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State v. Todd Appellant's Reply Brief Dckt. 35012

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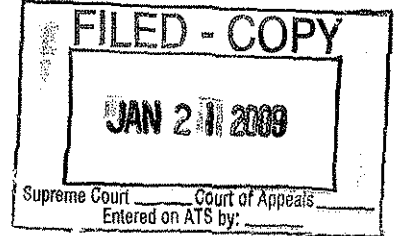
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 JAMES LLOYD TODD,)
)
 Defendant-Appellant.)

NO. 35012

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 BLAINE

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District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE.....	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings.....	2
ISSUE PRESENTED ON APPEAL	3
ARGUMENT.....	4
Mr. Todd's Rights Under Both The Due Process Clause And The Equal Protection Clause Of The Fourteenth Amendment Were Violated When The District Court Based Its Decision To Impose A Lengthy Prison Sentence Upon Mr. Todd Almost Entirely On Mr. Todd's Indigent Status.....	4
A. Introduction	4
B. Mr. Todd's Rights Under Both The Due Process Clause And The Equal Protection Clause Of The Fourteenth Amendment Were Violated When The District Court Based Its Decision To Impose A Lengthy Prison Sentence Upon Mr. Todd Almost Entirely On Mr. Todd's Indigent Status.....	4
1. It Is Improper For A Sentencing Court To Impose A Harsher Sentence Upon A Defendant Based Upon That Defendant's Indigent Status.....	4
2. Idaho Code §19-2521 Permits A District Court To Consider A Defendant's Payment Of Restitution Or Willingness To Pay Restitution As A Mitigating Factor In Deciding Whether The Defendant Should Be Placed On Probation And Does Not Permit The District Court To Consider A Defendant's Purported Inability To Pay Restitution As An Aggravating Factor Warranting The Imposition Of A Prison Sentence	6

CONCLUSION9
CERTIFICATE OF MAILING.....10

TABLE OF AUTHORITIES

Cases

<i>Beardon v. Georgia</i> , 461 U.S. 660 (1983).....	5
<i>Douglas v. California</i> , 372 U.S. 353 (1963).....	5
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956).....	5
<i>Mayer v. Chicago</i> , 404 U.S. 189 (1971).....	5
<i>Roberts v. LaVallee</i> , 389 U.S. 40 (1967).....	5
<i>Tate v. Short</i> , 401 U.S. 395 (1971)	5
<i>Williams v. Illinois</i> , 399 U.S. 325 (1970).....	5

Statutes

Idaho Code § 192521(2)(f).....	8
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STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Mr. Todd argued that his rights under both the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment were violated when the district court punished him based on his indigent status, or, alternatively, that the district court abused its discretion by imposing an excessive sentence upon him based on his purported indigency and in light of the mitigating factors present in his case. In response, the State contends that the district court properly considered Mr. Todd's purported inability to pay restitution as a sentencing factor under I.C. § 19-2521¹ and because Mr. Todd has not challenged the constitutionality of I.C. § 19-2521, he has failed to show error in the district court's decision to impose a prison sentence based on its belief that Mr. Todd would be unable repay all of the stipulated restitution. The State not only misreads I.C. § 19-2521, but fails to grasp the nature of the claim raised by Mr. Todd based on United States Supreme Court precedent or acknowledge that the prosecutor specifically argued that the district court should "take" Mr. Todd's time because he believed that Mr. Todd would be unable to repay the victim. See *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); and *Williams v. Illinois*, 399 U.S. 235 (1970).

¹ In its briefing, the State cites to both I.C. § 18-2526 and I.C. § 19-2526 for the same proposition. (See Respondent's Brief, pp.5-8.) Unfortunately, neither statute exists. However, given the quoted language referenced by the State, Appellant assumes the State intended to cite to I.C. § 19-2521.

Statement of the Facts and Course of Proceedings

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

ISSUE

Were Mr. Todd's rights under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment violated when the district court based its decision to impose a long prison sentence upon Mr. Todd in part on his inability to pay the restitution actually imposed?

