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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46377-2018**
Plaintiff-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2011-20560**
	)	
AARON ARTHUR ROTH,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE SAMUEL A. HOAGLAND
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order and judgment dismissing Aaron Arthur Roth's guilty verdict for escape. The district court abused its discretion when it dismissed this case under Rule 48 for the state's purported failure to prove a non-element of the crime.

Statement Of The Facts And Course Of The Proceedings

In late December of 2011, Roth was arraigned on a probation violation in a different criminal case. (Mot. to Reconsider Ex. 1,[1] 00:00-4:45.) Roth requested a continuance, which the district court granted. (Id., 05:00-5:25.) Roth, a "full time student at Boise State University," also pleaded for a bond reduction because the current semester was "ruined," and there was "serious jeopardy" of his incarceration affecting "student loans" and "getting enrolled again." (Id., 05:45-07:50.) The district court, noting the yuletide season, questioned why an academic emergency release would do any good; Roth responded, "Well, they finalize grades after the finals, and I was hoping to go back and just let the school know my situation, and hopefully [with] me not doing finals," he could turn "the Fs I have right now into Ws, so my GPA wouldn't suffer that much." (Id., 10:00-10:30.)

[1] A CD containing an audio recording of Roth's probation violation arraignment was attached to the state's motion for reconsideration as State's Ex. 1, cited herein as "Mot. to Reconsider Ex. 1."

The district court tried to accommodate Roth's request. It proposed a "one-day furlough" so Roth could get his scholastic affairs in order, which was explained to Roth in detail:

> **The court**: I hate to see somebody's education go to waste, on the other hand, it's not a crisis that I view [as] of the system's making. It's kind of a self-inflicted wound here.
>
> Uhm, at the risk of being accused of being a muddling middler, what I would do is authorize a one-day furlough. For the defendant to contact BSU in an effort to salvage his education …. So he can try and make the effort to, as he says … get his grades to a "withdraw" as opposed to a "failure." But I'm not gonna let him out on bond so that he can go party for the next couple of weeks until he's next due in court.
>
> So that furlough can be taken sometime between now and Friday. At the convenience of the jail, to be released no sooner than 7:30 a.m., and returned to custody no later than 6:00 p.m.
>
> Mr. Roth, I hope within that time—and the terms are: to the University, to deal with the issues of, uh, missing your finals and attempting to sort out whatever's going on with the University and to maintain your status as a student there, and then back to jail. No side trips. No stopping to party along the way. Obviously no new crimes. No alcohol. No drugs. Any of that, and you're guaranteeing yourself a bad outcome ultimately…. In other words, full terms of your probation continue in force during that.
>
> But I'll give you one, I'll give you a chance. And if someone will present me an order, so we can let the jail know, we'll do that. And then we'll be back here in January to deal with the admit or deny.
>
> Any questions?
>
> **Defense counsel:** How long is that furlough for again?
>
> **The court**: One day. 7:30 a.m. to 6:00 p.m. If he can't get it done with the University in that day, it's gonna be just too bad.

(Id., 12:26 – 15:03.)

Pursuant to the furlough order (State's Ex. 2), Roth was released from the Ada County Jail on December 22, 2011 (Supp. Tr.[2] p.91, L. 18 – p.92, L.5; State's Ex. 4). He did not, however, return to the jail at 6:00 p.m.—he "left the state of Idaho."[3] (See id; R., p.47.) Nearly six years later, in November of 2017, Roth resurfaced and was arrested pursuant to a warrant. (Supp. Tr., p.85, L.21 – p.87, L.10; State's Ex. 5.)

Pursuant to Idaho Code § 18-2505, the state charged Roth with escape. (R., pp.27-28.) Roth filed several motions to dismiss, alleging, among other things, that the state failed to show Roth "had been equipped with an 'electronic or global positioning system,'" which the statute purportedly required (R., pp.47, 61-62); that the statute presented "a choice of one of two theories in order to prove" escape, which the state purportedly mixed up (R., pp.81-83); and that the furlough was invalid or otherwise not proven by the evidence (R., pp.83-85). The district court denied all of Roth's motions. (R., pp.55-60, 63-69, 93-100.)

