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# State v. Steelsmith Appellant's Reply Brief Dckt. 39037

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO.39037
	)	
v.	)	
	)	
JACK CAHILL STEELSMITH, JR.,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTHFOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

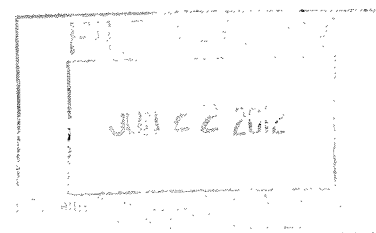
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## STATEMENT OF THE CASE

### Nature of the Case

At his sentencing hearing for DUI, the district court imposed a ten-year sentence with two years fixed, on Mr. Steelsmith, and retained jurisdiction. The district court also entered a restitution order. However, it did not impose any fines, costs, or driver's license suspension at that time, deciding that it wanted to wait to do so until after Mr. Steelsmith finished his rider. The district court remanded Mr. Steelsmith to the custody of the Department of Correction at the end of the sentencing hearing.

When the district court ultimately relinquished jurisdiction, it added the new, previously-unimposed punishments of a fine, court costs, and a driver's license suspension to Mr. Steelsmith's sentence. Mr. Steelsmith appealed, asserting that the district court did not have the authority (*i.e.*, the jurisdiction) to impose those additional punishments when it relinquished jurisdiction and by doing so, it violated his state and federal constitutional rights to be free from double jeopardy. He also argued that, in regard to the length of his sentence (both as initially imposed and after the denial of his I.C.R. Rule 35 (*hereinafter*, Rule 35) motion), the district court abused its discretion by not sufficiently considering the mitigating evidence present in his case.

The State's responses to Mr. Steelsmith's arguments in that regard ignore well-established Idaho law. It attempts to argue that each individual punishment was analyzed as a separate aspect of sentencing, imposition of which could be individually delayed until after the period of retained jurisdiction. However, the Idaho appellate courts have clearly stated that the sentencing courts only have jurisdiction to impose a sentence, and that occurs before the period of retained jurisdiction begins. Imposing

additional punishments at a second proceeding exceeds that authority and violates double jeopardy protections. The State also attempts to argue that because execution of a sentence subject to a period of retained jurisdiction is not effectuated until after relinquishment, the sentence was not actually executed before the period of retained jurisdiction. It makes this argument despite the fact that the Idaho appellate courts have clearly held that a sentence is executed when defendant is remanded to the custody of the Department of Correction. Furthermore, Idaho appellate courts have held that, in regard to periods of retained jurisdiction, if no action is taken by the district court, the defendant continues to serve his underlying sentence, indicating that the underlying sentence is in effect (*i.e.*, executed) throughout the period of retained jurisdiction.

As the State's responses in regard to the district court's jurisdiction and double jeopardy are directly contrary to established Idaho law, they do not discredit Mr. Steelsmith's arguments, nor do they demonstrate that the district court did not exceed its jurisdiction or violate the double jeopardy protections by imposing these additional punishments after the period of retained jurisdiction. Because of those errors, this Court should vacate the improperly-imposed punishments.

#### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Steelsmith'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 erred by imposing various punishments at the rider review hearing in violation of jurisdictional limitations and the state and federal constitutional protections against double jeopardy.
2. Whether the district court abused its discretion when it relinquished jurisdiction by not sufficiently considering the factors which indicated that Mr. Steelsmith would be able to succeed in a less structured environment.
3. Whether the district court abused its discretion when it denied Mr. Steelsmith's Rule 35 motion for a reduction of sentence in light of the new evidence he presented.<sup>1</sup>

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<sup>1</sup> In regard to Issues 2 and 3, the State's responses concerning the excessiveness of Mr. Steelsmith's sentence are not remarkable, and as such, no further reply is necessary in regard to those issues. Accordingly, Mr. Steelsmith simply refers the Court back to pages 18-33 of his Appellant's Brief.

## ARGUMENT

### The District Court Erred By Imposing Various Punishments At The Rider Review Hearing In Violation Of Jurisdictional Limitations And The State And Federal Constitutional Protections Against Double Jeopardy

#### A. Introduction

In this case, the district court imposed a sentence, which included a period of retained jurisdiction, on Mr. Steelsmith following his plea of guilty to DUI. That sentence included a prison term and restitution, but did not include fines, costs, or a driver's license suspension. Instead, the district court decided it would not impose those punishments until after the period of retained jurisdiction. The district court then executed that sentence (consisting of a prison sentence and a restitution order) when it remanded Mr. Steelsmith to the custody of the county sheriff with orders to transport him forthwith to the custody of the board. When Mr. Steelsmith returned from his period of retained jurisdiction, the district court relinquished jurisdiction and increased the sentence with the new, additional punishments it had not imposed at the sentencing hearing. In doing so, it not only exceeded its jurisdiction, but also committed fundamental error, violating clearly on the record Mr. Steelsmith's unwaived federal and state constitutional protections from double jeopardy.

