

BOISE, THURSDAY, OCTOBER 22, 2009, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35792

CARLOS ESQUIVEL,)
)
 Petitioner-Appellant,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Nevin, Benjamin, McKay & Bartlett; Dennis A. Benjamin, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

Carlos Esquivel was convicted and sentenced on three counts of lewd conduct with a minor under the age of sixteen, and one count of sexual abuse of a child under the age of sixteen. Esquivel subsequently filed an application for post-conviction relief requesting that the district court appoint an attorney to represent him in his post-conviction claims based on ineffective assistance of counsel. The district court denied Esquivel's request for appointment of an attorney.

On appeal, this Court concluded that the district court erred in denying counsel in Esquivel's ineffective assistance of counsel claim in regard to his psychosexual evaluation. Moreover, we determined that the record indicated that the district court relied on the psychosexual evaluation and the results contributed to the length of Esquivel's sentence. The case was remanded to the district court to appoint counsel to assist Esquivel in pursuing this potentially valid claim.

On remand, the district court appointed counsel who filed an amended post-conviction petition alleging ineffective assistance of counsel stating that Esquivel's attorney rendered deficient performance in failing to properly advise him regarding his Fifth Amendment rights in submitting to a psychosexual evaluation. The district court ultimately dismissed Esquivel's petition. Esquivel appeals.

BOISE, THURSDAY, OCTOBER 22, 2009, AT 1:30 PM

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35284

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 ROBIN J. BELDEN,)
)
 Defendant-Appellant.)
 _____)

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Steven C. Verby, District Judge.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

An unnamed confidential informant (CI) began working with police in 2007 in order to reduce the CI's pending drug charge. The CI told officers that she believed she could obtain marijuana from a man by the first name of Robin. The CI and her car were searched for drugs, she was wired with a recording device, was supplied with money, and purchased marijuana from Robin Belden. The officer who visually observed the CI enter a residence and the CI told another officer that the drug transaction had taken place inside the home located at space 23 in a mobile home park. Based on receiving the information from the observing officer and the CI, the officer applied for a search warrant with the magistrate to search the home at space 23. The magistrate granted a warrant to search the home at space 23.

The officer who applied for the warrant and other officers entered the home at space 23, but left after determining that it was not Belden's home. The officer who testified originally before the magistrate at the warrant hearing for space 23 returned to the same magistrate. The officer testified that, upon entering the home at space 23, the officer immediately determined that the home at space 23 did not match the layout of a map provided by the CI. The officer testified that he looked at a bill near the phone and determined that the residence did not belong to Belden and the police immediately left. The officer spoke with the manager of the mobile home park and determined that Belden lived at the home in space 25. Therefore, the officer sought a warrant to search the home at space 25, which the magistrate granted. A search of the home at space 25 resulted in the discovery of marijuana, packaging materials, and a scale.

Belden was charged with possession of a controlled substance with intent to deliver. Belden filed a motion to suppress the evidence, asserting that the magistrate did not have probable cause to issue the warrant for his residence. The district court held a hearing and denied Belden's motion to suppress. Belden proceeded to trial and was found guilty by a jury. Belden appeals.