The case proceeded to trial. The state's evidence included the furlough order itself and the judgment showing Roth's underlying felony conviction. (State's Exs. 1, 2.) The state's evidence also included the jail's temporary release form, dated for 12/22, with Roth's name, a "Time Out" of "0700" that morning, and a "Time In" of "1800" that evening. (State's Ex. 3.) The temporary release form bore the signature "Aaron Roth"

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[2] The volume of supplemental transcripts, containing the jury trial transcript, is cited herein as "Supp. Tr."

[3] It is unclear if Roth ever made it to BSU to transmute his Fs into Ws, but it seems unlikely, insofar as he was living in Arizona when he was arrested. (See State's Ex. 5.) Roth later filed a motion in limine to exclude "any and all evidence of defendant traveling to Mexico and remaining in Mexico until authorities arrested defendant on the fugitive warrant," which the district court granted. (R., pp.70, 165.)

next to a handwritten notation of "INMATE UNDERSTANDING." (Id.) The form was dated "12/22/11" at "6:36," and contained a checked box stating "Furlough – Copy of Furlough paperwork attached." (Id.) A jail detention deputy testified that jail records showed that Roth was released on 12/22/11 on a furlough but did not return until his capture in 2017. (Supp. Tr., p.77, pp.15-25; p.84, L.18 – p.87, L.10; State's Ex. 4.)

The state also called the deputy who released Roth. The deputy testified that some of the writing on the form was his; he thought he wrote "INMATE UNDERSTANDING." (Supp. Tr., p.101, L.18 – p.102, L.22.) The deputy also testified that the "Aaron Roth" signature was not his: "Where it says 'Aaron Roth'; no, I did not write that." (Id., p.103, Ls.15-24.) When asked whether "INMATE UNDERSTANDING" was written "after Aaron Roth put his name there," the deputy testified he did not recall. (Id., p.106, Ls.7-17.) The deputy also testified that he did not recall if released inmates received a copy of the temporary release form; but as for whether Roth received a copy, he "[didn't] see it anywhere" on the document. (Id., p.106, Ls.17-24.)

After the state rested, Roth made a Rule 29 motion for judgment of acquittal based on insufficient evidence. (Supp. Tr., p.109, Ls.7-10.) The district court denied the motion, finding "that while thin, there is evidence that the jury might find that the defendant is guilty of the crime." (Id., p.129, Ls.1-5.)

The district court also rejected Roth's proposed jury instruction setting forth a "notice" element as part of the elements of the crime. (Id., p.127, L.1 – p.128, L.22; R., pp.107-08.) The district court pointed out that, while the state would have to serve notice in "certain circumstances"—namely, where the alleged escape was from an "area of

restriction" or a release on electronic monitoring—that was "not applicable here." (Supp. Tr., p.127, Ls.11-15 (citing I.C. § 18-2505).) Accordingly, the district court crafted a new elements instruction which "deleted provisions regarding proof that the notice was actually served." (Id., p.127, Ls.16-21.) The district court then stated:

> Therefore, I am going to deny without prejudice the motion for judgment of acquittal and let the jury decide. But my analysis does not end there. The essence of due process of law is notice of conduct that would constitute a crime, and borrowing words and concepts from the furlough provisions in Title 20, Judge Greenwood required that the notice be served. In other words, the order required that the notice be served *even if the law does not specifically require it under the circumstances of this case.*
>
> And as previously mentioned, I do believe that there was insufficient evidence that the order was served by the Ada County Sheriff….
>
> *I have serious questions as to whether there is sufficient evidence that a jury might find proof beyond a reasonable doubt that the order was served.* Due process of law, as mentioned, requires notice of conduct that would constitute a crime, and notice starts with service. And without service, notice is insufficient. *Without notice, there is no due process*.
>
> And on that basis, I might—after the jury returns its verdict, if they find that the defendant is guilty of the crime of escape, I might still in the interests of justice grant a motion for judgment of acquittal for failure of the Ada County Sheriff to properly serve the furlough order on the defendant.

(Id., p.129, L.6 – p.130, L.10 (emphasis added).)

