

SUMMARY STATEMENT

State of Idaho v. Richard Turner Kerr – Docket No. 44770

In a case arising out of Kootenai County, the Court of Appeals affirmed a judgment of conviction and sentence. Pursuant to a plea agreement, Richard Turner Kerr pled guilty to grand theft by possession of stolen property in exchange for the dismissal of an allegation that he is a persistent violator. During the presentence investigation, Kerr admitted knowing the name of the individual Kerr bought the stolen property from but said he preferred not to disclose the name. At sentencing, the district court informed Kerr it would only consider retaining jurisdiction if Kerr provided the name of the individual who sold Kerr the stolen property. Kerr responded that he did not know the individual's name. The district court then sentenced Kerr to a unified term of fourteen years, with a minimum period of confinement of five years. For the first time on appeal, Kerr asserted that the district court violated his Fifth Amendment right against self-incrimination by asking the name of the seller.

The Court of Appeals held that Kerr failed to show a clear violation of an unwaived constitutional right. The district court's inquiry regarding the name of the seller did not violate Kerr's Fifth Amendment right to be free from compelled self-incrimination. Further, Kerr did not invoke his Fifth Amendment right but, instead, waived any privilege he may have had when he discussed his knowledge of the seller with the presentence investigator. The district court did not violate Kerr's Fifth Amendment rights by inquiring on the same subject at sentencing.