ARGUMENT

Mr. Todd's Rights Under Both The Due Process Clause And The Equal Protection Clause Of The Fourteenth Amendment Were Violated When The District Court Based Its Decision To Impose A Lengthy Prison Sentence Upon Mr. Todd Almost Entirely On Mr. Todd's Indigent Status

A. Introduction

The instant reply brief is necessary to address the State's claim that the district court properly considered Mr. Todd's purported inability to pay restitution as a sentencing factor under I.C. §19-2521. However, as is set forth below, Mr. Todd's rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment were violated when the district court viewed Mr. Todd's purported indigency as an aggravating factor warranting a prison sentence rather than probation, where Mr. Todd could attempt repay the victim for his criminal conduct and support his family.

B. Mr. Todd's Rights Under Both The Due Process Clause And The Equal Protection Clause Of The Fourteenth Amendment Were Violated When The District Court Based Its Decision To Impose A Lengthy Prison Sentence Upon Mr. Todd Almost Entirely On Mr. Todd's Indigent Status

1. It Is Improper For A Sentencing Court To Impose A Harsher Sentence Upon A Defendant Based Upon That Defendant's Indigent Status

In its briefing, the State argues that "Todd has not cited a single case prohibiting a sentencing court from considering a defendant's ability to pay restitution when that court imposes sentence." (Respondent's Brief, p.5.) First of all, it is necessary to clarify the issue presented on appeal. Idaho Code §19-2521 clearly allows a court to consider a defendant's *willingness* to compensate a victim as a mitigating factor warranting a defendant to be placed on probation. However, Mr. Todd is arguing that the district

court erred in punishing Mr. Todd, by imposing a prison sentence rather than placing him on probation, because both the court and the prosecutor believed Mr. Todd would be *unable* to repay the stipulated restitution, despite the fact that Mr. Todd had a job lined up in the event he was placed on probation. The crux of all of the cases cited in the Appellant's brief is that a court cannot affirmatively treat a defendant differently, based on the amount of money he or she has. *Beardon v. Georgia*, 461 U.S. 660, 665 (1983) (recognizing that "if the State determines a fine or restitution to be the appropriate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it."); *Tate v. Short*, 401 U.S. 395 (1971) (holding that the state cannot convert a fine into a jail term solely because the defendant is indigent and cannot immediately pay the fine in full); *Williams v. Illinois*, 399 U.S. 235 (1970) (A defendant may not be subjected to imprisonment beyond the statutory maximum merely because they are too poor to pay a fine); *Douglas v. California*, 372 U.S. 353, 357-358 (1963) (holding that indigent defendants are entitled to counsel on first direct appeal); *Roberts v. LaVallee*, 389 U.S. 40, 42-43 (1967) (holding that an indigent defendant is entitled to a free transcript of the preliminary hearing for use during the trial); *Mayer v. Chicago*, 404 U.S. 189, 198-199 (1971) (holding that an indigent defendant cannot be denied an adequate record to appeal a conviction, even under a fine-only statute); and *Griffin v. Illinois*, 351 U.S. 12, 18-19 (1956) (plurality opinion) (striking down a state practice of granting appellate review only to those persons who could afford the transcript).

2. Idaho Code §19-2521 Permits A District Court To Consider A Defendant's Payment Of Restitution Or Willingness To Pay Restitution As A Mitigating Factor In Deciding Whether The Defendant Should Be Placed On Probation And Does Not Permit The District Court To Consider A Defendant's Purported Inability To Pay Restitution As An Aggravating Factor Warranting The Imposition Of A Prison Sentence

In its briefing, the State argues that it was permissible, under I.C. § 19-2521(2)(f), for the sentencing court to consider Mr. Todd's ability to pay restitution when imposing sentence. The State misconstrues Appellant's argument on appeal and misreads I.C. § 19-2521. Mr. Todd has argued that it was improper for the district court to *punish* him based on its belief that he would be unable to pay restitution. At sentencing, the State advocated that because it believed Mr. Todd would not be able to repay the restitution in full, the court should "tak[e] his time."² (Tr., p.52, Ls.4-12.) Specifically, the prosecutor argued:

Also, with regard to restitution, I know Mr. Todd is not going to pay all this money back. There's \$60,000 here that is owed. *He doesn't have a dime to his name right now* and that money is not going to be seen by Mr. Lewis. I think *that is the reason, you know, if he can't pay this money back, he has to pay it back another way, and I think taking his time is the only thing that the Court has in order to impose punishment* because the money he stole, who knows whatever happened to that.