The jury returned a guilty verdict. (Id., p.170, Ls.17-20.) Roth renewed his Rule 29 motion, again alleging insufficient evidence, and now alleging for the first time that "fundamental principles of due process affording fairness [had] been violated." (Id., p.174, Ls.4-16.) The state responded that the evidence supported the jury verdict; that notice was not an element that it had to prove; and that even if "fundamental fairness and

due process" were at issue here, there was evidence showing the defendant was well aware of the furlough that he "himself requested." (Id., p.174, L.22 – p.177, L.19.)

The district court denied Roth's motion and again made clear that the evidence supported the verdict:

> As it relates to the Rule 29 motion regarding the elements of the offense as outlined in instruction 13, *I do believe that there's sufficient evidence for the jury to find beyond a reasonable doubt that the defendant is guilty of the crime of escape as outlined again in the elements in instruction 13.*
>
> I will continue to deny the motion as it relates to the charge on that basis.
>
> The question in my mind and it's a critical question *because notice is not, in my opinion, required as a matter of law.* In other words, the provisions in the statute, 2505, related to the notification required, etcetera. *That involves circumstances that are not applicable to this case. And since it's not applicable in this case, we did not include it as an element in instruction 13. And if it wasn't an element of this case, I don't know what the jury might have done with that. But it wasn't an element of this case. That's why I took it out,* that's why I denied the defendant's request ….

(Id., p.177, L.21 – p.178, L.15 (emphasis added).) The district court nevertheless reiterated that, "[h]aving said that, and to be perfectly clear, I indicated that I might still grant the motion, I guess you might say, on general principles of due process of law and fundamental fairness." (Id., p.178, L.23 – p.179, L.1.)

Prior to sentencing, Roth renewed his motion for a judgment of acquittal under Rule 29, and moved in the alternative for a dismissal pursuant to Rule 48(a)(2). (R., pp.166-74.) The district court again denied the Rule 29 motion. (R., pp.179-80.)

But the district court granted the Rule 48 dismissal motion. Despite finding the "written notice requirement [did] not apply, as a matter of law," the district court reasoned that "the effective administration of the Court's business requires that court orders be served on those who are affected by them, especially when the order itself

specifically requires such service." (R., pp.181-82.) Because the court concluded there was "insufficient evidence ... to find that it was more likely than not that [Roth] was served with a copy" of the furlough order, or "verbally informed of the consequences of violating" the furlough order, it dismissed the case. (R., pp.182, 184.) The state moved for reconsideration of the dismissal order (R., pp.186-92), which the district court denied (R., pp.215-221). The state timely appealed.[4] (R., pp.202-05.)

[4] The state's notice of appeal cited Idaho Appellate Rule 11(c)(4) for this Court's jurisdiction. This Court would also have jurisdiction to review the district court's order and judgment under I.A.R. 11(c)(3). See State v. Dennard, 102 Idaho 824, 642 P.2d 61 (1982).

ISSUE

Did the district court abuse its discretion by dismissing the guilty verdict based on the state's purported failure to prove a non-element of the crime?

ARGUMENT

The District Court Abused Its Discretion By Dismissing The Guilty Verdict For The State's Purported Failure To Prove A Non-Element Of The Crime

A. Introduction

The district court overturned a guilty verdict that it agreed the evidence supported. It did so because it found the state failed to prove notice—which the court agreed was not an element of the crime. This was an abuse of discretion. While Rule 48 gives trial courts broad discretion to dismiss a case in the interests of administrative efficacy and justice, it was neither effective nor just to allow this case to proceed to a proven guilty verdict, only to dismiss it for a purported failure to prove a non-element of the crime. Moreover, the district court's dismissal runs counter to the plain language of Rule 48 and its companion statute, which contemplate that a dismissal will not bar a refiling of charges. Because double jeopardy almost certainly bars refiling this charge, the post-trial dismissal thwarted the plain language of the statute and the rule.

Even assuming the district court correctly found that Rule 48 and due process concerns required the state notify Roth, dismissal was still an abuse of discretion. Roth had plenty of notice of the furlough order. Beyond the evidence adduced at trial, the record shows that the furlough order was granted at Roth's request, drafted by Roth's attorney, and its details were explained to Roth in the plainest possible terms in open court. Even if notice were a proper basis for overriding the jury verdict that concern is inapplicable here.

B. Standard Of Review

The granting or denial of a motion to dismiss an information is reviewed for an abuse of discretion. I.C.R. 48; State v. Dixon, 140 Idaho 301, 304-05, 92 P.3d 551, 554-55 (Ct. App. 2004); State v. Keetch, 134 Idaho 327, 329-30, 1 P.3d 828, 830-31 (Ct. App. 2000). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018) (citation omitted).

C. Dismissing A Supported Guilty Verdict For The State's Purported Failure To Prove A Non-Element Of The Crime Is Neither Effective Nor Just

A trial court's authority to dismiss a criminal case is governed by I.C. § 19-3504 and I.C.R. 48. Pursuant to the statute, the court may order a criminal action dismissed on its own motion, or on the motion of the prosecuting attorney if the dismissal is "in furtherance of justice." I.C. § 19-3504. Similarly, Rule 48 provides that the court may dismiss a criminal action for "any" reason if the court determines that the dismissal will "serve the ends of justice and the effective administration of the court's business." I.C.R. 48(a)(2). Pursuant to the rule, "[a]n order for dismissal is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony." I.C.R. 48(c); see also I.C. § 19-3506.

Rule 48 and its companion statute are broad grants of discretion. See I.C.R. 48(a); I.C. § 19-3504. But they are not unlimited. As the Court of Appeals pointed out in State

v. Hayes, a boilerplate "order stating only that the case was dismissed 'to serve the ends of justice' would be insufficient" to survive appellate scrutiny. 108 Idaho 556, 559, 700 P.2d 959, 962 (Ct. App. 1985). And even if a court places its reasons for dismissal on the record, appellate courts will not uphold a dismissal "in the interest of justice" that "is not borne out by the record." Id. To the contrary, "[w]ithout a valid reason supporting the decision to dismiss," a dismissal "order cannot be upheld." Id.

Here, the district court acted beyond the boundaries of its discretion and failed to act consistently with the applicable legal standards when it dismissed this case because the state failed to prove notice. As the district court correctly pointed out, notice was not an element of the crime. (R., p.220 (citing I.C. § 18-2505).) And the district court agreed the verdict was supported by the evidence—as the court put it, "there was sufficient evidence for a jury to find the Defendant guilty." (R., p.209; Supp. Tr., p.180, Ls.2-4.) As such, Roth was properly found guilty of escape and this case should have proceeded to sentencing. This case is that straightforward.

Instead, despite concluding the evidence supported the verdict, the district court dismissed this case because "there was insufficient evidence that anybody actually served the [furlough order]" on Roth. (R., p.220.) The court found that even though notice was not an element of the crime, it was "necessary to impress upon a sheriff the importance of serving court orders and properly documenting that such court orders are in fact served," and that "[t]o hold otherwise would excuse a sheriff from complying with court orders[,] which hinders the effective administration of court business and the ends of justice." (R., p.220.)

This was inconsistent with the applicable legal standards, beginning with the "bedrock, 'axiomatic and elementary [constitutional] principle'" that the state has the burden to prove "beyond a reasonable doubt of *every fact necessary to constitute the crime*" for which the defendant "is charged." Francis v. Franklin, 471 U.S. 307, 313 (1985) (emphasis added), holding modified by Boyde v. California, 494 U.S. 370 (1990). It is equally axiomatic that the state has no burden to prove non-elements of the crime. See id. Here, the state was not required to prove notice because, as the district court agreed, notice was not an element of the crime. (R., p.220 (citing I.C. § 18-2505).) Thus, the district court's decision to dismiss this case *because* the state failed to prove notice was an abuse of discretion.

Furthermore, dismissal here did not serve "the effective administration of court business and the ends of justice." (R., p.220.) "The likelihood that a dismissal will serve the effective administration of the court's business decreases as the case proceeds to a final judgment," as the proceedings below demonstrate. State v. Avelar, 132 Idaho 775, 781, 979 P.2d 648, 654 (1999). It was only after the state rested that the district court announced it "might still" dismiss the case for failure to prove notice, even though notice was not an element the state needed to prove. (Supp. Tr., p.127, L.1 – p.130, L.17.)

