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State v. Patterson Appellant's Reply Brief Dckt. 35463

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DALE ERNEST PATTERSON, Defendant-Appellant.	)	NO. 35463 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 TWIN FALLS

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Dale Patterson pled guilty to two counts of delivery of a controlled substance (methamphetamine), as well as a sentencing enhancement (five years fixed) under I.C. § 37-2739B(b)(1) for having a prior conviction for a similar offense. The district court interpreted I.C. § 37-2739B as creating a true mandatory minimum sentence and, therefore, it ruled that it had no discretion to suspend the five year fixed sentence, or retain jurisdiction over Mr. Patterson. Ultimately, it imposed (and executed) two concurrent unified sentences of fifteen years, with five years fixed. The district court explained that, in its view, the fixed portion of those sentences was required to be imposed and executed under section 37-2739B but, even if such a mandatory minimum did not exist, it would have exercised its discretion in favor of the sentence ultimately given anyway.

Mr. Patterson appealed. He argues first that the district court abused its discretion by imposing, and ordering into execution, the sentence that it did. As part of this argument, he contends that, given the record in this case, the district court should have granted him an opportunity to earn a chance at probation by placing him in the retained jurisdiction ("rider") program. Mr. Patterson also argues that the district court erred in concluding that a rider was not a legal sentencing option in this case.

In response, the State argues that the district court did not abuse its sentencing discretion (Respondent's Brief, pp.11-14) and that a rider or a suspended sentence was not permissible under section 37-2739B anyway (Respondent's Brief, pp.4-11). In support of the latter argument (which the State actually presents first in its brief), the

State argues that both the plain language of section 37-2739B, and its legislative history, require that it be read to create a true mandatory minimum, *i.e.*, a fixed minimum sentence which can never be suspended. (Respondent's Brief, pp.4-11.)

The present Reply Brief is necessary to address the State's arguments regarding the proper interpretation of section 37-2739B. For the reasons set forth below, Mr. Patterson contends that the plain language of that statute, as well as its legislative history, requires that it be interpreted to require a fixed minimum sentence which can, in the discretion of the district court, be suspended.

Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were previously articulated in Mr. Patterson's Appellant's Brief and, therefore, are not repeated herein.

ISSUES

1. Did the district court abuse its sentencing discretion by imposing upon Mr. Patterson a sentence which is excessive given any view of the facts?

2. May a defendant receive retained jurisdiction, or a suspended sentence, upon imposition of a "fixed minimum" sentence pursuant to I.C. § 37-2739B?

ARGUMENT

I.

The District Court Abused Its Sentencing Discretion By Imposing Upon Mr. Patterson Sentences Which Are Excessive Given Any View Of The Facts

Insofar as the State contends that this district court did not abuse its discretion in sentencing Mr. Patterson to two *concurrent* unified terms of fifteen years, with five years fixed (*see* Respondent's Brief, pp.11-14), the State's argument is unremarkable and, therefore, requires no further response. Mr. Patterson simply refers the Court back to pages 10 through 12 of his Appellant's Brief, wherein he explained why, in fact, the foregoing sentences represent an abuse of the district court's discretion.

II.

A Defendant May Receive Retained Jurisdiction, Or A Suspended Sentence, Upon Imposition Of A "Fixed Minimum" Sentence Pursuant To I.C. § 37-2739B

In his Appellant's Brief, Mr. Patterson argued that, because I.C. § 37-2739B requires the sentencing court to *impose* at least a five year fixed sentence in certain situations, but not does require the sentencing court to *order that sentence into execution*, the district court in this case erred when it held that, as a matter of law, it was unable to suspend Mr. Patterson's sentence and place him on probation, or to retain jurisdiction over Mr. Patterson. (Appellant's Brief, pp.12-16.) Specifically, Mr. Patterson argued that, since section 37-2739B contains no express language forbidding the sentencing court from suspending the defendant's sentence, the court's power to suspend sentences should be preserved. (Appellant's Brief, pp.14-16.) In making this argument, he compared section 37-2739B to Idaho's persistent violator statute, I.C. § 19-2514, which, based on its lack of an express prohibition against suspension of

the sentence imposed, has been interpreted to allow the suspension of the sentence, and contrasted it with certain other Idaho statutes which call for true mandatory minimum sentences by specifically forbidding the suspension of the sentence imposed. (Appellant's Brief, pp.14-16.)

In response, the State argues that, because section 37-2739B clearly and unambiguously precludes the district court from suspending the sentence it imposes, the district court in this case did not err. (Respondent's Brief, pp.4, 5-7, 9-10.) Alternatively, the State argues, the district court did not err because the legislative history of section 37-2739B indicates that it was meant to preclude the district court from suspending the sentence imposed. (Respondent's Brief, pp.7-9, 10.) Both of these arguments, however, are without merit.

With regard to the question of whether the meaning of section 37-2739B is clear and unambiguous, the State is correct *only* insofar as it recognizes that this inquiry is the starting point for evaluating any statute. It correctly notes that if the plain language of section 37-2739B is clear, this Court must apply that plain language; however, if the plain language of section 37-2739B is not clear, this Court must resort to traditional rules of statutory construction.[1] *State v. Wiedmeier*, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992).

The State argues that the language of section 37-2739B clearly and unambiguously requires that any sentence imposed pursuant to the sentencing

[1] While the plain language of a statute will generally control, it will not govern if "clearly expressed legislative intent is contrary or [if the] plain meaning leads to absurd results." *George W. Watkins Family v. Messenger*, 118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990).

enhancement described therein be *ordered into execution* because section 37-2739B states that the "defendant 'shall not be eligible for parole or discharge' and that 'each fixed minimum term *shall be served* consecutively.'" (Respondent's Brief, p.6 (quoting I.C. § 37-2739B(c)) (emphasis in the State's brief).) However, the State is flatly incorrect. First, the fact that section 37-2739B(c) prohibits "parole or discharge or credit or reduction of sentence for good conduct" during the "fixed minimum term of confinement imposed under this section" merely emphasizes the fact that the sentence imposed under section 37-2739B is "fixed," as that term is traditionally used under Idaho law; it does not call for the sentence imposed to necessarily be ordered into execution. Second, the fact that the statute requires that "[e]*ach fixed minimum term imposed* shall be served consecutively to the others, and consecutively to any minimum term of confinement imposed for the substantive offense" merely makes it clear the fixed minimum sentences provided for in section 37-2739B cannot be concurrent sentences; it does not mean that those sentences have to be ordered into execution.

The State's arguments notwithstanding, there is nothing in the plain text of section 37-2739B which would prohibit a sentencing court from suspending the enhanced sentence and placing the defendant on probation. As was noted in Mr. Patterson's Appellant's Brief (pp.15-16), the Idaho statutes that do contain such prohibitions are very explicit about them. *See, e.g.*, I.C. §§ 19-2520G (imposing a five-year mandatory minimum sentence for certain repeat sex offenders, and specifically stating that "[a] court shall not have the power to suspend, withhold, retain jurisdiction, or commute a mandatory minimum sentence imposed pursuant to this section"); 37-2732B(a) (imposing various mandatory minimum fixed sentences for drug trafficking,

and specifically stating that "adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld").

The reality, therefore, is that section 37-2739B is ambiguous. *State v. Harrington*, 133 Idaho 563, 990 P.2d 144 (Ct. App. 1999), although not dealing specifically with section 37-2739B, is nevertheless instructive. In that case, the Idaho Court of Appeals held that Idaho's persistent violator statute, I.C. § 19-2514, is ambiguous. *See id.* at 566-67, 990 P.2d at 147-48. Because the persistent violator statute is analogous to section 37-2739B, in that it provides for a minimum sentence (although not a *fixed* minimum sentence) under certain circumstances, but is completely silent as to whether that minimum sentence can be suspended, a similar result should obtain in this case. If a certain type of sentencing provision is ambiguous in the context of enhanced punishments for repeat offenses generally, then certainly the same type of sentencing provision is equally ambiguous in the context of enhanced punishments for repeat drug offenses under section 37-2739B(b)(1).

As noted above, if a statute is ambiguous, the reviewing court must turn to traditional rules of statutory construction in order to define the contours of that statute. *Twin Falls County v. Cities of Twin Falls and Filer*, 143 Idaho 398, 402, 146 P.3d 664, 668 (2006). In so doing, the reviewing court "has the duty to ascertain the legislative intent and give effect to that intent. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history." *Id.* However, when it comes to the interpretation of criminal statutes, the rule of lenity dictates criminal

statutes should be strictly construed in favor of the accused. *State v. Barnes,* 124 Idaho 379, 380, 859 P.2d 1387, 1388 (1993).

With regard to the legislative history and the legislative intent of section 37-2739B, the State directs this Court's attention to: (a) the first subsection of section 37-2739B, and (b) the statement of purpose attached to the bill that would eventually be signed into law and codified as section 37-2739B. (*See* Respondent's Brief, pp.8-9.) The State argues that because both of these sources evidence the intent of the Idaho Legislature to better protect society from drug dealers, presumably by punishing them more severely than they were being punished under prior law, section 37-2739B should be given the harshest possible interpretation, *i.e.*, it should be read to call for not only imposition of fixed minimum sentences, but also *execution* of those fixed minimum sentences. (*See* Respondent's Brief, pp.8-9.) However, there are two significant flaws with this argument. First, it is patently illogical; it overlooks the fact that the purpose of virtually every criminal statute is to provide greater protection for society. Under the State's argument, therefore, every criminal statute would have to be construed in the State's favor because, after all, the purpose of such statutes is to protect society. Second, the State's argument ignores and, indeed, when taken its logical conclusion, flies in the face of, the rule of lenity. As the Court of Appeals held in *Harrington*, where a statute calls for imposition of a minimum sentence, but is ambiguous insofar as it is silent on the question of whether that minimum sentence must be ordered into execution, *the rule of lenity dictates that the statute be construed in whatever way* provides the most leniency for the defendant. *Harrington*, 133 Idaho at 566 & n.5, 990 P.2d at 147 & n.5. "Where there has been no legislative action declaring a mandatory

minimum term of imprisonment, thusly canceling a court's power to suspend sentences, such power to suspend should be preserved." *Id.* at 566 n.5, 990 P.2d at 147 n.5. In this case, therefore, the rule of lenity must be applied and, under *Harrington*, that rule clearly calls for an interpretation of section 37-2739B that allows the district court judge to suspend the fixed minimum sentences provided for under that statute.

Finally, it is important to note that, contrary to the State's implication (*see* Respondent's Brief, p.6), there is nothing in *State v. Ayala*, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996), which would support the State's argument that section 37-2739B, whether ambiguous or not, requires a true mandatory minimum sentence, *i.e.*, one which must be ordered into execution and, therefore, may not be suspended. In *Ayala*, the question before the Court of Appeals was whether the minimum fixed sentences provided for under section 37-2739B are truly mandatory, or whether they are instead discretionary. *Ayala*, 129 Idaho at 918, 935 P.2d at 181. The Court of Appeals held that they are, in fact, mandatory; however, nothing in that decision indicates that those sentences have to be ordered into execution. *See id.* Accordingly, contrary to the State's implication, *Ayala* is simply not relevant to the present case.

In light of all the foregoing, this Court should hold that section 37-2739B does *not* require that the fixed minimum sentences imposed under that statute be ordered into execution, and that such sentences *may*, therefore, in the discretion of the district court, be suspended.

CONCLUSION

For the foregoing reasons, as well as those set forth in his Appellant's Brief, Mr. Patterson respectfully requests that this Court vacate his sentence and remand his case with an instruction that he be granted a rider and, thus, given an opportunity to earn a chance to be placed on probation. Alternatively, if this Court determines that a rider is not possible in this case, he requests that this Court reduce the indeterminate portion of his sentence, or that it find that his current sentence is excessive and remand his case for a new sentencing hearing.

DATED this 10th day of , 2009.

ERIK R. LEHTINEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of June, 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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