

10-8-2015

## State v. Cox Appellant's Reply Brief Dckt. 42835

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 42835
	)	
v.	)	ADA COUNTY NO. CR 2010-19789
	)	
CARSON MICHAEL COX,	)	APPELLANT'S
	)	REPLY BRIEF
Defendant-Appellant.	)	
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STATEMENT OF THE CASE

Nature of the Case

Carson Cox appeals and initially challenged the district court's decision to revoke his probation and execute his sentence as well as its decision to deny his motion for reduction to his sentences pursuant to I.C.R. 35(b) (*hereinafter*, Rule 35 motion).

The State responds that the challenge to the order revoking probation is untimely. It does not make any specific argument as to Mr. Cox's challenge to the order denying his Rule 35 motion. Instead, it simply adopts the district court's decision as its appellate argument.

Upon further review, it appears the State is correct as to the timeliness of the challenge to the decision to revoke probation. As such, Mr. Cox would withdraw that

issue. However, the arguments made in that regard are still relevant to his challenge to the denial of his Rule 35 motion, and, as he did in his Appellant's Brief, he continues to rely on them in that regard.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Cox's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

### ISSUES

1. Whether the district court abused its discretion by revoking Mr. Cox's probation and executing his sentence.
2. Whether the district court abused its discretion by denying Mr. Cox's motion for sentence reduction.

### ARGUMENT

I.

#### The District Court Abused Its Discretion By Revoking Mr. Cox's Probation And Executing His Sentence

Upon further review, it appears the State is correct and Mr. Cox's challenge to the decision to revoke probation and execute his sentence is untimely. See, e.g., *State v. Thomas*, 146 Idaho 592, 593 (2008). As such, Mr. Cox would withdraw that challenge.

## II.

### The District Court Abused Its Discretion By Denying Mr. Cox's Motion For Sentence Reduction

Mr. Cox maintains that the district court abused its discretion when it denied his Rule 35 motion. When petitioning for a sentence reduction pursuant to Rule 35, the defendant must show his sentence is excessive in light of new or additional information presented to the sentencing court. *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Therefore, the district court needed to sufficiently consider the recognized sentencing objectives in light of the mitigating factors as they were altered by the new evidence Mr. Cox presented. *See id.; Huffman*, 144 Idaho at 203.

As such, although he is withdrawing the challenge to the order revoking probation, the arguments he raised in that regard, which discussed various mitigating factors in the record (App. Br., pp.5-6), are relevant to his challenge to the order denying his Rule 35 motion. *See Huffman*, 144 Idaho at 203; *Trent*, 125 Idaho at 253. Therefore, this Court should still consider those arguments in regard to his challenge to the order denying his Rule 35 motion. (See, e.g., App. Br., pp.6-7 (explaining how the new information Mr. Cox presented in support of his Rule 35 motion altered the analysis mitigating factors evident in the record, as they provided more details about those issues).)

The State's responses concerning the denial of Mr. Cox's Rule 35 motion are not remarkable, but instead, adopt the district court's decision. As Mr. Cox has already

shown the abuse of discretion within that decision, no further reply is necessary. Accordingly, Mr. Cox simply refers the Court back to pages 5-8 of his Appellant's Brief.

CONCLUSION

Mr. Cox respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court reverse the order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 8<sup>th</sup> day of October, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8<sup>th</sup> day of October, 2015, 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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OROFINO ID 83544

LYNN G NORTON  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

BRIAN C MARX  
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E-MAILED BRIEF

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CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas