

*Summary of Supreme Court and Court of Appeals Published Opinions
February 5 – 20, 2015
Compiled by Stephen Kenyon, Clerk of the Courts*

SUPREME COURT DECISIONS

ARIAS V. ARIAS

No. 41745

Release date: February 6, 2015

Idaho Supreme Court

EISMANN, Justice.

This is an appeal by permission out of Bonneville County from an order in a divorce action modifying child custody. Because no final judgment dissolving the marriage and no judgment regarding custody had ever been entered in this action during the four-year period after the divorce trial, we dismissed the appeal because it did not qualify for an appeal by permission.

<http://www.isc.idaho.gov/opinions/41745ORDER.pdf>

917 LUSK LLC, v. CITY OF BOISE

No. 41214

Release date: February 6, 2015

Idaho Supreme Court

HORTON, Justice.

In an appeal from Ada County arising from a petition for judicial review of the Boise City Council's decision granting a conditional use permit for Royal Boulevard Associates to build an apartment complex near Boise State University, the Supreme Court reversed the decision of the district court affirming the City Council's approval of the Boise Planning and Zoning Commission's decision to grant the conditional use permit. The Supreme Court held that the Commission and the district court failed to recognize that Idaho law and the Boise City Code provided the Commission with discretion to require the project to provide on-site automobile parking beyond the minimum required by the Parking Chapter. As a result of this failure to apply governing legal standards, the Commission refused to consider the adverse effects on property in the vicinity, and thus, the decision reflected an abuse of discretion. Additionally, the Supreme Court found substantial evidence supporting Lusk's claim of potential prejudice to its substantial rights as the project calls for 622 bedrooms to be leased to students and the Parking Chapter requires only 280 parking spaces for the project.

<http://www.isc.idaho.gov/opinions/41214SS.pdf>

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DEPT OF TRANSPORTATION v. HJ GRATHOL
No. 40168
Release date: February 11, 2015
Idaho Supreme Court

BURDICK, Chief Justice

The Idaho Supreme Court unanimously affirmed the Kootenai County district court's just compensation award to HJ Grathol ("Grathol"), vacated and remanded the district court's denial of attorney fees to the Idaho Transportation Department ("ITD"), and affirmed the district court's award of costs to ITD. The Court also unanimously awarded attorney fees and costs to ITD on appeal.

This eminent domain case arose when ITD acted to condemn 16.314 acres of Grathol's 56.8 acres in order to improve U.S. Highway 95. After a bench trial, the district court held that just compensation would be based on the 56.8-acre parcel's value and the property remaining suffered no severance damages. Grathol argued on appeal that the district court should have based just compensation on a 30-acre parcel. Grathol also argued that the district court ignored Grathol's severance damage evidence and improperly excluded testimony about damages from a proposed frontage road. Grathol also appealed the district court's award of costs to ITD, arguing that condemners are not entitled to costs. ITD cross-appealed, arguing that the district court should have awarded ITD reasonable attorney fees under *Ada County Highway District v. Acarrequi*, 105 Idaho 873, 673 P.2d 1067 (1983). Contrary to Grathol's assertions that the district court ignored the law and evidence, the Idaho Supreme Court found substantial and competent evidence supported the district court's findings that the parcel valued was 56.8 acres and that the remainder suffered zero severance damages. The Court also found the district court did not err by excluding testimony about impacts from an alleged frontage road because this Court held in a prior decision that ITD had no intent to condemn land for that road. As to attorney fees, the Court vacated the district court's denial of attorney fees based on Idaho Code section 12-117 because that statute is not the exclusive source of fees for state agencies. The Court reasserted that it held in *Acarrequi* that courts can award attorney fees to a condemner in extreme and unlikely cases. The Court then adopted a three-part test to determine when a case is extreme and unlikely. The Court remanded for the district court to analyze attorney fees within the new "extreme and unlikely case" parameters. As to attorney fees on appeal, the Court found that this was in fact an "extreme and unlikely case" and awarded ITD its reasonable attorney fees to be paid by Grathol. The Court found Grathol's arguments on appeal were unreasonable and frivolous because Grathol asked this Court to re-weigh the evidence and second guess the district court without any legal or factual basis to support its argument.

<http://www.isc.idaho.gov/opinions/40168.pdf>

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STATE OF IDAHO v. DAMENIEL OWENS
No. 41174
Release date: February 11, 2015
Idaho Supreme Court

BURDICK, Chief Justice

The Idaho Supreme Court vacated and remanded the Twin Falls County district court's denial of Dameniel Owens's motion for credit for time served. The district court's denial specified that Owens would only receive credit for his prejudgment time served in a county jail on one of his eight counts of issuing a check with insufficient funds. The Court held that Idaho Code section 18-309's plain language unambiguously states that a defendant receives credit for time served on each of his offenses, whether to be served concurrently or consecutively. The Court therefore overruled *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981), because the Court in *Hoch* incorrectly relied on an assumed legislative intent that conflicts with the statute's plain language. The Court then determined its new interpretation of Idaho Code section 18-309's plain language applies only prospectively to future cases and to cases now on direct appeal.

Two members dissented from the Court's opinion because they found no legal basis for limiting a trial judge's discretion to impose consecutive terms of imprisonment in order to establish a minimum period of incarceration.

