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State v. Tollman Respondent's Brief Dckt. 44648

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 44648
 Plaintiff-Respondent,)
)
 v.) Ada County Case No.
) CR-FE-2012-17869
 TERESA LEE TOLLMAN,)
)
 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**

**HONORABLE MELISSA MOODY
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Teresa Lee Tollman appeals from the denial of her motion for limited driving privileges.

Statement Of The Facts And Course Of The Proceedings

Tollman pled guilty to felony DUI and was sentenced to 10 years with two and one-half years determinate. (#40907 R., pp. 35-36.) The sentence also included a five-year post-release absolute driver's license suspension. (#40907 R., pp. 36-37.) The court entered judgment on March 4, 2013. (#40907 R., p. 35.)

Upon being paroled, Tollman moved for restricted driving privileges. (R., pp. 10-15.) The district court denied the motion, at least in part on the basis that it lacked the authority to amend the sentence, specifically interpreting the 2015 amendment to I.C. § 18-8005(6)(d) to not have retroactive effect. (R., pp. 16-18, 36; Tr., p. 7, L. 17 – p. 8, L. 3.¹) Tollman filed a notice of appeal within 42 days of entry of the November 7, 2016, order. (R., p. 40.)

¹ The district court's November 7, 2016, written order says the motion is being denied "for the same reasons" stated in the March 21, 2016, order. (R., p. 36.) However, the prior order denied the motion on the basis of failing to show that Tollman qualified under the statute, either as it existed at the time of judgment or after the 2015 amendment, and did not address the issue of retroactive application of the 2015 amendment. (R., pp. 16-18.) The state therefore does not assert that the appeal is untimely.

ISSUE

Tollman states the issue on appeal as:

Whether the district court had discretion to grant Ms. Tollman's application for a restricted driver's license.

(Appellant's brief, p. 4.)

The state rephrases the issues as:

Has Tollman failed to show error in the district court's conclusion it lacked jurisdiction to amend the license suspension portion of Tollman's sentence in the judgment?

ARGUMENT

Tollman Has Shown No Error In The District Court's Conclusion It Lacked Jurisdiction To Amend Tollman's Sentence

A. Introduction

The district court concluded it did not “have the power, even if [it] wanted to, to give back [Tollman’s] driver’s license.” (Tr., p. 6, Ls. 6-13.²) The district court reasoned this was because the suspension was “part of the actual criminal sentence.” (Tr., p. 6, L. 19 – p. 7, L. 1.) Thus, Tollman was “stuck with the driver’s license suspension that was imposed when [she] was sentenced.” (Tr., p. 8, Ls. 14-20.) This was “frustrating,” because the legislature changed the law so that “even when” the suspension is “part of the sentence” the judge can modify it, but that law did not apply and the court was “stuck with the law that was in effect in the first instance.” (Tr., p. 7, L. 17 – p. 8, L. 3.)

On appeal, Tollman argues “the 2015 amendment to I.C. § 18-8005(6)(d) controls the analysis of Ms. Tollman’s application for a restricted driver’s license.” (Appellant’s brief, p. 6.) Tollman’s claim that the 2015 amendment conferred jurisdiction upon the district court to amend her sentence is without merit.

B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004). Whether a court has subject matter

² The district judge did say that if she “had the discretion” to grant limited driving privileges to Tollman she would. (Tr., p. 11, Ls. 1-4.)

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

C. The District Court Properly Concluded It Lacked Jurisdiction To Amend The Driver's License Suspension Entered As Part Of The Sentence For Felony DUI

“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). Here the district court entered judgment on March 4, 2013. (#40907 R., p. 35.) Tollman does not contend that any statute in existence at that time gave the district court ongoing jurisdiction to later amend the driver’s license suspension portion of the sentence.

Tollman argues that the district court’s jurisdiction to amend the driver’s license suspension imposed as part of the sentence in the 2013 judgment arises from a 2015 amendment to I.C. § 18-8005(6)(d), which empowered the district court to grant “restricted driving privileges” after the first year of a driver’s license suspension. (Appellant’s brief, pp. 5-8.) That statutory amendment was that a defendant convicted of felony DUI:

Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, ~~and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment,~~ during which time he shall have absolutely no driving privileges of any kind, and may have his driving privileges suspended by the court for an additional period not to exceed four (4) years, during which the defendant may request restricted driving privileges that the court may allow if the defendant shows by a

preponderance of the evidence that driving privileges are necessary for his employment or for family health needs[.]

2015 Idaho Sess. Laws, Ch. 60, p. 165 (text deleted by amendment shown in strikethrough, text added shown by underline). Under its plain language (“shall have absolutely no driving privileges of any kind”) a sentence allowing restricted driving privileges would have been illegal in 2013, when judgment was entered. That such a sentence was made legal in 2015, at least in relation to the suspension after the first year, did not entitle Tollman to a reduction of her sentence.

An Idaho statute “is not applied retroactively unless there is clear legislative intent to that effect.” Guzman v. Piercy, 155 Idaho 928, 937-38, 318 P.3d 918, 927-28 (2014) (internal quotes omitted). Likewise, “statutory amendments are not deemed to be retroactive unless there is an express legislative statement to the contrary.” State v. Leary, 160 Idaho 349, 353, 372 P.3d 404, 408 (2016). “A statute is not made retroactive merely because it draws upon facts antecedent to its enactment” but is retroactive if it “changes the legal effect of previous transactions or events.” Bryant v. City of Blackfoot, 137 Idaho 307, 313, 48 P.3d 636, 642 (2002).

Nothing in the language of the amendment granted the district court authority to apply its provisions retroactively by reducing Tollman’s sentence. Indeed, Tollman does not argue otherwise. Rather, she argues that the amendment was merely “remedial or procedural in nature” and that she is requesting application of the statute prospectively only. (Appellant’s brief, pp. 6-7

(citing Bryant, 137 Idaho at 313, 48 P.3d at 642).) However, the very authority Tollman cites belies her argument.

A statute is applied retroactively if it “changes the legal effect of previous transactions or events.” Bryant, 137 Idaho at 313, 48 P.3d at 642. A statute is “procedural or remedial,” and therefore not applied retroactively, if it “does not create, enlarge, diminish or destroy contractual or vested rights.” Id. at 313, 48 P.3d at 642. Under the statute as it existed at the time of Tollman’s sentencing, the defendant “shall have absolutely no driving privileges of any kind” for the entirety of the suspension. After the amendment, the defendant is disallowed all driving privileges for the first year only, and restricted privileges may be granted for any remaining period of suspension. This is an alteration of the scope of sentencing discretion available to the sentencing court, not a merely “procedural or remedial” change that “does not create, enlarge, diminish or destroy” rights. If the legislature had intended to allow a reduction of the absolute driving suspensions previously imposed as terms of felony DUI sentences, it would have said so. Absent such a statement, Tollman was not entitled to a reduction of her sentence in a manner that would have been illegal at the time it was imposed. She was requesting a retroactive application of the statute and the district court properly denied such a request.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of Tollman's motion for restricted driving privileges.

DATED this 25th day of April, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd