

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37973

STATE OF IDAHO,)	2011 Unpublished Opinion No. 572
)	
Plaintiff-Respondent,)	Filed: August 4, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
CHRISTIAN A. WITT,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Lewis County. Hon. John H. Bradbury, District Judge.

Order denying motion to strike, affirmed.

Fitzgerald & Van Idour; William J. Fitzgerald, Lewiston, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Elizabeth A. Koeckeritz, Deputy Attorney General, Boise, for respondent.

GRATTON, Chief Judge

Christian A. Witt pled guilty to conspiracy to unlawfully kill a big game animal, Idaho Code §§ 18-1701, 36-1401(c)(3), 36-1101(a), 36-502(b), 36-1402(e) and (f), and 18-204; possession of an unlawfully taken big game animal, I.C. §§ 36-409(c) and 36-1401(b); hunting without a valid Idaho hunting license, I.C. §§ 36-401, 36-1305, and 36-1402(b)(d); unlawfully baiting bears, I.C. §§ 36-409(j), 36-1402(b)(d), and Idaho Administrative Procedures Act 13.01.17.200; hunting in a closed season, I.C. §§ 36-409(c), 36-1305, and 36-1401(b), and; unlawfully kill and/or possess big game animals, I.C. §§ 36-409(c) and 36-1401(b). Pursuant to an Idaho Criminal Rule 11 binding plea agreement, several other charges were dismissed and Witt agreed that he would forfeit all Idaho hunting privileges for life, commencing on the date of sentencing. The district court entered a withheld judgment and placed Witt on probation for five years. Included within the terms and conditions of probation was the provision that “the defendant shall forfeit all hunting privileges for LIFE, commencing September 14, 2005” (emphasis in original).

Several years later, on May 5, 2008, Witt filed a motion “pursuant to Idaho Code Section 19-2604, for an order terminating the defendant’s probation, dismissing the above-entitled matter and restoring the defendant’s civil rights and privileges of hunting and fishing.” On May 23, 2008, Witt filed an amended motion which was identical to the initial motion except it deleted the phrase “and privileges of hunting and fishing.” On June 5, 2008, the district court entered an order terminating the probation, setting aside the guilty plea, dismissing the case, and providing that the dismissal “shall have the legal effect of restoring the above-named defendant to all of his civil rights.”

On October 9, 2009, the district court entered a “clarification.” The court stated that “it has been brought to the Court’s attention that there has been confusion as to whether this term [the lifetime hunting privileges forfeiture] was a condition of probation or an order that the defendant’s hunting privileges were forfeited for life.” The court explained that the provision was an order of the court and that the order of lifetime forfeiture of Witt’s hunting privileges remained in effect.

On May 14, 2010, Witt filed a motion to strike the clarification, arguing, as he does here, that the court lacked jurisdiction to enter the clarification and, alternatively, that the clarification should be withdrawn and the issue of hunting privileges left to the Idaho agency regulating hunting licenses. The State argued that the court had jurisdiction to enter the clarification as it was neither an amendment nor an order, but simply a clarification of an order, and that the provision was contractual and binding within the Rule 11 plea agreement. The court conducted a hearing on July 14, 2010, and orally denied the motion. After this appeal was taken, the district court, on September 1, 2010, entered a memorandum decision. The court agreed with the State that the clarification was not an attempt to amend or alter the withheld judgment, but to clarify it. The court stated that a forfeiture, in the context of a withheld judgment, is, as here, ordered in conjunction with the probation order, although the court acknowledged that a separate order of forfeiture may have avoided confusion. Nonetheless, the court indicated that it did not “change the plain meaning of the order withholding judgment and the plea agreement” forfeiting Witt’s hunting privileges for life.

Witt appeals timely from the denial of the motion to strike. Witt argues that the district court did not have jurisdiction to enter the clarification and, in addition, lacked authority to enter the clarification under I.C.R. 36. The State argues that this Court is without jurisdiction to hear

the appeal as Witt did not timely appeal the clarification. Whether a court lacks jurisdiction is a question of law, over which this Court exercises free review. *State v. Jones*, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004). Challenges to a court’s jurisdiction may be brought at any time. *Id.*

We note, first, that the clarification was not the product of any motion by a party, but sprung from an apparent *ex parte* communication bringing the matter to the court’s “attention.” The State did not complain at the time, and, in fact, argued on the motion to strike that the court had jurisdiction to enter the clarification because it was not an amendment or an order. However, the State now argues that Witt cannot appeal the decision on the subsequent motion to strike because Witt failed to timely appeal from the non-order clarification. The State did not argue that the motion to strike was any more procedurally barred than the *sua sponte* clarification. The State did not argue that the motion to strike could not be entertained by the district court because it lacked jurisdiction, likely since it was arguing that the court had jurisdiction to issue the clarification. Thus, we reject the argument from the State that we lack jurisdiction.

In this case, Witt entered into a binding agreement whereby he agreed to forfeit his Idaho hunting privileges for life. As a contractual term, Witt is bound by it, unless that contractual agreement has been amended to delete the ban. The agreement was a prerequisite to obtaining probation in the first place. In that sense, it was a condition of probation. As a term of probation, it could only be said, at the time Witt filed the motion to dismiss, that he “complied with the terms of probation” if the agreement of lifetime forfeiture remained in effect unless the agreement and term had been amended to delete the ban. As an order of the court, the lifetime forfeiture remained in effect unless the order was amended to delete the ban. At the sentencing hearing, Witt asked the district court to approve the Rule 11 agreement, including the forfeiture, which the court did and then indicated that it would follow and order its terms, stating in particular that “you will forfeit all hunting privileges in Idaho for life, starting today’s date.” The clarification changed nothing in regard to the continued existence of the lifetime forfeiture of Witt’s hunting privileges.

The Rule 11 contractual agreement was never amended to delete Witt’s agreement to lifetime forfeiture of hunting privileges. The terms and conditions of probation were never amended to delete the lifetime forfeiture. Witt’s representation in the motion to dismiss that he was compliant with the probationary terms, ordered upon the Rule 11 agreement, could only

mean he was compliant with his agreement to the lifetime forfeiture. Significantly, Witt originally asked for dismissal and reinstatement of his hunting privileges and then amended his motion to delete the request for reinstatement of his hunting privileges. We imply no attempt to hoodwink the district court and so conclude that Witt, abiding by his agreement, did not ask for reinstatement of his hunting privileges and, therefore, none was ordered. Under these circumstances, Witt's request, and the court's order to reinstate his civil rights taken by operation of law, most assuredly did not include hunting privileges. Moreover, the argument that a dismissal, pursuant to I.C. § 19-2604(1), of a withheld judgment renders it as if it had never been entered at all is misplaced. While the dismissal relieves the defendant of the burden of a criminal record, it does not erase the proceeding. If that were the case, a defendant like Witt would be entitled to refund of the substantial fines and costs paid as a condition of the probation. The order of dismissal no more entitled Witt to relief from the lifetime forfeiture than the financial terms set out in the Rule 11 agreement and ordered by the district court.

As Witt points out, a trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final. *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003). However, the clarification did not amend or set aside a final judgment and was not an attempt to correct a clerical error. As noted above, the clarification, in reality, had no changing effect on the withheld judgment or the order of dismissal. The district court's order denying Witt's motion to strike is, therefore, affirmed.

Judge GUTIERREZ and Judge MELANSON CONCUR.