

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47320-2019
 Plaintiff-Respondent,)
) Jerome County Case No.
 v.) CR-2009-7429
)
 JOHNNY RAY ANDOE,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME**

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Johnny Ray Andoe appeals from the district court's order denying his motion for relief based upon alleged double jeopardy violations.

Statement of Facts and Course of Proceedings

Pursuant to an agreement with the state, Andoe pled guilty to second-degree kidnapping and felony domestic battery. See State v. Andoe, 2012 WL 9435856 at *1 (Ct. App. 2012) (unpublished). Consistent with the terms of this agreement and the recommendations of the state, the district court imposed a unified 20-year sentence with 10 years fixed for second-degree kidnapping and a concurrent determinate 10-year sentence for felony domestic battery. See id.; State v. Andoe, 2014 WL 4953749 at *1 (Ct. App. 2014) (unpublished). As part of the plea agreement with the state, Andoe waived "all rights to appeal," unless the district court exceeded the state's sentencing recommendation. Andoe, 2012 WL 9435856 at *1. The district court suspended Andoe's sentences and retained jurisdiction, but later relinquished jurisdiction and imposed the original sentences. See id.

In the years since, Andoe has filed dozens of motions and petitions both in the underlying criminal case, and in collaterally-initiated civil proceedings, which were all denied or dismissed by the state district court. See State v. Andoe, 2019 WL 1568654 at *1 (Ct. App. 2019) (unpublished); Mycourts.idaho.gov portal, State v. Andoe, Jerome County District Court Case Nos. CR-2009-07429; CV-2013-2163; CV-HC-2012-9697; CV-HC-2013-16868. In four

unpublished opinions, the Idaho Court of Appeals affirmed the district court's denials of the motions and petitions that Andoe has appealed. Andoe, 2012 WL 9435856; Andoe, 2014 WL 4953749; State v. Andoe, 2016 WL 1730533 (Idaho App. 2016) (unpublished); Andoe, 2019 WL 1568654.¹ At least five other appeals initiated by Andoe have been dismissed by the Idaho Supreme Court. See Idaho Supreme Court Docket Nos. 41339, 45791, 45990, 46197, 47147. Andoe has also unsuccessfully sought federal habeas relief. See Andoe v. Blades, 2017 WL 4349011 (D. Idaho 2017).

Now, almost eight years after Andoe's underlying conviction became final, Andoe appeals from the district court's denials of various motions he filed in the district court in August 2019. (R., pp.2-105, 183-185, 187-198.) These motions make numerous assertions (and include personal attacks directed towards the victim in Andoe's case), without referencing any statute or rule pursuant to which they should have been considered. (Id.) The motions are supported by various memorandums, affidavits, and attachments of previously-filed documents from the underlying criminal proceeding. (Id.) The district court denied most of these motions by affixing an electronic "denied" stamp which includes the date of denial, but which set forth no specific grounds for denial. (R., pp.2, 34, 49.) Andoe timely appealed from the court's denial orders. (R., pp.106-115). The district court denied Andoe's motion for the appointment of appellate counsel. (R., p.127.) Andoe proceeds *pro se*.

¹ In the present appeal, the Idaho Supreme Court entered an order augmenting the appellate record with the clerk's records and reporter's transcripts from all four of these prior appeals. (9/5/19 Order.)

ISSUE

Andoe's brief does not contain a statement of issues on appeal as required by I.A.R. 35(a)(4). (See Appellant's brief.)

The state phrases the issue on appeal as:

Has Andoe failed to show that the district court erred by denying his motions alleging double jeopardy violations?

ARGUMENT

Andoe Has Failed To Show That The District Court Erred By Denying His Motions Alleging Double Jeopardy Violations

A. Introduction

Andoe contends that the district court erred by denying his motions alleging double jeopardy violations. (See generally Appellant’s brief.) However, a review of the record reveals that Andoe’s underlying judgment became final in 2012, and that the district court thus lacked jurisdiction to consider any of Andoe’s motions. Andoe therefore has failed to show that the district court erred.

B. The District Court Correctly Denied Andoe’s Motions

“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, 355, 79 P.3d 711, 714 (2003).

In this case, Andoe’s Notice of Appeal, Appellant’s brief, Memorandum attached to the Appellant’s brief, and motions filed before the district court, are all somewhat difficult to decipher. The state construes Andoe’s Appellant’s brief as challenging only the district court’s

denials of his motions alleging double jeopardy violations.² Andoe references double jeopardy in the caption of his Appellant's brief, and then discusses this claim throughout the brief and attached memorandum.³ (See generally Appellant's brief.) Andoe appears to assert that his guilty pleas for second-degree kidnapping and felony domestic battery resulted in a constitutional double jeopardy violation. (See *id.*)

Andoe's judgment of conviction became final in 2012 after the Idaho Supreme Court denied his petition for review of the Court of Appeals' unpublished opinion affirming the denial of his initial I.C.R. 35 motion after Andoe appealed from the district court's order relinquishing jurisdiction. See *Andoe*, 2012 WL 9435856 at *1; Idaho Supreme Court Docket No. 39023, 4/25/12 Order Denying Petition for Review. In none of Andoe's motions which make up the appellate record in this case, including those in which he references double jeopardy, does Andoe identify any statute or rule which extends the district court's jurisdiction past the time when Andoe's judgment became final. (See Appellant's brief.) Because Andoe invoked no rule extending the court's jurisdiction, its jurisdiction remained expired, and the court thus lacked

² To the extent this Court construes Andoe's brief as raising any other claims, the state submits that Andoe has waived such claims by failing to support them with argument or authority, *State v. Zichko*, 129 Idaho 257, 923 P.2d 966 (1996); and that, in any event, the district court lacked jurisdiction over any of Andoe's claims for the same reasons it lacked jurisdiction over his double jeopardy claims.

³ Andoe also filed a premature "Appellant's brief" (as well as a premature petition for review and petition for rehearing (R., pp.178-181)), on the same date he filed his notice of appeal (R., pp.136-176). The state reviewed and attempted to construe only Andoe's Appellant's brief that was filed on November 12, 2019, after the appellate clerk's record was settled.

jurisdiction to rule on the merits of any of Andoe's motions. Jakoski, 139 Idaho at 355, 79 P.3d at 714.

The district court properly denied Andoe's motions because it lacked jurisdiction to consider them. This Court should therefore affirm the district court's denial orders.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Andoe's motions.

DATED this 4th day of February, 2020.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 4th day of February, 2020, served a true and correct paper copy of the foregoing BRIEF OF RESPONDENT by placing the copy in the United States mail, postage prepaid, addressed to:

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MWO/dd