Section, Rich would not be eligible for the relief he obtained in 2004.

purchase, own, possess or have under his custody or control a firearm under the laws of the State of Idaho”. (R 6) The state objected to the Petition on the basis that Rich lacked standing. (R 11-13).

The District Court agreed with the State and dismissed Rich’s Petition, ruling that he lacked standing. (R 30-32). Rich timely sought reconsideration pursuant to I.R.Civ.P. 59(e), which was denied by the district Court. (R 55-60) The District Court did not address the merits of Rich’s contention that the Order of April 8, 2004 restored Rich’s right to bear arms under Idaho law. Rich timely filed a Notice of Appeal. (R 62).

II. ISSUE PRESENTED FOR REVIEW

DID THE DISTRICT COURT ERR IN FINDING THAT RICH LACKED STANDING TO BRING HIS PETITION FOR DECLARATORY JUDGMENT?

III. ARGUMENT

Standard of Review.

This Court exercises *de novo* review over legal questions. *Fields v. State*, 155 Idaho 532, 534, 314 P.3d 587, 589 (2013).

Discussion.

The District Court determined that Rich lacked standing because he failed to demonstrate that an actual controversy exists. The District Court also stated that under Pennsylvania law Rich would be a prohibited person regardless of the Idaho Court’s Order reducing his conviction to a misdemeanor and restoring his civil rights. (*Id.*) Respectfully, the District Court erred for the following reasons.

"The doctrine of standing focuses on the party seeking relief and not on the issues the

party wished to have adjudicated." *Doe v. Doe*, 155 Idaho 660, 315 P.3d 848, 850 (Idaho 2013); quoting from *Doe v. Roe*, 142 Idaho 202, 204, 127 P.3d 105, 107 (2005). "When an issue of standing is raised, the focus is not on the merits of the issues raised, but upon the party who is seeking the relief." *Id.*; *Scona, Inc. v. Green Willow Trust*, 133 Idaho 283, 288, 985 P.2d 1145, 1150 (1999). "Indeed, a party can have standing to bring an action, but then lose on the merits." *Id.*; *Bagley v. Thomason*, 149 Idaho 806, 808, 241 P.3d 979, 981 (2010).

In addition, "[t]o satisfy the requirement of standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Doe, supra*; *Bagley*, 149 Idaho at 807, 241 P.3d at 980. "The alleged injury must be to the litigant whose standing is at issue." *Abolafia v. Reeves*, 152 Idaho 898, 902, 277 P.3d 345, 349 (2012).

Rich sought and obtained the remedy which was then available to him under Idaho law in 2004 pursuant to IDAHO CODE §19-2604. The Court reduced his conviction to a misdemeanor and, without limitation, "thereby restoring the Petitioner to his civil rights." (R.5, 10) The Pennsylvania Administrative Law Judge completely ignored the plain language of this Order, and chose to give no effect to Idaho law in ruling that Rich was a prohibited person under Pennsylvania law. (R 52). This satisfies the 'injury' requirement for standing because there is "a fairly traceable causal connection between the claimed injury and the challenged conduct, and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Bagley*, 149 Idaho at 807, 241 P.3d at 980.

Throughout the proceedings below, the District Court misapprehended the nature of the

injury suffered by Mr. Rich. Rich has not only been deprived of his right to bear arms in Pennsylvania. Absent a declaration from an Idaho court that the Order of April 8, 2004 restored Rich's right to bear arms under Idaho law, he will be a prohibited person under federal law and the laws of almost every state in the nation.

Under 18 U.S.C. §922(g)(1) it is unlawful for any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year". 18 U.S.C. §921(a)(20)(B), defining the terms used in Section 922(g), provides:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(Emphasis supplied). Rich has no other forum but the Courts of Idaho to seek redress. It should be for the Courts of Idaho to address in the first instance the question of whether the Order of April 4, 2008 restored Rich's right to bear arms under Idaho law. To accept the State's standing defense would be tantamount to abdicating to another state and to the federal courts the primary responsibility of Idaho courts to decide questions of Idaho law. Granting Rich the relief he seeks in the Courts of Idaho would serve the interests of comity and federalism, allowing due respect to the wisdom of the Idaho courts in deciding questions of Idaho law.

Rich simply asks this Court to enforce the plain wording of the Order of April 4, 2008, which does not "expressly provide that [Rich] may not ship, transport, possess, or receive firearms".

Mr. Rich has a fundamental right to bear arms under the Second Amendment to the

United States Constitution and Article I, Section 11 of the Idaho Constitution. The right to keep and bear arms is "among those fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago*, –U.S.–, 130 S.Ct. 3020, 3042 (2010). However, the Supreme Court has also made it clear that although the right to bear arms is fundamental, this does not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons". *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816-2817 (2008).

Similarly, the Idaho Constitution states that the right to bear arms shall not be abridged, but that the legislature may provide penalties for the possession of firearms "by a convicted felon". *Idaho Constitution*, Article I, Section 11. Again, it should be the primary responsibility of the courts of Idaho to determine questions of Idaho law, all the more so when the case involves a question of the applicability of a provision of the Idaho Constitution. The question of whether Rich is a "convicted felon" under Idaho law should be decided by the Courts of Idaho, not a federal or other state's courts. To accept the State's standing defense in this case gives other states and the federal courts *carte blanche* permission to interpret and apply the Idaho Code and Constitution without any input from or deference to the courts of Idaho.

"Idaho's Constitution speaks generally of the "judicial power," without defining its limits. *Idaho Const.* art. V, § 2. Furthermore, the Idaho Constitution empowers this Court to review any decision of the district courts. *Idaho Const.* art. V, § 9. And, the Legislature, exercising its limited authority to constitute inferior courts under Idaho Const. art. V, § 13, has directed the district courts to "hear[] and determin[e] all matters and causes arising under the laws of this state." I.C. § 1-701." *Wasden v. State Bd. of Land Comr's*, 280 P. 3rd 693, 698, 153 Idaho 196

(2012)(internal quotation marks in original).

As the State has it, Rich should first face indictment and arrest under the law of another state or under federal law before he may have an Idaho court enforce his rights under Idaho law. The doctrine of standing should not be used to thwart Mr. Rich's attempt to vindicate his fundamental constitutional right to keep and bear arms. To do so would render the relief Rich lawfully sought and obtained under IDAHO CODE §19-2604 a nullity and would violate his right to bear arms under the United States and Idaho Constitutions.

The policy considerations which underpin the doctrine of standing would not be frustrated by this Court considering the merits of Rich's declaratory judgment action. Rather, the interests of comity between the states and the federal government, comity among the fifty states, and of judicial economy would be served by this Court's granting the relief sought by Rich.

IV. CONCLUSION

For all of the foregoing reasons, Todd Rich respectfully prays that this Honorable Court REVERSE AND REMAND the Judgment of the District Court dismissing Rich's Petition for Declaratory Judgment with directions to enter an Order granting the Petition; and for such other relief as this Court deems appropriate and just.

Respectfully Submitted on

3/7/15


Leo N. Griffare

Attorney for Petitioner-Appellant Todd Rich

CERTIFICATE OF SERVICE

I certify that 2 copies of this Appellant's Opening Brief were served by: ✓ United States Mail, postage prepaid at Golden, CO, and: ✓ that a PDF copy was sent by email to the following Counsel for the State of Idaho on this the 7th day of March, 2015.

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