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

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

# REPLY 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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# TABLE OF CONTENTS

**PAGE**

# TABLE OF AUTHORITIES

**CASES** **PAGE**



**STATUTES**



**RULES**



**OTHER AUTHORITIES**

## 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

The district court agreed that the evidence supported the jury verdict finding Roth guilty of felony escape. Nevertheless, the court applied Rule 48 to undo the jury verdict because it found the state failed to provide notice—which the court agreed was not an element of the crime. This was a clear abuse of discretion for at least two[1] essential reasons: first, because the state is never required to inform a defendant of penalties in order to satisfy due process. Second, even if *some* degree of notice was required, the evidence adduced at trial shows Roth received abundant notice of the furlough order itself.

Roth's response fails to overcome these fundamental points. Instead, he generally argues that the Idaho Rule 48 dismissal was proper because the district court concluded "the dismissal both served the ends of justice and the effective administration of the court's business," and because "the State failed to provide Mr. Roth with due process." (Respondent's brief, p.5.) These arguments are both meritless and will be taken up in turn.

1. Justice And Effective Administration

Roth claims that Rule 48 dismissal was appropriate because "the evidence shows the [furlough] order was not served on Mr. Roth." (Id.) As such, he argues the

[1] The state reasserts that the district court's dismissal was an abuse of discretion for all of the additional reasons set forth in its opening brief.

court correctly concluded that "dismissal both served the ends of justice and the effective administration of the court's business" and was an appropriate use of discretion. (Id.)

This argument fails, first, because it leaps to a conclusion that is unsupported by the record. In fact, there was no evidence below that "*shows* that the order was *not* served on Mr. Roth." (See Supp. Tr.) The evidence showed that an "Aaron Roth" signed the temporary release form, which was dated "12/22/11" at "6:36," and contained a checked box stating "Furlough – Copy of Furlough paperwork attached." (State's Ex., 3.) A 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.) This only tends to show that the furlough order *was* served on Roth—not that it was not.

There was a single piece of evidence that, at best, made it *unclear* whether the order was served. The jail deputy testified that he did not recall if furloughed 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.) Thus, Roth's claim that the order was not served hinges on an implication pulled from one deputy's lack of clear memory about a years-old event.

Even assuming the deputy's lack of memory is evidence the furlough was not served, there is a more fundamental problem with this argument. At trial the state only had 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). Perhaps the state could have adduced more evidence to show the furlough was served, but

why would it have done so? During trial the district court agreed that notice was not an element that the state had to prove. (Supp. Tr., p.177, L.21 – p.178, L.15.) There was a universe of irrelevant facts the state could have explored at trial—such as whether the furlough was served, what the deputy ate for breakfast that morning, the average rainfall in Mozambique—but the state had no burden, much less incentive, to prove any of them. And it does not serve the ends of justice to hold the state to the burden of proving, beyond a reasonable doubt, non-elements of the crime in order to survive dismissal.

Without a hint of irony, Roth tut-tuts the state for its purported "failure to comply with a district court order." (Respondent's brief, p.18.) He takes the state to task for a purported "failure to properly document possible compliance." (Id.) Improvising further, he assumes that these presumed failures "must significantly influence the effective administration of the court's business." (Id.)

Roth's premise and his conclusion are begged questions. The evidence did not show the state failed to comply with a court order—as explained above, the evidence showed, at most, that a single deputy did not recall serving the order. Thus, Roth has not conclusively identified a *single* time that the state did not serve a furlough order, either in this case or historically. (See Respondent's brief, pp.18-19.) He does not even allege that a failure to serve the furlough order has happened more than once, much less that it is a systemic or serious problem, which at least could theoretically justify deploying Rule 48 to cure some rampant administrative ills. (See id.) And because Roth's premise is imaginary the effects are imaginary too; he does not identify a single influence, much less a *significant* influence, that any purported failures actually had on the court's business. (See id.)

Roth does have a point here. There is no doubt that court orders are a serious thing and that failures to comply with them should be treated seriously. But that is exactly the state's argument. And the record, and the jury verdict, show only one unmistakable failure to comply with a court order: Roth's own failure to comply with the furlough order. Because the district court agreed the evidence supported the jury verdict, and because the Rule 48 dismissal did not serve the ends of justice or administrative efficiency, the district court abused its discretion by dismissing this case.

2. Due Process

As demonstrated in the state's opening brief, there is no due process right to be informed of criminal penalties before being charged with a crime, because "[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)). Moreover, even if some notice of the furlough order was called for here, the record showed Roth had abundant notice of it. (See, e.g., Mot. to Reconsider Ex.1, 12:26-15:03.) Either way, the district court abused its discretion by dismissing this case on due process grounds.

