State of North Dakota
Supreme Court

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SUPREME COURT MAY 04 2010

David Meador,
Appellant, - Defendant

20100063

v.

Case No. 20100063

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY - 3 2010
STATE OF NORTH DAKOTA

State of North Dakota,
Appellee- Plaintiff

I Reply Brief

(1.) The appellee has responded to the united States Supreme Court's opinion of Weaver v. Graham and attempts to replace it with one of his own.

In Weaver, the Court held:

> "To be ex post facto, a criminal or penal law must be retrospective in that it must apply to events occurring before its enactment and it must disadvantage the offender effected by it, but it need not impair a "vested right." N4.

The Appellee does make issue as to the amount of evidence as "beyond a reasonable doubt." Normally the evidence in any civil issue standard is a "little more than half," and that standard should be applied in this case. It is considered factual that the 1995 Amendment to N.D.C.C. 12.1-32-15 is retrospective and was applied retrospectively to the Appellant's case. Whether the Court invoke high end standards or common standards, this fact remains the same,

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i

The Court:

"And I think what the legislature was concerned about is when they move from 835 10th Avenue to 448 Southwest, and they lived two years over here and they ~~live~~ plan to live to years over there. I think that's what they were really after." See transcript 9-17-08 p.36 N. 23-25; p.37, N. 1-3.

The Appellant does hereby adopt, incorporate, and restate, every issue he has stated in this Case into this Appeal.

II Supplemental Statement

(1) The Appellant Should be held to a "less stringent standard" as a pro se litigant and by which a pro se pleading is judged, see Haines v. Karner, 404 U.S. 519, 520, 30 L.Ed. 2d 652, 92 S. Ct. 594 (1972).

N.D.C.C. 12.1-32-15 1995 Amendment violate ex post Facto, and Federal and State Constitutions as an ex post Facto law as a Criminal-penal Statute and as applied to Appellant is unconstitutional and void.

(2). There is No requirement in the North Dakota Century Code 12.1-32-15 that requires the Appellant to register if he has no address, in three days.

(3). There is a substantial difference between "Notice" and "Registration".

(4). The registration requirement starts upon a change of address and after establishment of a New residence, and than, the three day period is to begin. 12.1-32-15(7).

(5). The trial Court improperly instructed the Jury on definition of Address. a Supreme Court Statement is Not a part of the legislative enactment N.D.C.C. 12.1-32-15 and prejudiced Appellant. Transcript 8/6/2009 p1-8.

As, such was applied to appellant's 1994 offense, and such application has disadvantaged the appellant in this case. Weaver held:

"To be ex post facto, a criminal or penal law must be retrospective in that it must apply to events occurring before its enactment and it must disadvantage the offender affected by it, but it need not impair a "vested right."

III Supremacy Clause

(1) N.D.C.C 12 is a criminal-penal law; it was retrospectively applied to appellant's 1994 offenses, and has disadvantaged the appellant. See N.D.C.C. 12.1-32-15. Judgments by the United States Supreme Court are the supreme law of the land and all states are bound by them. Weaver controls this case. Transcript p36 at 16-18. Sept. 24, 2009.

(2) It was not punishable on May 9, 1994, the time of appellant's arrest, for the act of failure to comply with registration in Kentucky. Nor does North Dakota have jurisdiction over crimes in Kentucky. The Constitution's ex post facto prohibitions (Art 1, § 9, cl. 3, Art 1, §10, cl 1,) forbid the Congress and the states from enacting any law which imposes a punishment for an act which is not punishable at the time it was committed. This is the supreme law of the land.

3 Registration statute does not require offenders to "supply another address" in three days. Section (7) requires an offender to, "upon a change of address the individual shall register within three days at the law enforcement agency having local Jurisdiction of the NEW residence."

The trial Court stated:

"No, when I read it it didn't say that, I can read it again 12.1-32-15 paragraph two. The Court shall impose an addition to Any penalty provided by law requiring that the individual register within three days of coming into a County in which the individual resides or is temporarily domociled.... "So thats what you were told by the Court".... "et. Seq.. p.21 N.19-23; p22, N4-5. 2-13-09

4 Section 2 is a section to be used by a Court at a sentencing hearing after being found guilty of a Sex Crime in North Dakota. The Appellant has never been ordered by a Court to register. See p. 29, N.6-7 9-24-09, transcript.