<http://www.isc.idaho.gov/opinions/41174.pdf>

STATE OF IDAHO v. WILLIAM WOOLFE
No. 41750
Release date: February 17, 2015
Idaho Supreme Court

BURDICK, Chief Justice

This case came to the Idaho Supreme Court on a petition for review from the Court of Appeals. William Franklin Wolfe was convicted of first degree murder in 1982. Years later, Wolfe learned the district court may have lacked subject matter jurisdiction over his underlying case. Wolfe's unsuccessful challenges to the district court's subject matter jurisdiction formed the basis of this appeal. Specifically, Wolfe appealed the Idaho County district court's decisions denying (1) his motion for a hearing on his motion for reconsideration of his I.C.R. 35 motion to correct an illegal sentence; and (2) his successive Rule 35 motion to correct an illegal sentence. Wolfe argued the district court denied his motions based on two erroneous conclusions: that the subject matter jurisdiction issue had been previously adjudicated and that Wolfe could not file successive Rule 35 motions alleging an illegal sentence. Wolfe asserts that if the district court had properly considered the merits of his motions, the district court would have found it lacked subject matter jurisdiction over Wolfe's original criminal proceedings.

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The Idaho Supreme Court affirmed the district court's decisions denying Wolfe's motion for a hearing and his successive Rule 35 motion alleging an illegal sentence. As to the motion for a hearing, the Court held that the district court did not have jurisdiction to consider Wolfe's motion for a hearing because Wolfe failed to file a timely notice of appeal from the district court's order that failed to rule on his motion for reconsideration. With respect to Wolfe's successive Rule 35 motion alleging an illegal sentence, the Court ruled that the district court erred to the extent it held that a party is limited to one Rule 35 motion alleging an illegal sentence in a case. Nonetheless, the Court held that *res judicata* barred Wolfe's subject matter jurisdiction claim. The Court also held that Wolfe's reliance on *State v. Lute*, 150 Idaho 837, 252 P.3d 1255 (2011), was misplaced. In *Lute*, it was clear from the face of the judgment that the indictment that charged, and which Lute pled guilty to, was not a crime under Idaho law. Therefore, *Lute* did not turn on a significant question of fact, whereas Wolfe's subject matter jurisdiction claim turned on significant questions of fact that were not clear from the face of the judgment. The Court emphasized that courts must read *Lute* narrowly to limit Rule 35 motions to correct an illegal sentence to cases where it is clear from the face of the judgment that the sentence is illegal.

<http://www.isc.idaho.gov/opinions/41750X.pdf>

COURT OF APPEALS DECISIONS

KESEROVIC v. STATE OF IDAHO

No. 41890

Release date: February 11, 2015

Idaho Court of Appeals

GUTIERREZ, Judge

The State appeals from the district court's order reversing the magistrate's grant of the State's motion for summary dismissal of Haris Keserovic's petition for post-conviction relief. Specifically, the State contends the district court erred by determining that Keserovic raised a genuine issue of material fact as to whether Keserovic was prejudiced by his trial counsel's incorrect advice regarding the immigration consequences of his guilty plea. Affirmed.

<http://www.isc.idaho.gov/opinions/41890.pdf>

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STATE v. DUSTIN ARMSTRONG

No. 41458

Release date: February 12, 2015

Idaho Court of Appeals

SCHROEDER, Judge Pro Tem

Dustin Thomas Armstrong appeals from his judgment of conviction for grand theft. He argues that the district court erred in denying his motion to suppress evidence obtained from a warrantless search of his vehicle executed by police officers at the request and direction of Armstrong's parole officer. Affirmed.

<http://www.isc.idaho.gov/opinions/41458.pdf>

STATE v. DUSTIN ARMSTRONG

No. 41539

Release date: February 13, 2015

Idaho Court of Appeals

GRATTON, Judge

Dwayne Allan Bradley appeals from his judgment of conviction and sentence for trafficking in methamphetamine, Idaho Code § 37-2732B(a)(4). Bradley argues the district court erred in admitting audio recordings into evidence and by denying his motion for acquittal. He also alleges the district court imposed an excessive sentence. Affirmed.

<http://www.isc.idaho.gov/opinions/41539.pdf>

STATE v. MATTHEW GONZALES

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No. 40038

Release date: February 17, 2015

Idaho Court of Appeals

LANSING, Judge

Matthew James Gonzales appeals from the district court's order denying his post-sentencing motion to withdraw his guilty plea. The record of proceedings before the trial court does not demonstrate that Gonzales was informed of all of the elements of the charged offense before he pleaded guilty, and Gonzales submitted evidence that he was incorrectly advised in that regard by his attorney. Vacated and Remanded.

<http://www.isc.idaho.gov/opinions/40038X.pdf>

STATE v. RICHARD MORRIS

No. 41933

Release date: February 18, 2015

Idaho Court of Appeals

GUTIERREZ, Judge

Richard Glenn Morris appeals from his judgment of conviction after a jury found him guilty of possession of marijuana. On appeal, Morris raises two issues concerning the denial of his motion to suppress. The district court's finding that Morris' vehicle's tires had crossed the solid white line, after crediting the patrol officer's testimony, was supported by substantial evidence. In addition, the patrol officer had reasonable suspicion to believe that some criminal activity was afoot, because Morris violated I.C. § 49-637(1). Accordingly, we affirm Morris' judgment of conviction because the district court correctly denied the motion to suppress. Affirmed.

<http://www.isc.idaho.gov/opinions/41933.pdf>

No opinions during this time