

IN THE SUPREME COURT OF IOWA

STATE OF IOWA
Plaintiff-Appellee,

v.
MAURICE FREDERICK
BOONE JR.,
Defendant-Appellant.

SUPREME COURT NO.
21-1813

POLK COUNTY NO.
FECR296139

APPEAL FROM THE IOWA DISTRICT COURT FOR
POLK COUNTY
THE HONORABLE SCOTT BEATTIE

APPELLANT'S FINAL REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES

- I. DID THE DISTRICT COURT ERR IN DENYING BOONE'S MOTION TO DISMISS BY HOLDING THAT THE STATUTE OF LIMITATIONS HAD TOLLED BECAUSE HE WAS NOT "PUBLICLY RESIDENT" WITHIN THE STATE?

Cases

State v. Stillings, 778 P.2d 406 (Mont. 1989)

State v. Tague, 676 N.W.2d 197 (Iowa 2004)

T&K Roofing Co. V. Iowa Dep't of Educ., 593 N.W.2d 159 (Iowa 1999)

Statutes

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Iowa Code Section 802.6

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MT ST 45-1-206

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Tex. Code Crim. Proc. Ann. Art. 12.05

Utah Code Section 78-1-304

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING BOONE'S MOTION TO DISMISS

A. Legislative History Supports Boone's Argument

In its brief, the State correctly states that the relevant language of the statute has essentially remained unchanged since its original adoption in the 1851 Code of Iowa. Section 2814 of the 1851 Iowa Code stated as follows:

If defendant out of the state. If when the offense is committed the defendant is out of the state, the indictment or prosecution may be found or commenced within the time herein limited after his coming into the state, and no period during which the party charged was not usually and publicly resident within the state is a part of the limitation.

(bold heading in original). In addition to the language of the statute, the heading makes it abundantly clear that the tolling provisions only apply when a defendant is out of the state and is not limited in the manner suggested by the State. While a heading/title “cannot limit the plain meaning of the text, it can be considered in determining legislative intent.” *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004) (quoting *T&K Roofing Co. V. Iowa Dep't of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999)).

While the relevant language remained essentially the same, the headings/titles of the provision underwent a few changes up until 1978. According to the historical codes, between 1851 and 1897, the statutes heading remained “If defendant out of state” or “Defendant out of state.” (See Iowa Code Section 2814 (1851); Iowa Code Section 4516 (1860); Iowa Code Section 4169 (1873-1880); Iowa Code Section 5553 (1888); Iowa Code Section 5167 (1897)). In 1919, the Code Section title was modified to state “Time defendant out of state deducted.” Iowa Code Section 9091 (1919). In 1924 the title was again modified to “Absence from state deducted.” Iowa Code Section 13446 (1924). It remained “Absence from state deducted” from 1924 through 1977. (See Iowa Code Section 13446 (1927 - 1939); Iowa Code Section 752.5 (1946-1977)). In 1978, Iowa Code Section 802.6 was adopted which changed the heading title to “Periods excluded from limitation.” Iowa Code Section 802.6(1) (1979). However, as recognized by the State, the clause which is in dispute here was not changed. Importantly, the 1979 version of Iowa Code Section 802.6(1) introduced the opening modifier “When a person leaves the state.”¹ Given

¹ The State asserts that Boone’s reading of Iowa Code Section 802.6(1) would give no meaning and effect to the word “publicly” in the statute. However, it is actually the State’s reading that would make sections of

this legislative history, it is clear that when the language contained in the current Iowa Code Section 802.6(1), it was meant to be limited to instances when a criminal defendant is not physically present within the State of Iowa. Thus, the legislative history supports Boone's position and as such, this Court should reverse the district court's denial of his motion to dismiss.

B. Statutes and Holdings of Other States Provide Little Insight

In an attempt to support its position, the State relies upon statutes and rulings from several other jurisdictions. However, the State fails to recognize the significant differences between each of the proposed sister states statutory language and language of the Iowa Code Section 802.6(1). While it is undoubtedly true each of those jurisdictions have language which contains "publicly resident" or "publicly a resident," none

Iowa Code Section 802.6(1) superfluous. Indeed, if the State's reading of Iowa Code Section 802.6(1) is correct, it would render "When a person leaves the state" meaningless because a person would not be "publicly resident" under the State's analysis, if they were not in the State. It would also render meaningless the remaining beginning section of Iowa Code Section 802.6(1). There would be no reason to have any of the language before the "and no period" language if "publicly resident" was broad enough to include both individuals within the state and outside the state. Instead, it is clear that reading the statute as a whole, Boone's interpretation must be proper to give meaning and effect to all aspects of the statute.

of the states have the important modifier language of “when a person leaves the state” that is found in Iowa Code Section 802.6(1). Indeed, Indiana’s tolling statutes specifically provides a further exception to a person who “conceals himself or herself that process cannot be served.” IN St. 35-41-4-2(h)(1).