Section 7 is before the Court, and the 1995 Amendment.

5 The trial Court did Not properly instruct the Jury of the definition of three days or of Address, and the Appellant was prejudiced. The Appellant being without an address Nonthe less Notified ("Burr") Authorities on August 14th, 15th, 19, and 20 in valley City. These Contacts meet the requirement set forth and directed to a person without a "New permanent residing Address" to Notify law enforcement (See Burr) of the Change. To Notify law enforcement, does Not mean "to Supply a New Address in three days" As stated by Anderson. Nor does it Mean to "Supply a ~~written~~ written statement Signed by the individual." in three days, as stated by Grossman.

6 This Judgment Cannot Stand because Appellant was Charged with failure to register when he was only required to give Notice to law enforcement under burr. He complied with that requirement. In burr, the Court did Not Set a time in which to give Authorities Notice of the Change but Appellant gave Notice on four of the Six day involved in this Case and, between August 14, 2008 and August 19, 2008. The Appellant was only required to give one Notice to law enforcement. If this Course was incorrect, this Court Needs to instruct a proper procedure to be Complyed with. 12.1-32-15. (7)

7. The Appellant in this Case was Not Sentenced in this State for a sex related Crime and 12.1-32-15 (2) does Not Apply to him, Nor was he given Notice in 1994 At the time of his offense in Kentucky.

8. The Appellant gave law enforcement Notice as required under Barr on Four (4) of the Six (6) days involved between August 14 2008 And August 20, 2008. The Appellant had personal Contact with City police on August 14; August 15, August 20, 2008. The Appellant had telephone Contact on August 14, 15, 19, and 20th with Valley City police. This Cannot be Considered as a person Attempting to circumvent registration process or Attempting to slip through the cracks or to thwart the registration process. See Barr 598 N.W.2d 147

9. The Jury instructions did Mislead the Jury in the fact that they understood that Appellant was, according to the instruction, "was being Allowed to circumvent the registration process, Sliped through the cracks, and thwart the registration process. None of this is part of the 6,566 word Statute, and prejudiced Appellant. The Constitution's ex post Facto prohibitions (Art 1, §9, cl 3; Art 1, §10, cl 1) uphold the separation of powers by confining the legislature to penal decisions with prospective effect and the judiciary and executive to applications of existing penal Law. Weaver v. Graham, 450 US 24 (1981) N.3a 3b.

The Statute clearly establishes that the registration period begins three days After the establishment of a New place of residence. N.D.C.C. 12.1-32-15 (7):

(7) "upon a change of address the individual required to register shall Also register within three days at the law enforcement agency having local Jurisdiction over the NEW place of residence, School, or employment."

This provision does Not State [a person must Supply a New residence in three days] - NOR - [establish a New residence in three days] - NOR - [Register a New residence if you don't have one]. The State's position that "Meador need not establish a New residence for the three-day registration period to begin." is absurd.

If you remove from the Statute, the words:

1. (upon change of Address) = "New Address"
2. (having local Jurisdiction over) = "New Agency"
3. (The New place of residence,) = "New residence"

The Statute Would read:

"the individual required to register Shall also register within three days at the law enforcement agency."

but it does Not!

You Cannot Remove those words.

Conclusion

(10) The Appellant complied with the Notice requirement of Burr, and Complied with 12.1-32-15 on the 19th, 20th, and 22nd of August 2008. There was No violation of registration and the Conviction Must be overturned. Alternatively, the 1995 provision of Amendment to Registration Constitutes an Ex post facto law and violate Appellant's Substantive due process Rights under Federal law and is therefore UNCONStitutional and void.

David M

David Meador Appellant.

Po Box 5521, Bismarck, ND 58506

Certificate of Service

This is to Certify a true and Correct Copy of the Foregoing has this day been placed in the U.S. Mail and Addressed to the following:

Lee Grossman

230 4th St. NW

Valley City, ND 58072

On this ___ day of April, 2010

David M

David Meador