The State attempts to justify the district court's actions by contending that they constituted individual aspects of sentencing or individual sentencing rulings, and as such, imposition and/or execution of each could be delayed until the end of the period of retained jurisdiction. As to double jeopardy, it contends that Mr. Steelsmith had not been in original jeopardy because he did not have "a legitimate expectation in the finality of his sentence."

The State's arguments on both fronts are untenable. Its arguments in regard to the district court's jurisdiction ignore the fundamental premise that sentencing only occurs once, at the sentencing hearing, and it is at that time that the entire sentence is imposed (*i.e.*, all sentencing decisions are made) and that subsequent increases to that originally-imposed sentence are beyond the district court's jurisdiction. It also ignores the long-standing rule that a sentence is executed when the defendant is remanded to the custody of the board. Additionally, the State's arguments ignore the precedent which holds that a period of retained jurisdiction only grants the district court limited continuing jurisdiction, which is coextensive to that of the Department of Correction, and, as such, does not extend to allow for increases in the penalties originally imposed.

For both of these reasons, the district court did not have the jurisdiction to impose new, additional punishments at a second hearing, which is precisely what it erroneously did in this case. Furthermore, the State's arguments in regard to double jeopardy ignore the Idaho precedent which clearly demonstrates that a sentence imposed prior to a period of retained jurisdiction is final, so much so that the defendant is able to appeal that sentence and he does not have a cognizable due process right to a hearing in regard to the potential relinquishment of jurisdiction and the resuming of that sentence. Therefore, Mr. Steelsmith did have a legitimate expectation in the finality of that sentence sufficient to support a double jeopardy claim.

As none of the State's arguments are meritorious in regard to these issues, this Court should remedy the district court's erroneous actions by vacating these inappropriately-imposed additional punishments.

B. The District Court Did Not Have Jurisdiction to Add Fines, Costs, And A Driver's License Suspension After The Period Of Retained Jurisdiction

The State does not contest the fundamental premise that “a district court loses jurisdiction to modify or alter a sentence once that sentence has been imposed and executed.”<sup>2</sup> (See Resp. Br., p.5 (citing *McFarland v. Hunt*, 79 Idaho 262, 266 (1957); *State v. Johnson*, 101 Idaho 581, 585 (1980)).) “[A] sentence is imposed when initially pronounced, even though jurisdiction is retained under I.C. § 19-2601(4) or the sentence is suspended.” (Resp. Br., pp.6-7 (quoting *State v. Alvarado*, 132 Idaho 248, 249 (Ct. App. 1998).) Despite recognizing this authority, the State attempts to argue that Mr. Steelsmith’s sentence had not been imposed or executed (at least in regard to the fine, costs, and driver’s license suspension). It is mistaken on both counts.

1. As Established In Accordance With Precedent, Mr. Steelsmith’s Entire Sentence Was Imposed At The Sentencing Hearing, And The Authority To Impose That Sentence Could Not Be Deferred To The Relinquishment Hearing

The State disregards established precedent (*i.e.*, *McFarland*, *Johnson*, and *Alvarado*) and argues that the district court could impose a sentence and increase it later by deferring “one or more aspects of a sentence” or “some of its sentencing rulings” to-wit, imposition of additional punishments.<sup>3</sup> (See Resp. Br., pp.7-9.) The

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<sup>2</sup> To the extent that this is an argument about “the district court’s jurisdiction,” Mr. Steelsmith recognizes the difference between an entire lack of the overarching subject matter jurisdiction and a lack of authority to act in a certain way within that overarching subject matter jurisdiction. *State v. Armstrong*, 146 Idaho 372, 375 (Ct. App. 2008); *State v. Jensen*, 149 Idaho 758, 761 (Ct. App. 2010).

<sup>3</sup> The State relies on the recitation of the facts in *State v. Ward*, 145 Idaho 68, 71 (Ct. App. 2000), to support its premise that the district court can delay imposition of a sentence. (See Resp. Br., p.8.) However, in *Ward*, the district court delayed imposition of *the entire sentence* until after the defendant had been given a sufficient opportunity to argue that he should be allowed to withdraw his guilty plea. See *Ward*, 145 Idaho at 71.

State's position is contrary to established Idaho law, which provides that the district court's only opportunity to impose a sentence (*i.e.*, make determinations about all aspects of the sentence or make all sentencing rulings) is at the sentencing hearing. *See State v. Coassolo*, 136 Idaho 138, 142-43 (2001). The Idaho Supreme Court has unambiguously stated that, when a sentence includes a period of retained jurisdiction, "[s]entencing occurs before the period of retained jurisdiction begins, *not when jurisdiction is relinquished.*" *Id.* (emphasis added). Additionally, the Court of Appeals has explicitly held that the established principle in Idaho is: "a sentence is imposed when initially pronounced, even though jurisdiction is retained under I.C. § 19-2601(4) or the sentence is suspended." *Alvarado*, 132 Idaho at 249. To that end, "when, under a judgment, a valid sentence has been put into execution, the trial court cannot amend or modify it, either during or after the term of court at which the sentence was pronounced, and that any attempt so to do is of no effect." *McFarland*, 79 Idaho at 266; *but see State v. Goodlett*, 139 Idaho 262, 264 (Ct. App. 2003) (holding that the district court does have limited jurisdiction to modify an imposed sentence, but only insofar as to reduce that sentence pursuant to Rule 35; otherwise, it can only resume the original sentence, which impliedly was already imposed). As such, there is only one point at which the sentence, or any component, aspect, or ruling thereof, may be imposed – the sentencing hearing. *Id.*

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Once the district court had resolved the motion to withdraw the guilty plea, then it proceeded to impose the *entire* sentence. *Id.* As such, *Ward* does not stand for or support (or even discuss) the premise that the district court may bifurcate the imposition of sentence. *See id.* To the extent that the recitation of the procedural facts in *Ward* is precedential, it only recognizes that the district court may delay imposition of the entire sentence if it is necessary to resolve a pending motion. *See id.*

The State attempts to circumvent *Coassolo's* and *Alvarado's* clear holdings by arguing that the Idaho Supreme Court did not expressly say that a district could not defer a sentencing ruling until after the period of retained jurisdiction.<sup>4</sup> (Resp. Br., pp.8-9.) Other than the fact that the Idaho Supreme Court has actually forestalled that argument by holding that “sentencing” (*i.e.*, the imposition of the entire sentence, and thus all components, aspects, or rulings thereof) does not occur at relinquishment, *Coassolo*, 136 Idaho at 142-43; *Alvarado*, 132 Idaho at 249, the State’s inference, arising from the double negative (“the Idaho Supreme Court did not say we could not do this”), is wholly improper and contrary to the rest of Idaho law. See, *e.g.*, *McFarland*, 79 Idaho at 266; *Johnson*, 101 Idaho at 585; *Coassolo*, 136 Idaho at 142-43; *Alvarado*, 132 Idaho at 249; *Goodlett*, 139 Idaho at 264.

Further to that point, the statute under which Mr. Steelsmith was sentenced, I.C. § 18-8005(6) (R., p.61), has five components to the sentence that may be imposed

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<sup>4</sup> To this end, the State argues that it is within the district court’s inherent power to regulate its calendar to delay parts of its decisions to promote judicial efficiency (presumably reasoning that the district court is somehow being more efficient in resolving the case by not deciding all sentencing issues at one time, but instead, requiring a second hearing to finish up what should have been done at the first hearing). (See Resp. Br., p.8 (citing *Dep’t of Labor and Indus. Serv. v. East Idaho Mills, Inc.*, 111 Idaho 137, 138-39 (Ct. App. 1986).) However, the authority to which *East Idaho Mills* refers arose under Idaho Rule of *Civil Procedure* 16 governing pre-trial activities. *East Idaho Mills*, 111 Idaho at 136-37. Even if a parallel could be drawn between the authority of the court in criminal, as opposed to civil, matters (for example, the defendant’s constitutional right to a speedy trial could impact the district court’s unfettered ability to control its calendar or do substantial justice in the case), the critical fact in Mr. Steelsmith’s case is that it deals with a *post-conviction* issue, not a pre-trial issue. Thus, *East Idaho Mills* is distinguishable and the rule articulated by the Idaho Supreme Court in *Coassolo* remains the only precedent on point: the district court’s post-conviction authority to regulate its calendar is expressly limited. See *Coassolo*, 136 Idaho at 142-43. The district court is only authorized to impose the sentence or make decisions regarding the aspects of sentencing, at the sentencing hearing, not after a period of retained jurisdiction. *Id.*

pursuant to a conviction or guilty plea under that statute. I.C. § 18-8005(6). As such, each is a part of the sentence for the identified offense, not a sentence unto itself, even though each constitutes a different punishment. See *id.* Therefore, since sentencing (*i.e.*, the imposition of the sentence) occurs prior to the period of retained jurisdiction, all components or aspects of the sentence must necessarily be imposed at the sentencing hearing.<sup>5</sup> See *Coassolo*, 136 Idaho at 142-43; *Alvarado*, 132 Idaho at 249. Mr. Steelsmith’s entire sentence was necessarily imposed at the sentencing hearing, and it did not include any fine, costs, or license suspension. See *id.* The district court was without jurisdiction to impose parts of that sentence at a later date. See *id.*

Furthermore, as the Idaho Supreme Court held in *Coassolo*, and as the Court of Appeals subsequently affirmed in *Goodlett*, the district court’s authority at the relinquishment hearing was limited: at most, it could only resume that sentence which had been *already imposed*.<sup>6</sup> *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264; see also *State v. Thomas*, 146 Idaho 592, 594 (2008) (holding, in the revocation of probation context, which is substantially similar to the relinquishment of jurisdiction, “upon revocation of the probation *the court cannot resentence the defendant*” (emphasis added)); *State v. Timbana*, 145 Idaho 779, 782 (2008) (same). The district court’s only

