

8-17-2012

## State v. Reece Appellant's Reply Brief Dckt. 38661

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38661
	)	
v.	)	
	)	
BRENT ARDEN REECE,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

**REPLY BRIEF OF APPELLANT**

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME

HONORABLE JOHN K. BUTLER  
District Judge

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JUL 7 2012  
CLERK OF DISTRICT COURT

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## STATEMENT OF THE CASE

### Nature of the Case

Following a jury trial, Brent Reece was found guilty of driving under the influence of alcohol (*hereinafter*, DUI), and of having had a prior felony DUI conviction within the last fifteen years, thus making his recent DUI conviction a felony. Mr. Reece also pled guilty to a “persistent violator” enhancement under I.C. § 19-2514. The district court then imposed upon Mr. Reece a unified sentence of twenty-five years, with seven years fixed.

In his opening brief, Mr. Reece argued that he has been denied due process on appeal insofar as the Idaho Supreme Court required him to file his Appellant’s Brief prior to his counsel’s receipt and review of all necessary portions of the trial record. He also argued that his twenty-five year sentence for DUI is excessive under any view of the facts and thus represents an abuse of the district court’s sentencing discretion.

In response, the State argues that Mr. Reece has demonstrated neither a denial of due process on appeal nor an abuse of discretion at sentencing.

The sole purpose of this reply brief is to withdraw from this Court’s consideration the due process issue raised in Mr. Reece’s Appellant’s Brief.

### Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were generally set forth in Mr. Reece’s Appellant’s Brief and, therefore, are not repeated herein.

However, Mr. Reece would point out that since filing his Appellant’s Brief in this case, the record on appeal has been augmented with a supplemental transcript that he

requested be made part of the record on appeal.<sup>1</sup> Although it was anticipated that, upon receipt and review of this supplemental transcript, Mr. Reece would be filing a motion for leave to file a revised or supplemental appellant's brief in order to raise additional issues on appeal, he has not filed any such motion and has not sought leave to assert additional issues on appeal.

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<sup>1</sup> This supplemental transcript contains portions of his trial that were missing from the original trial transcript: the jury selection on the first day of trial, the giving of the pre-proof jury instructions, receipt of the jury's verdict during the first part of the three-part trial, the second part of the trial, and the change of plea proceedings that were held in lieu of the third part of the trial. (See *generally* Supp. Tr.)

## ISSUE

Did the district court abuse its sentencing discretion by imposing upon Mr. Reece a sentence which is excessive given any view of the facts?

## ARGUMENT

I.

### The Supreme Court Denied Mr. Reece Due Process On Appeal By Requiring Him To File His Appellant's Brief Prior To His Counsel's Receipt And Review Of All Necessary Portions Of The Trial Record

Mr. Reece hereby withdraws the claim, presented in his Appellant's Brief, that the Idaho Supreme Court denied him due process on appeal by requiring him to file his appellant's brief prior to his appellate counsel's receipt and review of all of the necessary portions of the trial record.

II.

### The District Court Abused Its Sentencing Discretion By Imposing Upon Mr. Reece A Sentence Which Is Excessive Given Any View Of The Facts

Mr. Reece still asserts that the district court abused its discretion by imposing an excessive sentence. However, because the State's arguments on this issue are unremarkable, no response is called for herein and Mr. Reece simply refers the Court to pages 10-13 of his Appellant's Brief.

## CONCLUSION

For the foregoing reasons, as well as those set forth in his Appellant's Brief, Mr. Reece respectfully requests that this Court reduce his sentence to ten years, with five years fixed, and remand his case with an instruction that the district court retain jurisdiction.

DATED this 17<sup>th</sup> day of August, 2012.



ERIK R. LEHTINEN  
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of August, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

BRENT ARDEN REECE  
INMATE #45187  
ICC  
PO BOX 70010  
BOISE ID 83707

JOHN K BUTLER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

DAVID HEIDA  
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Hand delivered to Attorney General's mailbox at Supreme Court.

  
EVAN A. SMITH  
Administrative Assistant

ERL/eas