

5-1-2009

# Kriebel v. State Appellant's Reply Brief Dckt. 35340

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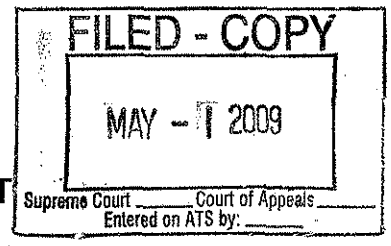
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, )  
 )  
 v. )  
 )  
 RICHARD W. KRIEBEL, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

NO. 35340

REPLY BRIEF



REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF NEZ PERCE

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District Judge

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## STATEMENT OF THE CASE

### Nature of the Case

Richard W Kriebel asserts that the district court erred summarily dismissing his post-conviction petition. Mr. Kriebel asserts that *Estrada*<sup>1</sup> announced a new rule and it should be retroactively applied to him. The matter should be remanded for further proceedings applying the rule announced in *Estrada* because Mr. Kriebel presented a material issue of fact requiring an evidentiary hearing. Alternatively, the statute of limitations should be tolled allowing Mr. Kriebel to file a late petition.

This Reply Brief will address the State's assertion that Mr. Kriebel's petition was untimely because Mr. Kriebel filed his petition more than one year after *Estrada* was decided. Mr. Kriebel asserts that the State is in error.

### Statement of the Facts and Course of Proceedings

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

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<sup>1</sup> *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006).

ISSUE

Did Mr. Kriebel file his petition for post-conviction relief within one-year of the *Estrada* decision becoming final?

## ARGUMENT

### Mr. Kriebel Filed His Petition For Post-Conviction Relief Within One-Year Of The Estrada Decision Becoming Final

The State argues that Mr. Kriebel failed to file his petition within one-year of the *Estrada* decision. (Respondent's Brief, pp.4-5.) The State argues that the *Estrada* Opinion was issued on November 24, 2006, and because Mr. Kriebel did not mail his petition for post-conviction relief until November 26, 2007, it is untimely under either *Charboneau v. State*, 144 Idaho 900, 174 P.3d 870 (2007) or Idaho Code § 19-4902(a). (Respondent's Brief p.5.)


The Court of Appeals issued its *Estrada* Opinion on October 4, 2005, and affirmed the district court's denial of Estrada's petition for post-conviction relief. *Estrada v. State*, Docket No. 30821, 2005 WL 2436232 (Ct. App. 2005) (unpublished and superseded by *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006)). Estrada filed a petition for review and the Idaho Supreme Court accepted review of the case. *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006). On November 24, 2006, the Idaho Supreme Court issued its opinion. *Id.* The State filed a timely petition for rehearing. The Idaho Supreme Court denied rehearing and issued its Remittitur on January 22, 2007. Thereafter, the State filed a Petition for Writ of Certiorari with the United States Supreme Court. *Idaho v. Estrada*, 128 S.Ct. 51 (mem) (2007). The Court denied the Petition for Writ of Certiorari on October 1, 2007. *Id.*

Mr. Kriebel filed his petition for post-conviction relief less than two months after the *Estrada* Opinion became final. Less than two months is timely under both *Charboneau* and Idaho Code § 19-4902(a). Therefore, this Court should reject the State's argument.

CONCLUSION

For reasons more fully elaborated in Mr. Kriebel's Appellant's Brief and incorporated herein by reference, Mr. Kriebel respectfully requests that this Court reverse the district court's Order Granting Motion for Summary Disposition and remand the matter for further proceedings.

DATED this 1<sup>st</sup> day of May, 2009.

  
DIANE M. WALKER  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of May, 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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