

## **SUMMARY STATEMENT**

*State of Idaho v. Cheng Yang*

Docket No. 46828

In this case arising out of Minidoka County, the Court of Appeals affirmed Cheng Yang's judgment of conviction and sentence for conspiracy to traffic in marijuana and the order of the district court denying Yang's I.C.R. 35 motion for reduction of sentence. Yang was arrested during an undercover drug operation after he and two other individuals delivered more than 100 pounds of marijuana to an undercover officer. Yang was charged with conspiracy to traffic in marijuana for his role in the drug transaction. Yang pled not guilty, and the case proceeded to trial. Before the case was submitted to the jury, Yang's counsel objected to the district court's jury instruction on the elements of the conspiracy charge, arguing that the instruction was inconsistent with the allegations pled in the charging document. The district court overruled Yang's objection.

The jury found Yang guilty of the conspiracy charge. The district court sentenced Yang to a unified term of fifteen years, with a minimum period of confinement of ten years. Subsequently, Yang filed an I.C.R. 35 motion for reduction of sentence, which the district court denied.

On appeal, Yang argued that the district court created a fatal variance by giving a jury instruction that listed his alleged coconspirators disjunctively when they were listed conjunctively in the charging document. Yang further argued that the district court abused its discretion by imposing an excessive sentence and denying his I.C.R. 35 motion for reduction of sentence. The Court Appeals held that there was no fatal variance because the identity of Yang's coconspirators was not an essential element of the conspiracy charge and the jury instructions listed the same alleged coconspirators as the charging document. The Court of Appeals further held that Yang failed to show that his sentence is excessive.