The closest example provided by the State may be Montana’s tolling statutes which provides that “any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state” is tolled. MT ST 45-1-206(1). However, it is important to note that the legislative history of MT ST 45-1-206(1) specifically stated that this tolling provision “tolls the statute for the offender who is absent from this state, or absents himself from his usual place of abode and makes some effort to conceal himself.” *State v. Stillings*, 778 P.2d 406, 409 (Mont. 1989) (quoting Criminal Law Commission Comments on section 45-1-206). Iowa contains no such legislative history, and as stated previously, the history to Iowa Code Section 802.6(1) indicates it is only applicable when a criminal defendant is out of state.

Finally, it is worth noting that an interpretation of Iowa Code Section 802.6(1) holding that there is no tolling unless the defendant is out of the state will not put Iowa on an island. There are many states that have tolling statutes which explicitly only apply when a criminal defendant is out of the state. *See e.g.*, Maine, ME. Rev. Stat. tit 17-A, Section 8(3)(A) (“The periods of limitations shall not run: (a) During any time when the accused is absent from the State...”); South Dakota, S.D. Codified Laws Sec. 23A-42-5 (“If when or after the offense is committed the defendant is out of the state, the indictment, information, or complaint may be filed within the period prescribed...inclusive, after his coming within the state, and no time during which the defendant is not an inhabitant within the state is part of the limitation.”); Texas; Tex. Code Crim. Proc. Ann. Art. 12.05(a) (“The time during which the accused is absent from the state shall not be computed in the period of limitation.”); Utah, Utah Code Section 78-1-304(1) (“The period of limitation does not run against any defendant during any period of time in which the defendant is out of the state following the commission of an offense.”).

C. The State Failed to Establish Boone was “Publicly Resident”

Even assuming the State’s requested definition of “publicly resident” is accurate (it is not), the State did not satisfy its burden to establish that Boone was not “publicly resident” in the State of Iowa. The State argues that “Boone disconnected from society” by not using his social security number, paying taxes, receiving public benefits, etc. (Appellee Brief P. 27). However, the problem is that the State did not establish that Boone had done any of those things before the charges were filed either. The State did not establish that Boone was fleeing justice or attempting to evade police. In fact, the State (and the district court) actually establish the problem with the State’s position. Assuming that Boone did not participate in any of these public activities/services prior to the incident alleged in the trial information, it would mean that the State would have a potentially limitless time in which to file or pursue criminal charges against him. This would also equally apply to many people who do not have typical means to participate in society like homeless individuals, or young unemployed adults who are living at home with their parents.

Further, the State did not establish that Boone was actually out of the State of Iowa during the periods in question. Instead, the only evidence presented regarding Boone's whereabouts (with the exception of a few days in Texas, a few minor trips, and his ultimate arrest in Nebraska) was Boone's testimony that he was actually in Iowa. There was no evidence that he had undertaken a secret identity or was in anyway evading police. The State simply did not and could not, present any evidence to contradict Boone's testimony. As such, this Court should reverse the district court's denial of Boone's motion to dismiss and find that the State failed to establish that the tolling provisions of Iowa Code Section 806.2(1) were inapplicable.

CONCLUSION

Boone respectfully requests that this Court reverse the district court's denial of his motion to dismiss.

REQUEST FOR ORAL ARGUMENT

Boone respectfully requests oral argument in this matter.

Respectfully Submitted,

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ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Proof Brief and Argument was \$0.00, as it was electronically filed.

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CERTIFICATE OF COMPLIANCE

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Dated: October 12, 2022.

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CERTIFICATE OF SERVICE AND CERTIFICIATE OF FILING

I certify on October 12, 2022, I will serve this brief on the Appellee's Attorney, Iowa Attorney General, by electronically filing it.

I further certify that on September 12, 2022, I will electronically file this document with the Clerk of the Iowa Supreme Court.

I further certify that on October 12, 2022, I will send a copy of this document to the Appellant Maurice Boone # 6742369 at Mount Pleasant Correctional Facility, 1200 E. Washington, Mt. Pleasant, IA 52641.

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