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<sup>5</sup> Even if the State’s perspective – that each aspect (fine, cost, and suspension) is an individual sentence – is appropriate, *Coassolo* provides that the district court did not have the authority to impose those sentences at the relinquishment hearing, since sentencing occurs before the period of retained jurisdiction begins. *Coassolo*, 136 Idaho at 142-43. Therefore, even if the “multiple aspects of sentencing” perspective is correct, the district court still acted beyond the bounds of its jurisdiction by imposing those aspects of sentencing at the relinquishment hearing. See *id.*

<sup>6</sup> The State actually implicitly admits that its argument to the contrary is untenable: “[*State v. Ditmars*, 98 Idaho 472, 474 (1977)] demonstrates that when a sentence of retained jurisdiction is pronounced, *such pronouncement constitutes the ‘imposition’ of sentence . . .*” (Resp. Br., p.16.)

other option was to reduce that *already-imposed* sentence. *Id.*; *State v. Mendenhall*, 106 Idaho 388, 395 (Ct. App. 1984) (the district court's authority is limited to corrections of the sentence that do not increase the penalty imposed); *State v. Bosier*, 149 Idaho 664, 668 (Ct. App. 2010) (applying the *Mendenhall* rule to prohibit subsequently increasing the aggregate penalty enforced against that defendant).<sup>7</sup> Therefore, the State's assertion that the district court is allowed to reserve part of the sentencing until the relinquishment hearing, which could only serve to increase the penalty imposed at the sentencing hearing, is flatly and directly contradicted by precedent: if a penalty was not already imposed, the district court does not have the jurisdictional authority to add it in at the relinquishment hearing. *See, e.g., Mendenhall*, 106 Idaho at 395. As such, those inappropriate and additional penalties should be vacated. *See Bosier*, 149 Idaho at 668.

In this case, the district court imposed Mr. Steelsmith's sentence at the sentencing hearing. It explicitly excluded fines, costs, or a driver's license suspension. (See R., p.62.) The idea that each of these is a separate aspect of sentencing or sentencing ruling, each of which is imposed separately is palpably absurd, particularly in light of *Coassolo, Alvarado, Goodlett, et al.* which clearly hold to the contrary (the district

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<sup>7</sup> The language in *Mendenhall* is particularly telling in this regard. The Court of Appeals referred to increasing the "aggregate penalty," which suggests that an overall increase in the quantity of the punishment imposed exceeds the district court's jurisdiction. *See Mendenhall*, 106 Idaho at 395; *see also Bosier*, 149 Idaho at 668 (applying the *Mendenhall* rule to prohibit increasing the aggregate penalty by altering a sentence so that it would run consecutively instead of concurrently). The Idaho Supreme Court has specifically recognized that fines and license suspensions constitute punishments at sentencing. *State v. Bennett*, 142 Idaho 166, 171-72 (2005). As such, adding them onto an already-imposed sentence at the relinquishment hearing impermissibly increases the aggregate penalty. *See Mendenhall*, 106 Idaho at 395; *Bosier*, 149 Idaho at 688.



court only has jurisdiction to impose a sentence before the period of retained jurisdiction begins, the entirety of which sentence may only subsequently be resumed at relinquishment or reduced pursuant to Rule 35). See, e.g., *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264.

Finally, exemplifying the State's disregard for precedent with this argument, the Court of Appeals has considered a district court's attempt to reserve an aspect of sentencing until after the period of retained jurisdiction and found such an action to be in error. *State v. Banbury*, 145 Idaho 265, 269-70 (Ct. App. 2007). In *Banbury*, the district court did not order a necessary psychological evaluation prior to sentencing, but instead, ordered that evaluation to occur during the period of retained jurisdiction, the impact of which would be considered at the end of the period for retained jurisdiction. See *id.* at 267-68. The Court of Appeals held that the mandate of I.C. § 19-2522 (one of the aspects of sentencing a defendant with a mental health condition) required the district court to order that evaluation prior to its initial imposition of sentence so as to assure that information would factor into the imposed sentence. See *id.* at 269. This is true even though the district court expected to revisit the sentence after the period of retained jurisdiction. *Id.* The critical fact was that the evaluation was necessary to inform the sentencing decision, a decision which could not be properly rendered at some time after the imposition of the sentence. See *id.* at 268. As such, delaying aspects of the sentencing decision or some of the sentencing rulings until after the period of retained jurisdiction is impermissible. See *id.* at 268-69; *Coassolo*, 136 Idaho at 142-43.

As the district court was only authorized to impose a sentence, which includes all components and aspects thereof, before the period of retained jurisdiction began, which it did, its decision to impose the additions of the fine, costs, and suspension was beyond its jurisdictional authority and therefore, those punishments should be vacated. See, e.g., *Bosier*, 149 Idaho at 668.

