

8-16-2012

# State v. Veenstra Appellant's Reply Brief Dckt. 38993

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

## Recommended Citation

"State v. Veenstra Appellant's Reply Brief Dckt. 38993" (2012). *Not Reported*. 406.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/406](https://digitalcommons.law.uidaho.edu/not_reported/406)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

2012 AUG 16 11:05 AM

State Of Idaho, )  
Plaintiff/Respondent )

NO. 38993

VS:

Albert Pete Veenstra, III, )  
Defendant/Appellant )

---

REPLY BRIEF OF APPELLANT

---

ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF GOODING  
STATE OF IDAHO

---

THE HONORABLE ROBERT J. ELGEE, PRESIDING

---

For The Respondent

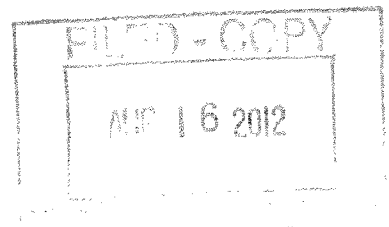
For The Appellant

Lawrence G. Wasden  
Attorney General  
State of Idaho  
  
Paul R. Panther  
Deputy Attorney General  
Criminal Law Division  
Post Office Box 83720  
Boise, Idaho  
83720-0010

Albert Pete Veenstra, III  
I.D.O.C. #21864  
I.S.C.I., Unit 13  
Post Office Box 14  
Boise, Idaho  
83707

Pro-Se

(208) 334-4534



ISSUES PRESENTED FOR REVIEW

- I. Does the clerk of a district court judge have authority to alter a criminal judgment and sentencing document?
- II. A Notice of Appeal is Jurisdictional, and failing to file a Notice of Appeal within the prescribed time limits compels the finality of the written Judgment and Sentence, and a Court then lacks Jurisdiction to change the sentence imposed.
- III. Does only the Court have the authority to change a criminal sentence under Idaho Criminal Court Rule 36?
- IV. Has there been fraud committed; and does not the Appellant have a right to the finality of the Judgment?

As stated, in the Responsive pleading by the State of Idaho, to this Appeal, the Attorney General of Idaho has "rephrased" the above listed issues into the following question:

"Has Veenstra failed to show error by the District Court"?

The Appellant stands on the issues he has previously presented to this Court in the Opening Brief of Appellant, and makes the statement that to rephrase the issues as the State of Idaho has, is asking this Court to allow the Respondent to answer to an issue which was not litigated to any Court for review, and is not before this Court in this appeal. In short, no where in this Appeal has the Appellant stated that the District Court committed any error.

Based upon this information, the Appellant would ask this Court to strike from the record the Response of the State.

### STATEMENT OF THE CASE

The Appellant, Albert Pete Veenstra, III, has appealed from the denial of his attempts to compel the Department of Corrections to follow the Judgment and Sentence imposed upon him.

The Appellant contends that the Court Ordered him to be taken into the 180 day program, (Rider program), and that the Department of Corrections has failed to follow that judgment.

The Appellant then sought, from the District Court, an Order which would have compelled the Department of Corrections to follow the Judgment and Sentence as ordered.

The State of Idaho, Respondent, has not correctly stated why the Appellant sought relief under Idaho Criminal Court Rule 35. The Appellant sought relief under the aforementioned Rule because the Department of Corrections was trying to impose the Judgment in an illegal manner. Instead of following the written Judgment and Sentence as was ordered, (by placing the Appellant in the 180 program), the Department of Correction sent the Appellant to an "out-of-State" prison.

Because the time for filing a Notice of Appeal had passed, and the State not having filed such an Appeal, (And a Notice of Appeal being Jurisdictional , and failing to file such brings finality to a Judgment), the Department of Corrections attempted to change the written Judgment and Sentence by contacting the

Clerk of Judge Elgee, who attempted to "amend" the Judgment and sentence.

This appeal follows from those attempts. For further information on the facts of this Appeal, please see the Opening Brief of Appellant.

However, it is very important for this Court to understand that the State of Idaho, in the Response of the State, in this Appeal, has changed the issues litigated in this Appeal. The State has "re-phrased" the issues raised, (Not answering those issues), and re-phrased them into a generalized question, which was poised as,

"Has Veenstra failed to show error by the District Court"?

The Problem here is apparent, The Appellant is not asking this Court to find error with the District Court. The Appellant is asking this Court to find error with the Department of Corrections for not following a valid order of the District Court.

Because the State of Idaho has failed to address the issues as was presented, and argued to this Court in the Opening Brief of the Appellant, this Court should grant to the Appellant the relief he requested in this Appeal.

ARGUMENT OF FACTS AND LAW

The Appellant has filed a Notice of Appeal, and has submitted to this Court his Opening Brief on Appeal.

The Opening Brief of Appellant is in the proper format, pursuant to the Rules of Appellate Procedure. (Even though the Appellant is acting in a Pro-Se format, with no access to any form of case-law or legal reference materials).

The Respondent has now filed the responsive pleading, but is attempting to change the issues as was presented to this Court for review.

By "rephrasing" the questions and issues presented by the Appellant, the State of Idaho, (i.e., the Respondent), have not answered the questions presented in this appeal.

The Idaho Appellate Rules, Rule 35, (b), (6), clearly states that the Respondent shall respond to the contentions of the Appellant.

The Respondent has failed to answer the issues as was presented to this Court in the Opening Brief of Appellant, and therefore it is proper for this Court to grant to the Appellant the relief he sought in this Appeal.

The Respondent makes the argument that the Appellant has not shown error by the District Court.

The Appellant agrees with the Respondent. There was no error by the District Court. The written Judgment and Sentence

is clear on it's face. The District Court did not commit any error. The District Court ordered that the Defendant be placed in the 180 day program.

The Department of Corrections has refused to carry out the lawful order of the Court. That is where the error has taken place; Not in the District Court.

WHEN-THERE IS NO ORAL RECORD, THE WRITTEN JUDGMENT CONTROLS

At no time has the Respondent shown to this Court any type of evidence that the written Judgment and Sentence conflicts in any way with what was orally pronounced in Court.

The Court of Appeals of the State of Idaho, in the case of State V. Allen, 172 P.3d 1150, 144 Idaho 875, (2007), stated as follows:

"A clerical error in typing a written judgment that directly conflicts with an orally pronounced sentence can be corrected by the trial court at any time, but the criminal rule permitting correction of such errors is not a vehicle for the vindication of the court's unexpressed sentencing expectations, or for the correction of errors made by the court itself". (Emphasis added)

In the case before this Court, it was not the Court who tried to change the Judgment and Sentence, it was the Judge's Clerk, and it was done at he behest of the Department of Corrections.

As stated previously, it is not the District Court who has committed an error, or abused it's discretion. It is the

Idaho State Department of Corrections who refuse to comply with a valid order of the District Court.

In the case of Wall v. Kholi, 560 U.S. \_\_\_\_, (2010), later reviewed by way of cert. in 2011, the United States Supreme Court clearly held that a Rule 35 Motion could be used to correct a sentence that was being implemented in an illegal fashion.

This is exactly what is taking place in this case. The Idaho State Department of Corrections has received the Appellant into their custody and control, with a valid sentencing Court order which directs that the Appellant be taken into the 180 day program within 14 days of his arrival at the Department of Corrections.

Instead of carrying out this valid order, the Department of Corrections has attempted to change the order. This is wrong and violates Due Process of Law as guaranteed to the Appellant under the Fourteenth Amendment to the United States Constitution, as well as the Sixth and Fifth Amendments thereof.

The Respondent has not answered the allegations of the Appellant as put forward in the Opening Brief on Appeal.

The Respondent has not shown this Court any evidence to suggest that there is a conflict between the oral and the written Judgment and Sentence.

The Respondent has not shown this Court any authority for a Judge's Clerk to have altered the written Order of Commitment.



The Respondent has not shown this Court any reason why the Idaho State Department of Corrections did not, and has not followed the Sentencing Court Order, as they were directed to do.

Once more, this action has denied to the Petitioner Due Process of Law.

The Ninth Circuit Court of Appeals, as well as the United States Supreme Court has stated, "...the failure of a State to abide by it's own statutory commands, may implicate a liberty interest which is protected by the Fourteenth Amendments Due Process Clause". Please see, Hicks V. Oklahoma, 447 U.S. 343, at 346, 65 L.Ed.2d 175, (1979); Fetterly V. Pasket, 997 F.2d 1295, 1300, (1993); Ballard V. Estelle, 937 F.2d 453, 456, (1991); Lambright V. Stewart, 167 F.3d 477, (1999).

The Statutory command at issue in this case, (and duty), is that the Department of Corrections is merely a custodial agency; It is the Duty of the Department of Corrections to obey the written Judgments they receive. Spanton V. Clapp, 78 Idaho 234, 299 P.2d 1103, (1956). It violates Due Process when the State only abides by the mandates of a Court order when they want to do so, or when it pleases the Department of Corrections to do so. Due process demands that the Department of Corrections obey ALL Court mandates and orders, not just the ones that pleases tehm.

The Respondent asks this Court to take Judicial Notice of the in Docket Number 32658.

The Appellant does not object to that action, and more specifically, moves this Court to examine the Opening Brief of Appellant under case number 32658, at page 5, footnote 1.

This clearly and conclusively proves that the Judgment was amended, and that the Amended Judgment also contains the same language as the Original Judgment. That language is clear and concise. It depicts that the Appellant is to be ...placed in the 180 day program at the Department of Corrections. The only 180 day program available at the Department of Corrections is the 180 day "rider" program.

As stated, this is the written Judgment and Sentence of the Court. The Respondent has submitted absolutely no evidence that there is any other Judgment and Sentence, either oral or written.

Inasmuch, it is undisputed that the Department of Corrections must obey the Order as was given to them.

#### CONCLUSION

Because the Respondent has not provided any evidence to this Court that there is any kind of conflict between the written Judgment and the Oral pronouncement of the sentence, it appearing that the written judgment is therefore the legal and valid order of the Court, it is respectfully submitted that

this Court enter an Order which directs the Department of Corrections to place the Appellant in the 180 day program, and if he is successful in that program to allow him to be placed on probation as is required by statute for the retained Jurisdiction program.

OATH OF APPELLANT

Comes now, Albert Pete Veenstra, the Appellant herein, who after being placed upon his Oath, avers and states as follows:

I am the Appellant in this case. I have read the enclosed Reply Brief of Appellant. I know the Contents thereof and believe them to be true and correct to the best of my belief.

  
\_\_\_\_\_  
Albert Pete Veenstra, III

8-13-2012  
\_\_\_\_\_  
Dated

CERTIFICATE OF SERVICE

I Certify that I placed a true and correct copy of the enclosed Reply Brief of the Appellant in the United States Mail, first class postage pre-paid and addressed as follows:

Mr. Paul Panther  
Deputy Att. General  
Post Office Box 83720  
Boise, Idaho  
83720-0010

Clerk of the Supreme Court  
Post Office Box 83720  
Boise, Idaho  
83720-0110

  
\_\_\_\_\_  
Albert Pete Veenstra, III

8-13-2012  
\_\_\_\_\_  
Dated