

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

6-20-2019

State v. Coniconde Appellant's Reply Brief Dckt. 46410

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Coniconde Appellant's Reply Brief Dckt. 46410" (2019). *Idaho Supreme Court Records & Briefs, All*. 7685.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7685

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46410-2018
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY
v.)	NO. CR-2017-21484
)	
MICHAEL WATSON CONICONDE,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE LANSING L. HAYNES
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUES PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
I. The District Court Erred In Ordering Mr. Coniconde’s Driver’s License Suspension To Commence Upon His Release From Incarceration Rather Than Upon His Conviction.....	3
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	5

TABLE OF AUTHORITIES

Cases

Brown v. State, 137 Idaho 529 (Ct. App. 2002)5

Cafferty v. State Department of Transportation, 144 Idaho 324 (2007).....4

State v. Anderson, 145 Idaho 99 (2008).....5

State v. Trusdall, 155 Idaho 965 (Ct. App. 2014).....5

Statutes:

I.C. § 49-1404(3)..... 1, 3, 4

I.C. § 49-326A(3)..... 1, 3, 4

STATEMENT OF THE CASE

Nature of the Case

Mr. Coniconde appeals from his judgment of conviction, as amended by the district court's order amending judgment. He argued in his Appellant's Brief that the district court erred in ordering his driver's license suspension commence upon his release from incarceration rather than upon his conviction because, pursuant to Idaho Code § 49-1404(3), a license suspension for felony eluding must commence upon conviction. (Appellant's Br., pp.5-10.) In its Respondent's Brief, the State does not directly address Mr. Coniconde's argument, but instead argues Idaho Code § 49-326A(3) requires that a license suspension for felony eluding commence upon release from incarceration. (Respondent's Br., pp.3-5.) The State is incorrect, and its argument must be rejected.

Statement of Facts and Course of Proceedings

Mr. Coniconde included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (Appellant's Br., pp.1-3.)

ISSUE

Did the district court err in ordering Mr. Coniconde's driver's license suspension commence upon his release from incarceration rather than upon his conviction?

ARGUMENT

The District Court Erred In Ordering Mr. Coniconde's Driver's License Suspension Commence Upon His Release From Incarceration Rather Than Upon His Conviction

Mr. Coniconde argued in his Appellant's Brief that Idaho Code § 49-1404(3) unambiguously provides that a license suspension for felony eluding commences upon a finding of guilt as reflected in a judgment of conviction. (Appellant's Br., pp.5-6.) He argued, in the alternative, that if this Court concludes I.C. § 49-1404(3) is ambiguous, it should interpret the statute to mean that a license suspension for felony eluding commences upon a finding of guilt as reflected in a judgment of conviction, relying principally on the rule of *in pari materia*. (Appellant's Br., pp.7-10.)

The State argues in its Respondent's Brief that "Idaho Code requires that [the license suspension] run only after release from incarceration," pointing only to Idaho Code § 49-326A(3). (Respondent's Br., p.4.) The State claims "[o]ne must look" to § 49-326A(3) to determine when a driver's license suspension runs, and that statute plainly provides the suspension commences upon release from incarceration. The State cites no authority beyond the statute, and the State's argument is incorrect as a matter of law.

Idaho Code § 49-326A states, in pertinent part:

When a court's judgment or order provides that the suspension of an individual's driver's license or driving privileges shall begin after the individual is released from confinement or imprisonment, the department, for purposes of administering the ordered suspension, shall consider the driver's license or driving privileges as suspended effective as of the end of the last day of the fixed portion of the ordered sentence, as shown by the judgment or sentencing order of the court.

Section 49-326A(3), which is the section of the statute relied upon by the State, provides that "[n]o time credit against the court-ordered period of suspension will be given while the individual is incarcerated or if the individual is reincarcerated."

In *Cafferty v. State Department of Transportation*, the Idaho Supreme Court held that, for I.C. § 49-326A to apply, “the judge must order the suspension to begin upon release from imprisonment” 144 Idaho 324, 330 (2007). If the judge so orders, “then the DMV must follow certain procedures . . . before it can reinstate the license.” *Id.* Thus, “[t]he requirements of I.C. § 49-326A . . . apply only when a suspension begins after release[] from imprisonment,” and are not applicable when a suspension begins prior to imprisonment according to an explicit statement by the district court. *Id.* at 331-32.

As *Cafferty* makes clear, I.C. § 49-326A does not require a district court to order that a license suspension for felony eluding (or any other offense) commence upon a defendant’s release from incarceration. Rather, the statute provides the procedure by which the Department of Motor Vehicles administers the judicial suspension of a driver’s license or driving privileges when ordered by a judge to commence upon release from incarceration.

As Mr. Coniconde argued in his Appellant’s Brief, the start date for the license suspension for felony eluding must be the entry of the judgment of conviction (regardless of the form of the judgment), as there is no other date referenced in the statute. (Appellant’s Br., pp.5-6.) Alternatively, if this Court concludes I.C. § 49-1404(3) is ambiguous, it should interpret it to mean that a license suspension for felony eluding commences upon a finding of guilt as reflected in a judgment of conviction because the DUI statutes discussed in the Appellant’s Brief make clear that the Legislature knows what language to use to mandate that a licenses suspension commence upon a defendant’s release from incarceration, and did not use such language in I.C. § 49-1404(3). (Appellant’s Br., pp.7-10.) To the extent there is an “interpretive tie” regarding the start date for the running of a license suspension under I.C. § 49-1404(3), the tie must be resolved in favor of the defendant under the rule of lenity. *State v. Trusdall*, 155 Idaho

965, 969 (Ct. App. 2014); *see also State v. Anderson*, 145 Idaho 99, 103 (2008) (“The rule of lenity states that criminal statutes must be strictly construed in favor of defendants.”) (quotation marks and citation omitted); *Brown v. State*, 137 Idaho 529, 536 (Ct. App. 2002) (stating “to the extent the theft statute is ambiguous, the rule of lenity compels us to construe it in favor of the accused”).

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant’s Brief, Mr. Coniconde respectfully requests that the Court vacate his judgment of conviction, as amended by the order amending judgment, and remand this case to the district court with instructions to amend his judgment of conviction to reflect that his 18-month license suspension commenced on the date of his conviction.

DATED this 20th day of June, 2019.

/s/ Andrea W. Reynolds

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Kylie M. Fournier

Kylie M. Fournier
Administrative Assistant

AWR/kmf