At that point, presumably, the state's only option was to move to reopen its case-in-chief in order to present notice evidence—in other words, to seek the court's leave to admit *irrelevant* evidence at trial. See I.R.E. 401. Could Roth have objected to the state's attempt to present irrelevant evidence? Who knows. But the threatened dismissal left the state in a Kafkaesque bind: wherein it was not required to prove notice to convict

Roth; but was required to prove notice to survive dismissal under Rule 48. (Supp. Tr., p.127, L.11 – p.130, L.10.) This arrangement was neither effective nor just.

The district court also failed to act consistently with applicable legal standards when it concluded the state violated "fundamental notions of justice and fairness" by not proving Roth was informed "of the consequences of violating" the furlough order. (R., p.220.) There is simply no due process right to be informed of penalties before being charged with a crime. Quite the opposite: it is well-established that "[i]gnorance of the law is not a valid defense." State v. Dolsby, 143 Idaho 352, 355, 145 P.3d 917, 920 (Ct. App. 2006) (citing State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993)). Of course, prior notice of penalties can be an element of escape in certain circumstances—but as the district court correctly pointed out, this case did not present those circumstances. (R., p.181, n.2; Supp. Tr., p.127, Ls.7-15 (citing I.C. § 18-2505).)

Finally, the district court went beyond the boundaries of its discretion by dismissing this case after the guilty verdict. Section 19-3506 and Rule 48 contemplate that dismissals will be without prejudice, and "not a bar" to refiling, "if the offense is a felony." The dismissal here was, in effect,[5] a dismissal *with* prejudice, because double jeopardy almost certainly bars the refiling of this charge. State v. Stevens, 126 Idaho 822, 825-26, 892 P.2d 889, 892-93 (1995) (finding it "clear under state and federal law that jeopardy had attached in this case because a jury had been sworn to try the case"); Crist v. Bretz, 437 U.S. 28, 37-8 (1978). Deploying Rule 48 in this circumstance exceeded the

[5] The judgment does not actually state whether this case was dismissed with or without prejudice. (R., p.184.) But however it is stylized, it is effectively a dismissal with prejudice, insofar as double jeopardy very likely precludes the state from refiling this charge. See Stevens, 126 Idaho at 825-26, 892 P.2d at 892-93.

court's discretion insofar as it nullified the text of the statute and rule and thwarted their intended operation. See I.C. § 19-3506; I.C.R. 48(c).

The district court agreed that the state presented evidence to convict Roth beyond a reasonable doubt. (R., p.209.) And the district court agreed that notice was not an element of this crime. (R., p.209; Supp. Tr., p.180, Ls.2-4.) Dismissing this case because the state purportedly failed to prove notice was accordingly an abuse of discretion.

D. Even If Due Process Concerns Warranted Some Proof Of Notice, The District Court Abused Its Discretion By Dismissing This Case In Light Of Roth's Abundant Notice Of The Furlough Order

The district court's concerns were rooted in "fundamental notions of fairness and due process." (R., p.209.) As argued above, it runs counter to fairness and due process to require the state to prove non-elements of a crime in order to sustain a conviction. But even assuming some proof of notice was required to satisfy due process concerns, the court abused its discretion by dismissing this case. The record reveals that Roth had abundant notice of the furlough.[6]

The state's "Movement Tracking" records plainly show that Roth was "OUT [FACILITY]" on "FURLOUGH" on 12/22/11 at 6:33 a.m., which a detention deputy testified would have been "the time that the housing deputy working dorm [at] six that morning would have sent him down to booking to be released shortly following him walking out the door." (Supp. Tr., p.91, L.18 – p.92, L.2; State's Ex. 4.) The temporary

[6] Moreover, it was Roth's burden to prove the facts upon which his due process claim was based. State v. Jacobson, 150 Idaho 131, 134, 244 P.3d 630, 633 (Ct. App. 2010) ("It is the defendant's burden to demonstrate facts that constitute a due process violation."); see State v. Cantrell, 139 Idaho 409, 412, 80 P.3d 345, 348 (Ct. App. 2003). Below, he failed to prove he was not notified that the furlough was only one day.

release form shows this was exactly what happened: three minutes later, at "6:36," Roth was ordered to be released. (State's Ex. 3.) The temporary release form was signed and dated by "Aaron Roth," next to a handwritten notation of "INMATE UNDERSTANDING," and the release order contained a checked box stating "Furlough – Copy of Furlough paperwork attached." (Id.)