2. As Established In Precedent, Mr. Steelsmith's Entire And Final Sentence Was Executed When He Was Remanded To The Custody Of The County Sheriff

Further demonstrating why the subsequently-imposed punishments should be vacated, the imposed sentence (without the fine, costs, and suspension) was also executed. As recently as 2010, the Idaho appellate courts have held that once the defendant is remanded to the custody of the Department of Correction, his sentence has been executed. *State v. McGonigal*, 122 Idaho 939, 940 (1992); *State v. Williams*, 126 Idaho 39, 44 (Ct. App. 1994); *State v. Petersen*, 149 Idaho 808, 812-13 (Ct. App. 2010). And, as the *Williams* Court explained,

Idaho Code § 19-2601(4) superimposes upon this division of jurisdiction between the courts and the Board a means by which a court may retain jurisdiction even after the defendant is in the physical custody of the Board. By allowing the court to retain jurisdiction for 180 days *after the execution of a sentence has been ordered*, Section 19-2601(4) creates an exception to the general rule that the court loses jurisdiction from the moment execution of the sentence begins. The statute enables the court and the Board essentially to exercise concurrent authority over the offender for a limited period.

*Williams*, 126 Idaho at 44 (emphasis added). As the Court of Appeals clearly stated, in the situation of retained jurisdiction, the sentence is executed, but the district court is permitted to retain limited jurisdiction (concurrent to that of the board). *Id.* The board is not authorized to increase the length of a defendant's sentence. See, e.g.,

*State v. Creech*, 105 Idaho 362, 391 (1983) (quoting *Ex parte Prout*, 86 P. 275, 276 (Idaho 1906) for its discussion of the separation of powers, specifically in regard to the powers of the board of pardons).<sup>8</sup>

To hold otherwise and allow the district court to increase the amount of punishment after executing the sentence would permit the Judiciary to usurp a power reserved specifically to the Executive branch by the Idaho Constitution, specifically, control over a convicted and sentenced person. *State v. Urrabazo*, 150 Idaho 158, 163 (2010), *abrogated on other grounds by Verska v. Saint Alphonsus Regional Medical Ctr.*, 151 Idaho 889, 895 (2011); *State v. Taylor*, 142 Idaho 30, 31-32 (2005); *State v. Chapman*, 121 Idaho 355 (1992). Therefore, the result of this dual jurisdiction is that the district court's continuing jurisdiction is necessarily limited. *Id.* As explained in Section I(B)(1), *infra*, this limited grant of authority only permits the district courts to resume the original sentence or reduce it pursuant to Rule 35 when it relinquishes jurisdiction. *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264. Thus, in order for the coextensive jurisdiction to function within Idaho's constitutional framework, the sentence must be executed prior to the period of retained jurisdiction. See, e.g., *Williams*, 126 Idaho at 44. This is consistent with the long-standing principles of Idaho law: "The *Pedraza* principle [that courts may not increase a previously imposed and suspended sentence upon a violation of probation] . . . narrows the range of corrective sentences to those which will not increase the aggregate penalty imposed."

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<sup>8</sup> "Whenever such [Board of Pardons] undertakes to increase or extend the penalty or punishment imposed upon a convict by a decree of court, they at once pass beyond the realm of their jurisdiction and authority . . . ." *Prout*, 86 P. at 276.

*Mendenhall*, 106 Idaho at 395 (citing *State v. Pedraza*, 101 Idaho 440 (1980)). As such, the State's assertion, that the sentence had not been executed, is without merit.

Such a conclusion is also consistent with the statutory language governing periods of retained jurisdiction, which clearly indicates that the sentence must be executed before the period of retained jurisdiction begins. See I.C. § 19-2601(4). The Legislature provided: "The prisoner will *remain committed to the board* of correction if not affirmatively placed on probation by the court." *Id.* (emphasis added); see *Taylor*, 142 Idaho at 31-32; *Petersen*, 149 Idaho at 812. Because the language specifically denotes that the person "*remains committed to the board*," that person *must* have been initially committed to the board.<sup>9</sup> See *id.* (emphasis added). And since the person must have been initially committed to the board before the period of retained jurisdiction began, the sentence must have been executed at that time. *McGonigal*, 122 Idaho at 940; *Williams*, 126 Idaho at 44.

In addition, the Court of Appeals recently reaffirmed this principle, that when the district court retains jurisdiction, "[a] defendant's sentence begins when it is imposed by the court. I.C. § 20-209A . . . [T]he 180-day period of retained jurisdiction begins to run once the sentence is pronounced, regardless of whether the defendant is transported to the Board immediately or there is some delay." *Petersen*, 149 Idaho at 813. The only way such calculations of time frames (*i.e.*, the time for the district court to suspend the sentence or for the defendant to file an appeal) can permissibly begin from the date of imposition is if the sentence is also executed at that same time. See *id.* And while the

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<sup>9</sup> The statute is clear and unambiguous in this regard, and so this Court must give effect to that unambiguous language, regardless of whether it approves of the outcome. *Verska*, 151 Idaho at 894-95.

execution may be *effectuated* at the point of relinquishment (see Resp. Br., p.10), that does not change the fact that the execution *initially occurred* upon remand of custody to the board. Compare *State v. Ditmars*, 98 Idaho 472, 474 (1977), with *McGonigal*, 122 Idaho at 940; *Williams*, 126 Idaho at 44; *Petersen*, 149 Idaho at 812-13.<sup>10</sup> Rather, the commitment which occurs when the district court relinquishes jurisdiction is properly qualified as the “final commitment to the State Board of Corrections.” See *State v. Schrom*, 105 Idaho 769, 772 (1983). To be qualified as a “final commitment,” there must necessarily have been an “initial commitment.” See *id.* That initial commitment occurs at the sentencing hearing and constitutes the execution of the sentence. See, e.g., *Williams*, 126 Idaho at 44; *Petersen*, 149 Idaho at 812-13.

When, as here, the district court is permitted to retain some limited jurisdiction, that jurisdiction “did not extend to take other actions, such as enlarging the sentence after the original judgment of conviction and sentence had become final.” See *Bosier*, 149 Idaho at 667. Both the Legislature and the appellate courts have made it clear that execution of the sentence in a retained jurisdiction situation occurs before the period of retained jurisdiction begins. I.C. § 19-2601(4); I.C. § 20-209A; *McGonigal*, 122 Idaho at 940; *Williams*, 126 Idaho at 44; *Petersen*, 149 Idaho at 812-13. They have also made it clear that any continuing jurisdiction over the sentence is limited to only resuming that

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<sup>10</sup> It is also important to note that the law in this regard evolved away from the position articulated in *Ditmars* in 1977. See *McGonigal*, 122 Idaho at 940 (decided in 1992); *Williams*, 126 Idaho at 44 (decided in 1994); *Petersen*, 149 Idaho at 812-13 (decided in 2010). Similarly, the Legislature amended I.C. 19-2601(4) in 1995 to provide that “the prisoner will *remain committed to the board* of correction if not affirmatively placed on probation by the court.” 1995 Idaho Session Laws Ch. 247 (emphasis added). As such, the more accurate statement of the law regarding the execution of the sentence is that articulated by Mr. Steelsmith.

which was already imposed or reducing that which was already imposed. *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264; I.C. § 19-2601(4).

In Mr. Steelsmith's case, the district court explicitly, both in its written order and in its oral pronouncement, executed the sentence: "The defendant shall be remanded to the custody of the Sheriff of Ada County, to be delivered FORTHWITH by him into the custody of the State of Idaho Board of Correction." (R., p.63 (emphasis in original); see Tr., p.37, L.23 - p.38, L.1.) Because Mr. Steelsmith's entire sentence was executed before the period of retained jurisdiction began, the district court was without jurisdiction to add new punishments or otherwise increase that sentence when it relinquished that jurisdiction. See, e.g., *Williams*, 126 Idaho at 44; *Petersen*, 149 Idaho at 812-13. Its limited statutory grant of continuing jurisdiction would have allowed it, at most, to continue the originally-imposed-and-executed sentence (which did not include any fines, costs, or license suspension). See, e.g., *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264. By going beyond that limited jurisdiction, the district court erred and those punishments added to the sentence without jurisdiction should be vacated. See *McFarland*, 79 Idaho at 266; *Bosier*, 149 Idaho at 667.

C. The District Court Committed Fundamental Error Because The Imposition Of The New Punishments Violated Mr. Steelsmith's Unwaived Federal And State Constitutional Protections Against Double Jeopardy

By imposing multiple punishments for the same offense, the record clearly demonstrates that, in addition to exceeding its jurisdictional authority, the district court also clearly violated Mr. Steelsmith's unwaived federal and state constitutional protections against double jeopardy, and in doing so, affected the outcome of the proceedings by increasing his sentence. (See App. Br., pp.12-17.) As such, this Court

may consider this argument on appeal. See *State v. Perry*, 150 Idaho 209, 226 (2010). Imposing multiple punishments at a second, subsequent proceeding, even if authorized by the Legislature, violates the double jeopardy protections. *State v. Avelar*, 132 Idaho 775, 778 (1999). The State responds with the odd and untenable argument that Mr. Steelsmith had no legitimate expectation of finality in the sentence imposed at the sentencing hearing, and so was not originally in jeopardy. (See Resp. Br., pp.13-15.) This position is directly contrary to explicit Idaho law, as set forth by the Legislature and reinforced by judicial precedent, and should, therefore, be rejected.

First and foremost, in a guilty plea context, jeopardy attaches when the defendant pleads guilty. *State v. Alanis*, 109 Idaho 884, 896 (1985). As such, the minute Mr. Steelsmith' guilty plea was entered and accepted by the district court, the jeopardy protections attached to his case. See *id.* Therefore, the State's argument that jeopardy did not attach to the original sentence (Resp. Br., p.21 ("Accordingly, under *DiFrancesco*,<sup>11</sup> former jeopardy did not attach to [Mr.] Steelsmith's sentence in regard to those matters before the rider review hearing . . . .") is meritless. Jeopardy had attached to these proceedings upon the entry of the guilty plea. *Alanis*, 109 Idaho at 896.

The State's only other argument is that the sentence was not final, in that Mr. Steelsmith had no legitimate expectation of finality in that sentence, and therefore, could not be placed in double jeopardy. This position, too, is meritless. For the same reason the sentence must be executed before the period of retained jurisdiction begins, (see Section I(B)(2), *supra*), that sentence must also be final, or at least provide a

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<sup>11</sup> *United States v. DiFrancesco*, 449 U.S. 117, 136 (1980).

legitimate expectation of finality therein: “The prisoner will *remain committed to the board of correction* if not affirmatively placed on probation by the court.” *Id.* (emphasis added); *see also Taylor*, 142 Idaho at 31-32 (recognizing the same); *Petersen*, 149 Idaho at 812 (recognizing the same). The board has no authority to increase that term of commitment. *Prout*, 86 P. at 276; *see Creech*, 105 Idaho at 391. Similarly, the district court, at most, may only resume the originally-imposed judgment, not increase it. *Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264; *Bosier*, 149 Idaho at 668.

Since the *default* result at the end of the period of retained jurisdiction is that the originally-imposed and executed sentence is continued (as opposed to initiated), that sentence must necessarily be reliably final. And since that person remains committed pursuant to the original judgment, his appeal of his sentence is necessarily against the original Judgment of Conviction. *See, e.g., State v. Longest*, 149 Idaho 782, 783-84 (2010). As such, the sentence imposed therein must possess the necessary finality to constitute an appealable order. I.A.R. 11(c)(1); *see I.A.R. 14*. Therefore, the defendant has, at least, a legitimate expectation in the finality of that sentence because he knows that it will be the sentence he must serve if no further action is taken by the district court, he knows that sentence cannot be increased, and he knows that he can challenge the propriety of the sentence on appeal. *See Coassolo*, 136 Idaho at 142-43; *Goodlett*, 139 Idaho at 264; *Bosier*, 149 Idaho at 668; *Longest*, 149 Idaho at 783-84; I.A.R. 11(c)(1); I.A.R. 14.

Furthermore, the principle the State cites from *DiFrancesco* – that the defendant cannot have a legitimate expectation of finality in an originally-imposed sentence (Resp.



Br., pp.13-15) – does not undermine Mr. Steelsmith’s argument, either because the principle is inapplicable to his claim or because he had the requisite expectation.

First, the *DiFrancesco* principle was articulated in the specific situation where Congress expressly provided that sentences imposed pursuant to a particular statute could be increased on appeal. See *DiFrancesco*, 449 U.S. at 136. As all parties were on notice that, by statutory authority, the imposed sentence was subject to increase, that sentence could not be relied upon as final until the appeal resolved. See *DiFrancesco*, 449 U.S. at 136; compare, e.g., *Goodlett*, 139 Idaho at 264 (holding that, in Idaho, the courts do not have the authority to increase a sentence once imposed). Therefore, the *DiFrancesco* rule is appropriately limited to situations where there is an express grant of power by the Legislature to effect an increase to an imposed sentence on appeal.<sup>12</sup> See *id.* The statutes under which Mr. Steelsmith was sentenced do not have such an express grant of authority. See I.C. §§ 18-8004, 8005(6). Therefore, the *DiFrancesco* rule is inapplicable to Mr. Steelsmith’s case.<sup>13</sup>

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<sup>12</sup> However, based on the ruling in *Avelar* – that, in Idaho, new or additional punishments imposed at a second proceeding (which would include an appellate proceeding), even if authorized by the Legislature, violate the constitutional double jeopardy protections (*Avelar*, 132 Idaho at 778; see also *Goodlett*, 139 Idaho at 264) – the rule from *DiFrancesco* is further limited to arguments made pursuant to the federal Constitution.

<sup>13</sup> As a result, the general rule – that a second or increased punishment for the same act violates the double jeopardy protections – governs whether Mr. Steelsmith’s protections against double jeopardy were violated. See *Avelar*, 132 Idaho at 778; *Whalen v. United States*, 445 U.S. 684, 703 (1980) (holding that “the Double Jeopardy Clause as interpreted by *Ex parte Lange* [85 U.S. 163 (1873)] prevents a sentencing court from increasing a defendant’s sentence for any particular statutory offense, even though the second sentence is within the limits set by the [L]egislature” (emphasis added)). The addition of previously-unimposed punishments at the subsequent rider review hearing constitutes both a second punishment and an increase to the aggregate punishment, and thus, under the general rule, constitutes a violation of the protections against double jeopardy.

Second, even if the *DiFrancesco* rule is applicable to Mr. Steelsmith's case, he did have a legitimate expectation of finality in his sentence. For example, the Idaho Supreme Court recognized in *Coassolo* that the deprivation of liberty at the sentencing hearing was constitutionally permissible because the defendant had been afforded due process during that at that hearing. See *Coassolo*, 136 Idaho at 142-43. However, it found that there was no due process right at the relinquishment stage of proceedings because the State was not effectuating a new liberty deprivation (*i.e.*, depriving the defendant of more than it had originally deprived him of at the sentencing hearing). *Id.* at 143.<sup>14</sup> In order for such a determination to pass constitutional muster, the initial deprivation must be reliably final.

In addition to the indications of finality identified in *Coassolo*, *Bosier*, *Longest*, *et al.*,<sup>15</sup> judgments of conviction (which include sentencing orders) are final judgments

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<sup>14</sup> However, in this case, the district court did not deprive Mr. Steelsmith of his liberty or property (the fines, costs, and suspension) when it was permitted to do so. (See R., pp.61-63.) Instead, it effectuated new deprivations when it relinquished jurisdiction (*i.e.*, it took more than it had originally taken at the sentencing hearing). (Compare R., pp.61-63 with R., pp.68-71.)

This comparison also demonstrates the clear violation in the record itself, as well as the prejudice (the increased punishment) caused by the violation. As such, it demonstrates compliance with the second and third prongs of the *Perry* fundamental error test. See *Perry*, 150 Idaho at 226. There is no evidence in the record that Mr. Steelsmith ever waived his constitutional protections against double jeopardy. (See *generally* R.) Therefore, under *Perry*, Mr. Steelsmith only need demonstrate a violation of his constitutional protections against double jeopardy to meet all the prongs of that test. See *Perry*, 150 Idaho at 226. As explained *infra* and *supra*, the district court's actions did, in fact, violate his rights to be free from double jeopardy, imposing a second and additional punishment for the same actions. See, *e.g.*, *Avelar*, 132 Idaho at 778. As a result, this Court has the authority to rule on the merits of this issue as fundamental error. See *id.* And since those new and additional penalties violate the constitutional protections against double jeopardy, this Court should vacate those penalties.

<sup>15</sup> The reasons why, in a case involving a period of retained jurisdiction, a sentence must be imposed and executed prior to the period of retained jurisdiction (as discussed

for purposes of appeal. *State v. Tucker*, 103 Idaho 885, 888 (Ct. App. 1982). Suspending a sentence for a period of probation does not affect the finality of the underlying judgment. *Id.* (also discussing the fact that, pursuant to I.A.R. Rule 14,<sup>16</sup> the appeal period is enlarged by the period of retained jurisdiction, implying that retaining jurisdiction would not affect the finality of the judgment of conviction either). Accordingly, regardless of the outcome of the period of retained jurisdiction, a potential appeal is against the initially-imposed sentence contained in the original judgment of conviction. *Id.*; I.A.R. 14. As such, that initial judgment of conviction and the initially-imposed sentence therein, must be reliably final.

To that end, an order for the payment of fines and costs alone is considered a final judgment. *State v. Wagenius*, 99 Idaho 273, 276 (1978). As such, the inverse should also be true – an order for only imprisonment (as was ordered in this case) is considered a final judgment. *See id.* Furthermore, even if the defendant had not challenged (or was unable to challenge) the initial punishment, he is not precluded from challenging the imposition of any additional punishments imposed after the judgment of conviction has been entered, including costs and fines. *See id.* (implying that, because each order constitutes a final, appealable order, the appealability of each order (and the

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in depth in Sections I(B)(1)-(2), *supra*), also, by inference, indicate that the sentence must be final.

<sup>16</sup> I.A.R. Rule 14 states:

The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of judgment . . . . If, at the time of judgment, the district court retains jurisdiction pursuant to Idaho Code § 19-2601(4), the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between entry of the judgment of conviction and entry of the order relinquishing jurisdiction or placing the defendant on probation.

punishments contained therein) is determined separately, thus allowing a challenge to the additional punishments even without a challenge to the initial imposition of sanctions). In fact, the only distinguishable order is a withheld judgment because, in that situation, no sentence is imposed.

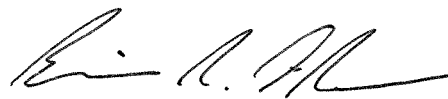
As such, the initially-imposed sentence *must* have the necessary finality (*i.e.*, the defendant's expectation of finality in that sentence is legitimate) to be appealable. Therefore, as Mr. Steelsmith would be allowed to challenge the sentence imposed in his judgment of conviction on appeal, he must necessarily have a legitimate expectation in the finality of that sentence.

Therefore, these new punishments, imposed at a second proceeding, violated Mr. Steelsmith's unwaived state and federal constitutional protections against double jeopardy. *Avelar*, 132 Idaho at 778. This violation constitutes fundamental error, and thus, this Court may address this issue on appeal and provide the appropriate remedy to Mr. Steelsmith.

### CONCLUSION

Because the district court imposed the additional penalties of the fine, costs, and license suspension without jurisdiction to do so, and in violation of the constitutional protections against double jeopardy, Mr. Steelsmith respectfully requests this Court vacate those penalties.

DATED this 22<sup>nd</sup> day of June, 2012.



BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of June, 2012, 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

LAURENCE G SMITH  
ADA COUNTY PUBLIC DEFENDER'S OFFICE  
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\_\_\_\_\_  
EVAN A. SMITH  
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BRD/eas