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State v. Brandon Appellant's Reply Brief Dckt. 43217

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43217
)	
v.)	CASSIA COUNTY NO. CR 2014-4808
)	
JORDAN GARTH BRANDON,)	APPELLANT'S REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Jordan Garth Brandon pleaded guilty to one count of possession of methamphetamine. The district court imposed a sentence of four years, with one year fixed, but retained jurisdiction. Subsequently, the district court relinquished its jurisdiction and reduced Mr. Brandon's sentence to 18 months, with one year fixed.

In his Appellant's Brief, Mr. Brandon asserted that the district court abused its discretion when it failed to further reduce his sentence upon relinquishing jurisdiction. In response, the State asserted that, in light of recent precedent, Mr. Brandon must have raised this issue under the fundamental error standard. Mr. Brandon acknowledges that

the precedent cited by the State is controlling in this situation. Mindful of that precedent, Mr. Brandon nevertheless asserts that the district court abused its discretion when it failed to further reduce his sentence upon relinquishing jurisdiction.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Brandon'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 failed to further reduce Mr. Brandon's sentence upon relinquishing jurisdiction?

ARGUMENT

The District Court Abused Its Discretion When It Failed To Further Reduce Mr. Brandon's Sentence Upon Relinquishing Jurisdiction

In its Respondent's Brief, the State argues that "Brandon's claim is not properly before this Court because Brandon never moved for a reduction of sentence below and the trial court's failure to further sua sponte reduce Brandon's sentence does not constitute fundamental error." (Resp. Br., p.2.) In support of its position, the State cites to *State v. Perry*, 150 Idaho 209 (2010), *State v. Carter*, 155 Idaho 170 (2013), and *State v. Clontz*, 156 Idaho 787 (2014). (Resp. Br., pp.2-4.)

Mr. Brandon acknowledges that those cases are controlling in his case and that he did not assert that the district court's failure to further reduce his sentence was fundamental error. Mindful of that controlling precedent, however, Mr. Brandon argues

that the district court abused its discretion when it did not further *sua sponte* reduce his sentence based on the mitigating factors discussed in the Appellant's Brief.

CONCLUSION

Mr. Brandon respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 19th day of April, 2016.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of April, 2016, 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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INMATE #113904
IMSI
PO BOX 51
BOISE ID 83707

MICHAEL R CRABTREE
DISTRICT COURT JUDGE
E-MAILED BRIEF

TIM J SCHNEIDER
MINI-CASSIA PUBLIC DEFENDER OFFICE
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas