

SUMMARY STATEMENT

State v. Ish

Docket No. 49412

This case concerns an appeal from the second trial Martin Edmo Ish, who was originally convicted of voluntary manslaughter in 2017 for the 2009 death of Eugene Lorne Red Elk. After his initial conviction, Ish was sentenced to a unified sentence of 15 years with 10 years fixed and five years indeterminate. However, Ish's original conviction was later vacated by the Idaho Supreme Court in *State v. Ish*, 166 Idaho 492, 461 P.3d 774 (2020).

While Ish was awaiting his second trial, the Idaho Supreme Court issued a series of orders addressing public safety at jury trials during the COVID-19 pandemic, which postponed the commencement of Ish's second trial several times. Citing speedy trial concerns, Ish repeatedly moved for dismissal of his case, but his requests were denied by the district court. At the conclusion of his second trial, Ish was again convicted of voluntary manslaughter. Ish was sentenced to a fifteen-year unified sentence, the same overall sentence he received before; however, this time the district court ordered that the first 14 years would be fixed with one year indeterminate. This resulted in a fixed sentence four years longer than his original sentence.

Ish timely appealed to the Idaho Supreme Court, asserting seven points of error: (1) that Ish's speedy trial rights were violated; (2) that the district court erred in denying Ish's motion for a change of venue; (3) that the district court erred in denying Ish's motion to strike a juror for cause; (4) that the errors in the aggregate deprived Ish of his right to a fair trial; (5) that the district court violated Ish's right to due process when it "imposed a vindictive sentence" following Ish's successful appeal; (6) that the district court abused its discretion by imposing a fifteen year sentence, with fourteen years fixed, upon Ish's guilty verdict for voluntary manslaughter; and (7) that the district court abused its discretion in denying Ish's Idaho Criminal Rule 35 motion in light of the new information provided.

After finding the length of delay required further inquiry, the Idaho Supreme Court concluded that Ish's speedy trial rights were not violated. Additionally, the Court concluded that there was not sufficient evidence in the record supporting the conclusion that the district court erred in not changing venue. The Court also concluded that Ish failed to demonstrate actual or implied bias on the part of Juror No. 3. Having found no error, the Court explained that there could also be no cumulative error. Finally, the Court concluded that there was no error established in Ish's second sentencing. Accordingly, the judgment of conviction and sentence were affirmed.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******