

12-15-2015

## State v. Plant Appellant's Brief 2 Dckt. 43038

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 43038 & 43039
	)	
v.	)	ADA COUNTY NOS. CR 2014-2697 &
	)	CR 2014-10225
	)	
BRIAN WILLIAM PLANT, JR.,	)	APPELLANT'S REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Brian William Plant, Jr. pleaded guilty to one count of sexual exploitation of a child and one count of sexual battery of a minor child sixteen or seventeen years of age. For the respective counts, the district court imposed concurrent sentences of ten years, with four years fixed, and twenty years, with four years fixed. Subsequently, Mr. Plant filed two Idaho Criminal Rule 35 motions requesting leniency, which the district court denied. In this consolidated appeal, Mr. Plant asserts that the district court abused its discretion when it denied the Rule 35 motions.

In his Appellant's Brief, Mr. Plant asserted that the district court abused its discretion when it denied his motions because Mr. Plant submitted new information that showed his sentence was excessive. In response, the State argues that Mr. Plant did not submit new information in support of his motions. This reply is necessary to address the State's assertion.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Plant'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 denied Mr. Plant's Idaho Criminal Rule 35 Motions for a Reduction of Sentence in light of the fact that Mr. Plant submitted new information that showed he had diligently pursued programming and education while incarcerated?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Plant's Idaho Criminal Rule 35 Motions For A Reduction Of Sentence In Light Of The Fact That Mr. Plant Submitted New Information That Showed He Had Diligently Pursued Programming And Education While Incarcerated

Mr. Plant argued in his opening brief that the district court abused its discretion when it denied his Rule 35 motions because the new information he submitted was mitigating and should have resulted in a lesser sentence. (App. Br., pp.4-7.) In response, the State argues that "Plant provided no 'new' information in support of his Rule 35 motions . . ." (Resp. Br., p.2.) This is not correct. The information that

Mr. Plant submitted in support of his motions was not before the district court at sentencing.

The State asserts that “[i]nformation with respect to Plant’s age, amenability to treatment, and his former employer’s willingness to rehire him was before the district court at the time of sentencing.” (Resp. Br., p.2.) But Mr. Plant never argued that his age was new information. He argued that his age should be viewed as a stronger mitigating factor *in light of the fact* that he was diligently pursuing treatment while incarcerated. (App. Br., p.7.) Further, while the district court may have had some information regarding Mr. Plant’s amenability to treatment at sentencing, the information he submitted in support of his Rule 35 motions provided a great deal more information about Mr. Plant’s willingness to participate in and pursue treatment. (App. Br., pp.4-6.) This information was not before the district court at sentencing.

Finally, the State argues that “it is not ‘new’ information that prisoners are most often placed in programming nearer to their date of parole eligibility and ‘alleged deprivation of rehabilitative treatment is an issue more properly framed for review either through a writ of habeas corpus or under the Uniform Post-Conviction Procedure Act.’” (Resp. Br., p.2.) The State misinterprets Mr. Plant’s argument. Mr. Plant did not argue that he was being deprived of treatment. He argued that his diligent pursuit of treatment showed that he was willing to engage in treatment but had not been able to start that treatment because he had been moved to different institutions. (App. Br., pp.5-7.) His letter to his attorney also showed that he was trying to become a worker at the prison but could not do so because he had been moved. (App. Br., p.5.)

In short, because Mr. Plant's actions—after he was sentenced—showed that he was willing to engage in treatment and was actively pursuing treatment, the information was new. The district court even acknowledged that Mr. Plant had made “diligent efforts to obtain access to programming in prison” and “noted and accepted” those efforts as a “sign of Plant's desire for rehabilitation.” (R., pp.125, 236.) As such, the district court clearly found that the information was new. Therefore, the State's argument fails.

### CONCLUSION

Mr. Plant respectfully requests that the orders denying his Rule 35 motions be vacated and the cases remanded to the district court for further proceedings.

DATED this 15<sup>th</sup> day of December, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15<sup>th</sup> day of December, 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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DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

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

RPA/eas