

6-20-2016

## State v. Sanders Appellant's Reply Brief Dckt. 43372

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43372
	)	
v.	)	ELMORE COUNTY NO. CR 2013-2909
	)	
SCOTT ALLEN SANDERS,	)	APPELLANT'S
	)	REPLY BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Scott Allen Sanders pled guilty to attempted strangulation. He received a unified sentence of ten years, with two years fixed, but the district court retained jurisdiction. Following his rider, the district court relinquished jurisdiction. On appeal, Mr. Sanders contends that the district court abused its discretion in relinquishing its jurisdiction, and in failing to reduce this sentence or place him on probation in light of the additional information submitted in conjunction with his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion.

This Reply Brief is necessary to correct the State's incorrect assertions that no new or additional information was submitted in support of the Rule 35 motion.<sup>1</sup>

### Statement of the Facts and Course of Proceedings

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

### ISSUES

1. Did the district court abuse its discretion by sentencing Mr. Sanders to ten years, with two years fixed, upon his conviction for one count of attempted strangulation?
2. Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Sanders?
3. Did the district court abuse its discretion when it denied Mr. Sanders' Idaho Criminal Rule 35 Motion in light of the new information provided in support thereof?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Sanders' Rule 35 Motion In Light Of The New Information Provided In Support Thereof

The new or additional information presented in support of Mr. Sanders' Rule 35 motion showed that, since being sentenced, he had been in the custody of the Idaho Department of Correction for 561 days which had a substantial rehabilitative effect on Mr. Sanders, he had realized the burden his incarceration was placing on his family members, because the prison was overcrowded and Mr. Sanders is willing to abide by

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<sup>1</sup> Mr. Sanders will only address in his Reply Brief the State's erroneous arguments made in response to the third issue identified on appeal. The two remaining issues were fully briefed in his Appellant's Brief and need not be repeated herein.

the conditions of probation thus his release would be a much greater use of penal resources, and that he is a military veteran deserving some leniency. (Motion to Augment, pp.1-3.)

The State contends that there was no new information submitted in support of Mr. Sanders' I.C.R. 35 motion because, *inter alia*, the district court was aware at the time of sentencing and/or when it relinquished jurisdiction that Mr. Sanders' "family was experiencing difficulties and he wanted to be there for them." (Respondent's Brief, pp.4-5.) In support of this contention, the State identifies portions of the PSI in which Mr. Sanders tells the presentence investigator that he wants to be there for his kids (PSI, pp.6-9) and the point at sentencing when Mr. Sanders told the district court "I want to be there for my family, my children" (7/7/14 Tr., p.14, Ls.4-5). (Respondent's Brief, p.5.) Further, the prosecutor conceded below that the information "that some of the Defendant's children are now living with his mother, who is suffering emotionally, physically, and financially, may be somewhat new for the Court." (Augmentation, p.7.) The State cannot now claim that the information was not new after all.

Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion in failing to reduce Mr. Sanders' sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Sanders respectfully requests that this Court reduce his sentence as it sees fit or place him on probation. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 20<sup>th</sup> day of June, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20<sup>th</sup> day of June, 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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ISCC  
PO BOX 70010  
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CHERI C COPSEY  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

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

SJC/eas