Roth's response fails to show otherwise. He begins by proclaiming that "this is a case about notice" and "notice as it pertains to due process of law." (Respondent's brief, p.1.) This is a sneak preview of the error that Roth repeatedly makes in his response: he is boiling down two kinds of notice into one. To understand this case, and the due process issue, we need to separate "notice" into two categories—notice of *orders*, versus notice of *penalties*.

The first question is whether Roth had notice of the furlough *order*. Notice of the furlough order itself is obviously relevant to due process. A defendant cannot comply with a furlough order if he does not know its time or distance limitations. But as the state demonstrated in its opening brief,[2] Roth had abundant notice of the furlough. (See, e.g., Mot. to Reconsider Ex.1, 12:26-15:03.) Roth himself concedes this point. (Respondent's brief, p.21 (acknowledging "that he was present at the hearing where the limitations of the furlough were explained to him" (footnote omitted)).) Thus, Roth fails to show—as a matter of due process—that he did not have notice of the terms of the furlough order, or that he was otherwise unable to comply with it.

The second question is whether Roth had notice of the *penalties* for violating the furlough order. But as already explained, this is irrelevant. Due process does not require the state to inform a suspect of potential criminal penalties because "ignorance of the law is no defense." Dolsby, 143 Idaho at 355, 145 P.3d at 920 (citing State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993)). As such, the state was not required to inform Roth of prior penalties before charging him—because the state is never required to make that showing to satisfy due process.

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[2] Roth curiously concludes this argument is not preserved because, he thinks, "the State has presented no challenge to the district court's denial of the motion to reconsider." (Respondent's brief, p.15 n.7.) This is incorrect. Below the state moved for reconsideration, arguing that "Even if notice is somehow a relevant consideration for this Court, there is ample evidence of notice to the Defendant to cure any concern for fundamental notions of justice and fairness," which the district court's order on reconsideration denied." (R., pp.190, 215-20 (emphasis omitted).) The state's challenge to this denial on appeal is Section D, entitled "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," which can be found on pages 14 through 17 of the opening brief.

Roth fails to show otherwise. He begins by conceding, as he must, that "ignorance of the law is not a defense." (Respondent's brief, p.17.) But Roth claims, without any citation to case law, to have unearthed some special exemption to this rule:

> Normally, ignorance of the law is not a defense. However, this customarily assumes that the criminal behavior is codified, published, and available to the citizenry, as is most criminal conduct in the State of Idaho. Yet, unlike a prisoner that is furloughed by the Idaho Department of Correction, no criminal defendant furloughed by the district court can have knowledge of the limits of the furlough or the related criminal consequences without either an explanation in court or receiving a written order.

(Id. (internal citations and footnotes omitted).)

Even assuming Roth's reliance on customary assumptions shows some exception to the general rule, he fails, sentence by sentence, to show it would apply here. The criminal behavior here *was* "codified, published, and available to the citizenry"; Roth was charged with Escape, which is codified and published in the Idaho Code. I.C. § 18-2505. It is available online, free of charge, at https://legislature.idaho.gov/statutesrules/idstat/.[3] Regarding Roth's "knowledge of the limits of the furlough," it is uncontested that he knew about them. He concedes "that he was present at the hearing where the limitations of the furlough were explained to him." (Respondent's brief, p.21 (footnote omitted)); see also Mot. to Reconsider Ex.1, 12:26-15:03. And as for whether the district court was required to explain "the related criminal consequences" to Roth, this is begging the question. (See Respondent's brief, p.17.) The general rule is that the state is not required

[3] And of particular relevance to this appeal, the entire Idaho Code, "kept up to date," is also available on the first floor of the BSU Library. See https://guides.boisestate.edu/idaho_code (last accessed October 11, 2019).

to prove notice of penalties to satisfy due process. Roth cannot identify an exception to general rule by simply assuming the exception exists.

Roth goes on. Without any citation to case law, Roth riffs on what he thinks are analogous situations where "notice is required to satisfy due process":

> This situation is not unique, but similar to numerous other circumstances. For example, without service of jury summons, a juror does not know that they must appear in court. A parent may not know that they will face a contempt charge for failing to return their child to the other parent without the service of the custody orders. Or, more simply, a person may not know they have violated the speed limit if the speed limit sign has been removed.

(Id.)

Here is where Roth's error is most obvious: he is mixing up notice of *orders* with notice of *penalties*. All of Roth's examples are scenarios where the state would obviously need to give of notice of judicial or municipal orders—summonses, custody orders, and speed limits—to satisfy due process. But none of these examples show that the state would *also* be required to notify suspects of potential penalties for violating those orders, to satisfy due process.

Take the first example. Of course a juror needs a summons to know to appear in court. But is a juror also required to be informed of the penalties of skipping jury duty to be charged with contempt? If Roth has some law (or customary assumption) that says so, he does not share it.

Likewise, a parent obviously needs to know of a custody order in order to comply with it. But is the state also required to notify a parent of the potential criminal penalties for violating a custody order, in order to charge interference with a custody order?

The answer is no. As it happens, there is controlling authority (that Roth does not bother to cite to) that resolves this question. In State v. Calver, 155 Idaho 207, 213, 307 P.3d 1233, 1239 (Ct. App. 2013), the appellant made the now-familiar claim that she could not be charged with child custody interference because the restraining order "did not mirror wording in the criminal statute *and only provided notice of possible civil penalties, including a fine and up to five days in jail*." (emphasis added).

The Idaho Court of Appeals rejected this argument, and instead applied the general rule:

> We reiterate that under the circumstances of this case, the State was not required to show a violation of the *civil* [joint temporary restraining order] to establish that Veronica violated the *criminal* statute. The two are not co-equal. Even relying on a violation of the JTRO to show she acted without lawful authority, *the State was not required to show she had notice of possible criminal penalties within the JTRO itself as a condition to finding her criminally liable because a citizen is presumptively charged with knowledge of criminal statutes once enacted.*

(Id. (emphasis added).) If there is any doubt that the Calver Court was rejecting the idea that notice of prior penalties is required for due process, the case it cited to made it plain:

> Finally, it is axiomatic that citizens are presumptively charged with knowledge of the law once such laws are passed. Ignorance of the law is not a defense. "The entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny."

Wilson v. State, 133 Idaho 874, 880, 993 P.2d 1205, 1211 (Ct. App. 2000) (internal citations omitted, quoting Atkins v. Parker, 472 U.S. 115, 131 (1985)); see also Smith v. Zero Defects, Inc., 132 Idaho 881, 887, 980 P.2d 545, 551 (1999); Fox, 124 Idaho at 926, 866 P.2d at 183 (1993). Roth's child-custody example, therefore, only underscores the

state's point. Due process did not require the state to give Roth prior notice of penalties in order to charge him with escape.

Finally, take Roth's speed limit sign example. To satisfy due process, does a speed limit sign need to include a notice of penalties? Of course not. That is precisely why speed limit signs are *limit* signs—they are not "speeding penalty signs." Speed limit signs give notice of the legal limit, not the penalties for exceeding it.

Speed limit signs, therefore, serve the exact same purpose as the court's explanation of the furlough order. The sentencing court plainly explained the time and distance limits to Roth (which Roth concedes on appeal). Mot. to Reconsider Ex.1, 12:26-15:03; (Respondent's brief, p.21 (footnote omitted).) Roth cannot argue that he was additionally required to be notified of the penalties in store for him if he violated the order, any more than a driver could argue that a speed limit sign violated due process because it did not include a schedule of fines and fees.

Roth concludes by attacking an almost unrecognizable parody of the state's argument. He thinks that "the State has asserted that those who escape have no right to litigate their case," and that "[t]he State appears to assert that those charged with escape have somehow waived or are [undeserving] of their constitutional rights." (Respondent's brief, p.22.) Nothing could be further from the truth. Of course, persons charged with Escape can press their constitutional rights on appeal. But there is no constitutional right to be informed of prior penalties because, as Roth concedes, "ignorance of the law is no defense." Dolsby, 143 Idaho at 355, 145 P.3d at 920 (citing Fox, 124 Idaho at 926, 866 P.2d at 183). And of course Roth's escape itself did not waive his constitutional rights. The question is whether Roth's prolonged evasion of a court order should be rewarded by

presuming the *state* failed to comply with a court order—simply because witnesses could not remember, post-escape, all the details regarding non-elements of the crime.

Putting aside Roth's defenseless strawmen, the state's real point is simple. Because ignorance of the law is no defense, it was an abuse of discretion to undo the jury verdict on due process grounds for an alleged failure to give notice of prior penalties. Even if notice of the furlough order is a proper due process concern, Roth had abundant notice. Finally, it was an abuse of discretion to conclude that the state failed to prove notice based solely on a deputy's lack of memory of a non-element of the crime—the deputy had no memory precisely *because* Roth had successfully evaded the court's order for so long. (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.)

Despite the district court's conclusion that this dismissal was in the interests of justice, this Court will not uphold a dismissal if "the interest of justice" articulated by the trial court "is not borne out by the record." State v. Hayes, 108 Idaho 556, 559, 700 P.2d 959, 962 (Ct. App. 1985). While trial courts have broad authority to dismiss a case under Rule 48, the record does not support the dismissal here. The district court abused its 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 11th day of October, 2019.

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 2019, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kale D. Gans
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