

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 49358-2021
)	
v.)	ADA COUNTY NO. CR01-17-46404
)	
NICKOLAUS AARON)	
OLDENBURG,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE PATRICK J. MILLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Nickolaus Aaron Oldenburg appeals from the district court's order denying his unopposed motion to seal his criminal case file pursuant to I.C. § 67-3004(10). He asserts that the district court erred by denying his motion because he met the requirements set forth in the statute. The district court's conclusion that it lacked authority to grant the motion should be reversed.

Statement of the Facts and Course of Proceedings

Mr. Oldenburg articulated the relevant facts and proceedings in the Appellant's Brief. They are not repeated here, but are incorporated by reference.

ISSUE

Did the district court err by denying Mr. Oldenburg's unopposed motion to seal his criminal case file?

ARGUMENT

The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File

A. Introduction

Mr. Oldenburg asserts that he was entitled to have his criminal case file sealed pursuant to I.C. § 67-3004(10) and that the district court therefore erred by denying his motion.

B. The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File

The State asserts that Mr. Oldenburg’s argument fails because it does not address or refute the district court’s “core analysis that it this Court, and the not the Idaho Legislature, that has constitutional authority over court records.” (Respondent’s Brief, p.3.) The State further asserts that “[a]pplication of relevant constitutional standards . . . shows [I.C. § 67-3004(10)]’s enforceability depends on (1) its compatibility with I.C.A.R. 32 and (2) the Legislature’s limited constitutional authority to create rules of court procedures.” (Respondent’s Brief, p.4.) Mr. Oldenburg respectfully disagrees.

First, the district court never held that I.C. § 67-3004(10) was unconstitutional. The only time the court mentioned the Idaho Constitution was when it stated that it doubted that the “Department [the Idaho State Police] could implement rules affecting court records without approval of the Idaho Supreme Court.” (R., p.97.) It did not hold that the *Legislature* had exceeded its constitutional authority. The court noted it doubted that the Idaho State Police could implement rules relating to court records in its conclusion that the State permitted the department

to adopt rules necessary to the implement of Chapter 30, Title 67 and its conclusion that Mr. Oldenburg could not obtain the relief he requested from the Idaho State Police. (R., pp.97.98.)

Mr. Oldenburg did not dispute these points on appeal. He agreed that the State Police did not have authority over court records and that he could not obtain the relief he requested from the State Police, but he asserted (and continues to assert) that this is irrelevant. (Appellant’s Brief, p.7.) As Mr. Oldenburg noted in the Appellant’s Brief, he did not seek relief from the State Police in this case, he sought it from the district court, which has authority over its own records. (Appellant’s Brief, p.7.) As Mr. Oldenburg asserted in the Appellant’s Brief, the rules contemplated in the statute are those “necessary to implement the provisions” of the statute, because Mr. Oldenburg qualified under this non-discretionary statute, no further rules were necessary and the district court erred.

Next, the State spends the majority of its briefing addressing the contention that Article V, Section 13 of the Idaho Constitution forbids the legislature from exercising powers pertaining to the judicial department (Respondent’s Brief, pp.3-6.), and that when a conflict exists between certain statutory provision and the Idaho Criminal Rules in terms of procedure, the rules will prevail. (Respondent’s Brief, p.4 (citing *State v. Beam*, 121 Idaho 862, 863 (1992)). These issues were not addressed in the district court’s order.¹ As Mr. Oldenburg already noted, the only time

¹ Because the State did not oppose Mr. Oldenburg’s motion in the district court, it cannot raise any new claims on appeal. *See, e.g., State v. Wolfe*, 165 Idaho 338, 341-42 (2019) (“issues not raised below will not be considered by this [C]ourt on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.”)

the court mentioned the Idaho Constitution was its concern that the State Police had authority over the court's records, a point that he does not dispute on appeal.

Although Mr. Oldenburg does not believe that the district court held that the legislature lacked constitutional authority to pass the amendment to I.C. § 67-3004(10), and that the State's argument is not preserved, Mr. Oldenburg notes that the State has acknowledged that I.C. § 67-3004(10) "is not necessary conflicting" with any court rules. (Respondent's Brief, p.5.) He also submits that, as the district court found, the statute provides grants a substantive right to defendants such as Mr. Oldenburg. (R., p.96.) "Statutes and rules that can be read together without conflicts must be read in that way." *State v. Garner*, 161 Idaho 708, 711 (2017).

"When there is a conflict between a statute and a criminal rule, this Court must determine whether the conflict is one of procedure or one of substance; if the conflict is procedural, the criminal rule will prevail." *State v. Johnson*, 145 Idaho 970, 974 (2008). On the other hand, when the conflict is substantive, the statute will prevail. *State v. Two Jinn, Inc.*, 148 Idaho 706, 709 (2010). Because I.C. § 67-3004(10) grants Mr. Oldenburg a substantive right and is not in conflict with a court rule, the statute applies and the district court erred by not applying it.

However, even accepting the State's premise that I.C. § 67-3004(10) is procedural and that the legislature can only make procedural rules when it is "required by changing circumstances," Mr. Oldenburg submits that this requirement is met.

Representative Zito, a co-sponsor of the amendments, expressly noted the difficulty and, often, impossibility of defendants being able to have their court records sealed for dismissed charges when addressing the House Judiciary, Rules, and Administration Committee about the

need for the now adopted changes to I.C. § 67-3004(10). *See* March 15, 2018 Minutes, Idaho House Judiciary, Rules and Administration Committee, pp.147-148.² She also noted that these records were in the “courts’ publicly available online database.” *Id.* at 147. Mr. Oldenburg submits that the ready availability of anyone to access this online database is a “changing circumstance” that would justify the legislature’s actions in amending the statute.

CONCLUSION

Mr. Oldenburg requests that the district court’s order denying his motion to seal his case file be reversed and this case remanded for an order sealing the case file.

DATED this 9th day of November, 2022.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

² These minutes can be found through the Legislature’s official website at this link: <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/HJUDmin.pdf#page=144>.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2022, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to be served as follows:

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E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas