3-5-2010

State v. Shultz Appellant's Reply Brief Dckt. 33310

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. OLIVIA KAY SCHULTZ, Defendant-Appellant.	)	NO. 33310 REPLY BRIEF

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 CASSIA

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STATEMENT OF THE CASE

Nature of the Case

On appeal, Olivia Kay Schultz has challenged, *inter alia*, the failure of the district court to *sua sponte* order a mental health evaluation pursuant to I.C. § 19-2522 prior to sentencing her for burglary. This Reply Brief is necessary to address some of the State's contentions on appeal with regard to this claim.

First, the State has suggested on appeal that this issue is moot because a mental health evaluation was performed on Ms. Schultz while she was serving her second rider. However, as was originally noted in Ms. Schultz's Appellant's Brief, the case law is clear that such evaluations are to be ordered before sentencing. In addition, this Reply Brief is necessary to clarify that, contrary to the State's position on appeal, the mental health evaluation generated during Ms. Schultz's second rider failed to meet with the criteria for mental health evaluations pursuant to I.C. § 19-2522, and therefore this information was insufficient to adequately inform the district court's sentencing determination in any event.

Second, the State has suggested on appeal that the manifest disregard standard that applies to review of an alleged error in failing to *sua sponte* order a mental health evaluation should be conducted solely under review of I.C.R. 32, rather than reading this provision in conjunction with the standards contained in I.C. § 19-2522 that govern when a mental health evaluation is mandatory for purposes of sentences. Because the Idaho Court of Appeals has previously considered, and rejected, this claim, the State's argument is in error.

Although Ms. Schultz continues to assert that the district court abused its discretion when it failed to *sua sponte* order a mental health evaluation for purposes of sentencing, relinquished jurisdiction over her case, and when the court failed to *sua sponte* reduce her sentence upon relinquishing jurisdiction, she will rely on the arguments made within the Appellant's Brief, and will not reiterate those arguments herein.

Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Schultz's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it failed to *sua sponte* order a mental health evaluation for purposes of sentencing in this case?

ARGUMENT

The District Court Abused Its Discretion When It Failed To *Sua Sponte* Order A Mental Health Evaluation For Purposes Of Sentencing In This Case

A. Introduction

While the State has asserted on appeal that there was no error in the district court failing to *sua sponte* order a mental health evaluation because one was conducted at a later date (during Ms. Schultz's second rider review hearing), the State's argument is misplaced. The Idaho Court of Appeals has already considered and rejected this claim, as was noted in the Appellant's Brief. Moreover, the State's assertion erroneously assumes that the limited examination conducted on Ms. Schultz during her period of retained jurisdiction was sufficient to meet with the dictates of I.C. § 19-2522. A review of this evaluation demonstrates that it was insufficient under the applicable legal standards governing such evaluations. As such, the State's contention that this issue is moot is meritless.

Additionally, the State in this case has suggested that the standard that this Court applies on review of whether the district court erred in failing to *sua sponte* order a mental health evaluation for sentencing purposes turns exclusively on an examination of I.C.R. 32. However, this assertion has also previously been raised and rejected by the Idaho Court of Appeals. The proper standard of review for manifest disregard incorporates a review of both the provisions of I.C.R.32(d) and of the standards contained in I.C. § 19-2522, because the statute governing mental health evaluations sets forth the circumstances under which the district court is required to exercise its

discretion in favor of obtaining a mental health evaluation, as authorized under the court rule.

B. The District Court Abused Its Discretion When It Failed To *Sua Sponte* Order A Mental Health Evaluation For Purposes Of Sentencing In This Case

1. The Issue Regarding The District Court's Failure To *Sua Sponte* Order A Mental Health Evaluation For Purposes Of Sentencing Is Not Moot In This Case

The State has asserted, in response to Ms. Schultz's claim regarding the failure of the district court to *sua sponte* order a mental health evaluation at sentencing, that this issue is moot because a mental health evaluation was produced while Ms. Schutlz was serving her second period of retained jurisdiction.

However, this argument ignores prior decisions from the Idaho Court of Appeals that have rejected this exact claim. As was originally set forth in Ms. Schultz's Appellant's Brief, prior case law makes clear that mental health evaluations that are mandated under I.C. § 19-2522 must be conducted prior to sentencing. *See State v. Coonts*, 137 Idaho 150, 153, 44 P.3d 1205, 1208 (Ct. App. 2002) (*see also* Appellant's Brief, pp.10-11.) In addition, the Idaho Court of Appeals has also considered and rejected the propriety of the district court waiting until a defendant is serving his or her period of retained jurisdiction before ordering a psychological evaluation under I.C. § 19-2522. *State v. Banburry*, 145 Idaho 265, 268-269, 178 P.3d 630, 634 (Ct. App. 2007). The State fails to acknowledge this case law, much less provide this Court with any reason to depart from this established precedent.

Even in absence of the case law indicating that I.C. § 19-2522 requires that mental health evaluations be ordered prior to sentencing, the State still could not

establish that issue of the district court's failure to order a proper mental health evaluation was moot. This is because the evaluation conducted during Ms. Schultz's second rider was inadequate to meet the standards for such evaluations under I.C. § 19-2522. The case law governing mental health evaluations makes clear that these evaluations must be adequate to meet with the criteria set forth in I.C. § 19-2522. *See, e.g., State v. Pearson*, 108 Idaho 889, 890, 702 P.2d 927, 928 (Ct. App. 1985). The observations by the court in *Pearson* are instructive on this point:

> The more crucial issue before the court, in our view, relates to the inadequacy of the psychological evaluation. We agree with defendant Pearson's assertion that the evaluation, as submitted in this case, failed to fulfill the intent and spirit of the statute authorizing such evaluations. We find that the evaluation, which is part of the exhibits herein, merely gives conclusory statements to the effect that the defendant is an alcoholic with an anti-social personality and violent tendencies. The evaluation does not explain upon what tests or procedures these conclusions are based. It tends to reflect only a social interview with claimant, rather than a full-scale psychological evaluation.

Id. In view of the gross deficiencies of the mental health evaluation that was produced in *Pearson*, the Court of Appeals ruled that this evaluation was insufficient to provide the district court with sufficient information "on which to make an educated, reasoned, appropriate sentencing decision." *Id.* at 891, 702 P.2d at 929.

Contrary to the State's assertion, the mere fact that a document purporting to be a mental health evaluation was subsequently produced for the district court does not mean that this document is sufficient for purposes of I.C. § 19-2522. And a review of the evaluation conducted during Ms. Schultz's second rider demonstrates that it suffers from the exact deficiencies found to render the evaluation inadequate in *Pearson*.

The mental health evaluation referred to by the State was attached to Ms. Schultz's addendum to the presentence evaluation that was dated December 10,

2007. (Respondent's Brief, p.8.) As an initial matter, this evaluation appears to have been conducted by a licensed social worker, and not a psychiatrist or a licensed psychologist who would be in a position to engage in appropriate diagnostics. *See* I.C. § 19-2522(1). There is no description of what psychometrics or other diagnostic methods that were employed in conducting the evaluation. *See* I.C. § 19-2522(3)(a). The "evaluation" appears to rely entirely on an interview with Ms. Schultz and other employees at the correctional center and a review of Ms. Schultz's presentence investigation report. (*See* Mental Health Evaluation pp.1-2.) There is no diagnosis or evaluation of any of Ms. Schultz's mental conditions, although the report does describe some of the maladaptive behaviors that Ms. Schultz has exhibited. *See* I.C. § 19-2522(3)(b).

Because there was no diagnosis provided for Ms. Schultz's mental health conditions (presumably because the evaluator does not appear to be qualified to make medical diagnoses of this sort), there is likewise no analysis of the degree to which any of Ms. Schultz's mental conditions impacted her level of impairment or may have contributed to her underlying offense. *See* I.C. 19-2522(3)(c).