Beyond this, Roth himself requested to be released from jail, and there is no doubt he understood the court's explanation of the furlough. (Mot. to Reconsider Ex. 1, 05:45-07:50, 10:10-10:38.) Roth was an adult and a "full time" student (id., 6:07-6:11), and the court's explanation could not have been clearer:

> **The court**: … the terms are: *to the University*, to deal with the issues of, uh, missing your finals and attempting to sort out whatever's going on with the University and to maintain your status as a student there, *and then back to jail. No side trips. No stopping to party along the way. Obviously no new crimes. No alcohol. No drugs. Any of that, and you're guaranteeing yourself a bad outcome ultimately*…. In other words, full terms of your probation continue in force during that.
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> But I'll give you one, I'll give you a chance. And if someone will present me an order, so we can let the jail know, we'll do that. And then we'll be back here in January to deal with the admit or deny.
>
> Any questions?
>
> **Defense counsel:** *How long is that furlough for again?*
>
> **The court**: *One day. 7:30 a.m. to 6:00 p.m. If he can't get it done with the University in that day, it's gonna be just too bad.*

(Id., 14:07-15:03 (emphasis added).)

And note that the court asked for "someone" to present the furlough order in the first place. (Id., 14:39-14:42.) You might inquire: who ultimately drafted the furlough order? The face of the order shows it was drafted by *Roth's own attorney*, as it bears

defense counsel's caption on the top left corner. (State's Ex. 2.) Thus, the totality of the evidence shows the furlough was granted at Roth's request; the court explained the furlough to Roth in unmistakable detail; Roth's own attorney drafted the furlough order; and Roth signed and dated the release order with the furlough attached. This is ample notice evidence to satisfy any lingering due process concerns.

This was not enough for the district court, which concluded there still was "insufficient evidence that anybody *actually served*" the furlough order on Roth. (R., p.220 (emphasis added).) It is true that the releasing deputy did not recall handing the temporary release form and attached furlough paperwork to Roth. (Supp. Tr., p.106, Ls.17-24.) That is unsurprising, given that Roth migrated south for warmer climates in 2011 and over six years elapsed before the deputy testified in 2018. (See R., pp.70, 165; State's Ex. 5.)

But penalizing the state for the deputy's lack of memory plainly contradicts notions of fairness and due process. The deputy could not remember precisely *because* Roth escaped the jail and was on the lam for six years—thumbing his nose at a court-ordered furlough crafted for his benefit and at his request. (See Supp. Tr., p.102, L.23 – p.103, L.3; p.104, Ls.18-22; p.105, Ls.9-14; p.107, Ls.8-13.) It gives Roth an ill-gotten windfall to dismiss this case simply because he successfully evaded arrest until memories faded. Courts have long held that fugitives—who "'flout' the authority of the court by escaping"—demonstrate "such disrespect for the legal processes that [they have] no right to call upon the court to adjudicate" their claims. Ortega-Rodriguez v. United States, 507 U.S. 234, 246 (1993). By the same logic, Roth's "contemptuous disrespect manifested by his flight" should not entitle him to an equitable boon that unwinds the jury verdict. See

id. Rewarding Roth's prolonged escape from justice with yet another escape from justice is manifestly unfair and does not conceivably help courts administer their own business.

In sum, even if due process concerns could justify a notice-based dismissal, that standard in inapplicable here. The record comfortably shows Roth had abundant notice of the furlough and its terms. Under any interpretation the Rule 48 dismissal was an abuse of discretion.

CONCLUSION

The state respectfully requests this Court vacate the district court's order and judgment dismissing this case, reinstate the jury's guilty verdict, and remand for sentencing.

DATED this 16th day of July, 2019.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of July, 2019, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd