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IN THE SUPREME COURT OF THE STATE OF IDAHO

NICHOLAS DAVID JOHNSON,)
) No. 48376-2020
 Petitioner-Appellant,)
) Canyon County Case No.
 v.) CV14-20-1139
)
 STATE OF IDAHO,)
)
 Respondent.)
_____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE DAVIS F. VANDERVELDE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Nicholas David Johnson appeals from the judgment denying his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

Johnson was convicted in 2011 of second degree murder. State v. Johnson, No. 39573, 2013 WL 5915000 (Idaho Ct. App. Nov. 1, 2013). Johnson filed a petition for post-conviction relief. (R., pp. 5-14.) His claim for relief was that in 2018 the Idaho Legislature amended Idaho's self-defense laws. (R., pp. 6-10.¹) He contended this amendment entitled him to a "[r]esentencing," to having his "charges dismissed [with] credit for time served," or to allowing him to "plead guilty to disturbing the peace." (R., p. 11.)

The state moved for summary dismissal of the petition. (R., pp. 22-27.) Among the theories presented in the motion was that the statutory amendments upon which Johnson relied were not retroactive. (R., pp. 23-24.) The district court granted summary dismissal on this basis. (R., pp. 44-47.) Johnson filed a timely notice of appeal from the entry of judgment. (R., pp. 49, 54.)

¹ The law passed by the Legislature can be found at 2018 Idaho Sess. Vol. I, C. 222, p. 500.

ISSUE

Johnson states the issue on appeal as:

Introduction of Senate Bill 1313. If the jury had this law and instructions in front of them I would not have been convicted.

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Johnson failed to show that the district court erred in summarily dismissing his petition for post-conviction relief because his claim lacked legal merit?

ARGUMENT

The District Court Properly Dismissed Johnson’s Petition For Post-Conviction Relief Because His Claim Lacked Legal Merit

A. Introduction

Johnson asserted that he should be granted post-conviction relief on his 2011 murder conviction based on amendments to the self-defense statutes passed in 2018. (R., pp. 6-10.) The district court correctly held that the amendments were not retroactive.

B. Standard Of Review

“On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner’s admissible evidence asserts facts which, if true, would entitle the petitioner to relief.” Campos v. State, 165 Idaho 90, 93, 438 P.3d 787, 790 (Ct. App. 2019). “The meaning and effect of a statute is a question of law over which this Court exercises free review.” State v. Hart, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001).

C. The District Court Properly Held That Amendments To I.C. § 18-4009 Are Not Retroactive

“No part of these compiled laws is retroactive, unless expressly so declared.” I.C. § 73-101. “[A] well-settled and fundamental rule of statutory construction is to construe statutes to have a prospective rather than retroactive effect.” State v. Leary, 160 Idaho 349, 352, 372 P.3d 404, 407 (2016) (quotation marks omitted). “Thus, in Idaho, a 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) (quotation marks omitted). “Accordingly, 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).

Here there is no express legislative statement that the 2018 amendments to the self-defense law were intended to be retroactive. To the contrary, the legislative intent provision of the law states only that it is the Legislature’s intent to incorporate the castle doctrine into Idaho’s self-defense provisions. 2018 Idaho Sess. Vol. I, C. 222, p. 501, § 3. Because there is no express statement that the Legislature meant this law to be applied retroactively to concluded criminal cases, the district court properly concluded that Johnson had failed to state a claim on which relief could be granted.

On appeal Johnson requests the statutory amendments be applied retroactively, but cites no legal grounds for doing so other than unspecified references to “justice.” (Appellant’s brief, p. 9.) This argument fails first for lack of citation to relevant authority. Kootenai Med. Ctr. ex rel. Teresa K. v. Idaho Dep’t of Health & Welfare, 147 Idaho 872, 880, 216 P.3d 630, 638 (2009) (“A party waives an issue cited on appeal if either authority or argument is lacking.”) It also fails because Johnson has not shown an express legislative statement that the amendments be applied to resolved criminal cases. He has therefore failed to show error in the summary dismissal of his petition.

CONCLUSION

The state respectfully requests this Court to affirm the judgment dismissing the petition for post-conviction relief.

DATED this 20th day of April, 2021.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 20th day of April, 2021, 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:

NICHOLAS DAVID JOHNSON
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/s/ Kenneth K. Jorgensen
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KKJ/dd