Because there was no meaningful psychological diagnoses that were undertaken, the district court was similarly left with no information regarding what potential treatments were available for Ms. Schultz's mental conditions, nor with an analysis of the relative risks or benefits of treatment or nontreatment. *See* I.C. §§ 19-2522(3)(d), (e). In fact, the only statutory factor addressed by this evaluation was the social worker's own beliefs regarding the potential risk of danger should Ms. Schultz be released into the community. *See* I.C. § 19-2522(3)(f). And this conclusion is of

minimal import given that it was the product largely of social interviews rather than being informed by a full-scale psychological evaluation. *See Pearson*, 108 Idaho at 890, 702 P.2d at 928.

In sum, the State's arguments regarding mootness have previously been considered and rejected in prior cases – the mandate of I.C. § 19-2522 is one that must be fulfilled prior to sentencing in those cases where a mental health evaluation is required. Moreover, even if this were not the case, the evaluation provided to the district court fails to meet virtually every criteria established for such evaluations, and therefore the State's suggestion that this evaluation was sufficient is without merit.

2. The State Articulates The Incorrect Legal Standards For Appellate Review Of An Assertion That The District Court Erred In Failing To *Sua Sponte* Order A Mental Health Evaluation For Purposes Of Sentencing

In this case, the State appears to argue that this Court's review of whether the district court acted in manifest disregard of I.C.R. 32 in the context of the failure to order a mental health evaluation is divorced from a review of whether a mental health evaluation was required for purposes of sentencing pursuant to I.C. § 19-2522. This same argument has previously been considered and rejected in *State v. Durham*, 146 Idaho 364, 366, 195 P.3d 723, 726 (Ct. App. 2008). And there was good reason for the Court of Appeals to reject this claim.

Generally, when a statute and a court rule deal with the same subject matter and share a common purpose, this Court reads the two provisions in conjunction with one another. The case law regarding the *sua sponte* duty of the district court reflects this principle through analyzing the provisions of I.C.R. 32(d) in conjunction with I.C. § 19-2522. *Craner*, 137 Idaho at 189, 45 P.3d at 845. *See also Collins*, 144 Idaho at 409,

162 P.3d at 788; *State v. McFarland*, 125 Idaho 876, 881, 876 P.2d 158, 163 (Ct. App. 1994); *State v. Pearson*, 108 Idaho 889, 890-892, 702 P.2d 927, 928-930 (Ct. App. 1985). This Court similarly reads statutes and Idaho court rules in conjunction with one another in other contexts involving criminal trials or sentencing where the statute and the court rule deal with the same subject matter. *See, e.g., Murillo v. State*, 144 Idaho 449, 452, n.1, 163 P.3d 238, 241 (Ct. App. 2007) (recognizing co-extensive right to an interpreter in both statute and court rule); *State v. Dorsey*, 139 Idaho 149, 150-51, 75 P.3d 203, 204-205 (Ct. App. 2003) (recognizing legal sufficiency of an information as being governed by both statute and court rule); *State v. Pole*, 139 Idaho 370, 372, 79 P.3d 729, 731 (Ct. App. 2003) (citing to both statute and court rule for standards of probable cause hearing). This is also in accord with Idaho's well-established rule of statutory construction that statutes relating to the same subject matter are to be construed together. *See, e.g., State v. Callaghan*, 143 Idaho 856, 858, 153 P.3d 1202, 1204 (Ct. App. 2006).

Courts interpreting the duty of the district court to order a mental health evaluation *sua sponte* focus directly on the mandatory language included in I.C. § 19-2522. *See Craner*, 137 Idaho at 189, 45 P.3d at 845. It is the plain language of I.C. § 19-2522 stating that the district court "shall appoint" a psychiatrist or psychologist to obtain a mental health evaluation, read in conjunction with the provisions of I.C.R. 32(d), that creates an independent duty on the part of the court to order a mental health evaluation under certain circumstances. *State v. Coonts*, 137 Idaho 150, 152-153, 44 P.3d 1205, 1207-1208 (Ct. App. 2002). In fact, the court in *Coonts* appears to root the *sua sponte* duty of the district court to order a mental health evaluation entirely

in the mandatory language of I.C. § 19-2522, finding that "frustrations with defense counsel's lack of diligence do not, however, excuse the trial court from compliance with I.C. § 19-2522." *Id.* at 153, 44 P.3d at 1208.

As stated by the court in *Craner*, "The legal standards governing the court's decision whether to order a psychological evaluation and report are contained in I.C. § 19-2522." *Craner*, 137 Idaho at 189, 45 P.3d at 845; *see also Collins*, 144 Idaho at 409, 162 P.3d at 788. Moreover, if there was sufficient evidence before the district court to determine that the defendant's mental condition would be a factor at sentencing, and the information before the district court does not satisfy the requirements of I.C. § 19-2522, this constitutes a manifest disregard of the provisions of I.C.R. 32(d). *Craner*, 137 Idaho at 190-191, 45 P.3d at 846-847. This is in accord with other decisions interpreting the provisions of I.C. § 19-2522(3) as providing the specific content to which a psychological report must conform to be within the proper exercise of the court's discretion under I.C.R. 32(d). *See, e.g., Collins,* 144 Idaho at 409, 162 P.3d at 788; *McFarland*, 125 Idaho at 881, 876 P.2d at 163; *Pearson*, 108 Idaho at 890-892, 702 P.2d at 928-930. Applying the relevant case law, the question of compliance with the provisions of I.C. § 19-2522 is inextricably intertwined with the analysis regarding whether the district court acted in manifest disregard of the provisions of I.C.R. 32(d).

Here, the relevant issue involves the district court's discretion, and the statutory requirements that are attendant upon that discretion, with regard to mental health evaluations. I.C.R. 32(d) provides in relevant part that the decision as to whether to order a psychological evaluation is to be made by the sentencing judge. While it is within the discretion of the district court to order a psychological evaluation for purposes

of sentencing, the legislature has placed constraints on the proper exercise of that discretion through enacting I.C. § 19-2522. Under certain circumstances – that being where there is reason to believe that the mental condition of the defendant will be a factor at sentencing and where the information already before the district court does not meet with the requirements of I.C. § 19-2522(3) – the legislature has made it mandatory that the district court exercise its discretion under I.C.R 32(d) in favor of obtaining a mental health evaluation and the failure to do so constitutes manifest disregard. *See State v. Craner*, 137 Idaho 188, 189-191, 45 P.3d 844, 845-847(Ct. App. 2002).

To the extent that the State argues to the contrary in this case, the State's arguments are belied by the relevant case law governing when the district court has a *sua sponte* duty to order a mental health evaluation for use at sentencing. Under a proper evaluation of this claim, the district court erred when it failed to *sua sponte* order a mental health evaluation for purposes of sentencing in this case. (*See* Appellant's Brief, pp.7-13.)

CONCLUSION

Ms. Schultz respectfully requests that this Court vacate her sentence and remand this case to district court for resentencing after a complete evaluation of her mental condition is made in compliance with I.C. § 19-2522. In the alternative, Ms. Schultz asks that this Court vacate the district court's order relinquishing jurisdiction and remand this case for further proceedings. Alternatively, she requests that this Court reduce her sentence as it deems appropriate.

DATED this 5th day of March, 2010.

SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of March, 2010, 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:

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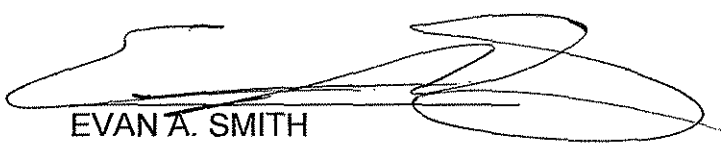

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