(Tr., p.52, Ls.4-12 (emphasis added).) The district court then obliged the prosecutor's request, weighing heavily Mr. Todd's purported inability to pay restitution, in choosing to impose a prison sentence, rather than place Mr. Todd on probation as was recommended by the Presentence Investigation Report (*hereinafter*, PSI) investigator, so that Mr. Todd could begin repaying restitution, the restitution that he stipulated to. (Tr., p.58, L.17 – p.61, L.6; PSI, pp.9-10.) Mr. Todd is not arguing that the district court

² Curiously, the State makes no reference to, or attempts to defend the unconstitutional and unethical position taken by the prosecutor during the sentencing hearing.

could not have considered whether Mr. Todd had already repaid restitution or his willingness to repay restitution as a mitigating factor warranting a suspended sentence. Rather, Mr. Todd's argument is that the court erred when it punished Mr. Todd based on its belief that Mr. Todd would be unable to pay restitution, which is impermissible and a violation of Mr. Todd's Fourteenth Amendment rights.

The State's reliance on I.C. §19-2521 is also misplaced. In the Respondent's Brief, the State argues that the district court's consideration of Mr. Todd's ability to pay restitution was permissible under I.C. §19-2521, and Mr. Todd's claim fails because he has failed to challenge the constitutionality of the referenced statute. (Respondent's Brief, pp.5-7.) However, whether Mr. Todd has challenged the constitutionality of I.C. § 19-2521 is irrelevant to determine whether the district court violated Mr. Todd's Fourteenth Amendment rights by punishing him because of its belief he was too poor to repay the stipulated restitution. The fact that the statute exists does not cure any unconstitutionality during Mr. Todd's sentencing hearing. Additionally, I.C. § 19-2521(2)(f) considers it a *mitigating* factor that a defendant has already or is willing to repay restitution, not an *aggravating* factor that a defendant is indigent and too poor to repay restitution.

Idaho Code §19-2521(2)(f) provides:

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight *in favor of avoiding a sentence of imprisonment*.

(f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or the injury that was sustained, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combination.

Idaho Code § 192521(2)(f) (emphasis added). Thus, I.C. §19-2521 requires that the court consider the payment or willingness to make payment as mitigating factors “in favor” of not imposing a prison sentence. Here, Mr. Todd stipulated to the restitution amount and voiced his desire to repay the victim for the losses incurred as a result of his criminal conduct, informing the court that upon being placed on probation he already had a job lined up. (Tr., p.41, Ls.14-21.) However, rather than considering this as a mitigating factor, which I.C. §19-2521 requires, both the prosecutor and the district court apparently believed that Mr. Todd was too poor and would not be able to repay restitution, and the district court responded by treating Mr. Todd’s indigent status as an aggravating factor, warranting a long prison sentence.³

Accordingly, as is articulated herein and in Mr. Todd’s Appellant’s Brief, Mr. Todd asserts that his rights under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment were violated when the district court imposed a lengthy prison sentence almost entirely based upon his indigent status.

³ For some reason, the State seems to believe it is important that the district court did not even impose the maximum sentence upon Mr. Todd. (Respondent’s Brief, p.7.) However, the question is not whether harsher punishment was available to the district court, it is a question of whether more severe punishment was imposed based on Mr. Todd’s indigent status.

CONCLUSION

Mr. Todd respectfully requests that this Court vacate his sentence and remand his case for a new sentencing hearing in front of a different district court judge. Alternatively, he requests that this Court reduce his sentence as it deems appropriate.

DATED this 21st day of January, 2009.



ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 21st day of January, 2009, 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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