

12-13-2012

# State v. Garcia-Pineda Respondent's Brief Dckt. 39782

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39782
	)	
vs.	)	
	)	
MARTIN GARCIA-PINEDA,	)	
	)	
Defendant-Appellant.	)	

**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

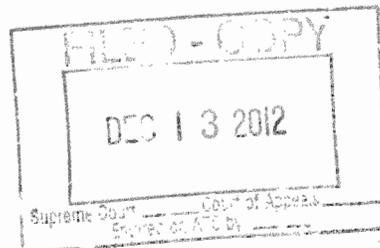
**HONORABLE CASEY ROBINSON, Magistrate Judge  
HONORABLE JOHN K. BUTLER, District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Martin Garcia-Pineda appeals from the district court's order reversing the magistrate's denial of the state's motion to correct an illegal sentence. Garcia-Pineda contends the district court erred in concluding the magistrate lacked authority to suspend any portion of the community service requirement set forth in I.C. § 37-2738.

### Statement Of Facts And Course Of Proceedings

Upon investigating a report of "stolen property and narcotics activity," law enforcement obtained a search warrant for Garcia-Pineda's residence. (R., pp.2-4.) The search revealed marijuana concealed in an Altoids' tin. (R., p.3.) Although Garcia-Pineda initially denied ownership of the marijuana, he later admitted the marijuana belonged to him. (R., pp.4-5.) As a result, law enforcement issued Garcia-Pineda a citation for possession of marijuana. (R., p.1.)

Garcia-Pineda pled guilty to possession of a controlled substance in violation of I.C. § 37-2732(c)(3). (R., p.12.) The magistrate imposed a 90-day jail sentence, with 87 days suspended, and placed Garcia-Pineda on probation for 18 months. (R., p.12.) The magistrate also imposed 100 hours of community service but suspended 80 of those hours. (R., p.12.)

Approximately one month later, the state filed an I.C.R. 35 motion, asserting the sentence was "contrary to law" because the magistrate did not "impos[e] the statutory minimum required number of hours of community

service.” (R., p.13.) The magistrate denied the motion, concluding it had inherent authority to suspend a sentence. (8/22/2011 Tr., p.11, Ls.4-10.) The state appealed to the district court, which reversed the magistrate. (R., pp.16-18, 21-29.) Garcia-Pineda filed a timely notice of appeal from the district court's Memorandum of Decision on Appeal. (R., pp.21, 31-33.)

## ISSUES

Garcia-Pineda states the issues on appeal as:

- A. Whether the District Court Erred in Holding That the Magistrate Court Abused Its Discretion In Suspending the Imposition of Community Service as a Term of Probation.
- B. Whether the District Court Erred in Reversing the Magistrate Court's Decision Denying the Appellant's Idaho Criminal Rule 35 Motion to Correct an Illegal Sentence.

(Appellant's Brief, p.2 (formatting altered).)

The state rephrases the issue on appeal as:

Has Garcia-Pineda failed to establish error in the district court's decision that the magistrate lacked discretion to suspend any portion of the community service imposed as required by I.C. § 37-2738?

## ARGUMENT

### Garcia-Pineda Has Failed To Show Error In The District Court's Decision Reversing The Magistrate's Denial Of The State's Request To Correct Garcia-Pineda's Illegal Sentence

#### A. Introduction

Garcia-Pineda claims the district court erred in reversing the magistrate's denial of the state's request to correct an illegal sentence, arguing the district court erroneously concluded the magistrate did not have discretion to suspend the majority of the community service required by statute. (Appellant's Brief, pp.2-5.) A review of the relevant statutes and applicable legal standards shows Garcia-Pineda's claim fails.

#### B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

The interpretation and application of a statute is a question of law subject to *de novo* review. State v. Jones, 151 Idaho 943, 946, 265 P.3d 1155, 1158 (Ct. App. 2011). “Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction.” Id.

C. The Magistrate Did Not Have Authority To Suspend Any Portion Of Garcia-Pineda’s Community Service

Idaho Code § 37-2738(5) governs sentencing criteria in drug cases and provides:

Any person who pleads guilty to or is found guilty of a violation of the provisions of [subsections (a), (b), (c), or (e) of section 37-2732, Idaho Code] **shall**, when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work.

(Emphasis added.)

Garcia-Pineda does not dispute that he was convicted of an offense that subjected him to the requirements of I.C. § 37-2738(5). Instead, Garcia-Pineda contends the magistrate could suspend a portion of the 100-hour community service requirement and the district court erred in concluding otherwise. (Appellant’s Brief, pp.3-5.) Garcia-Pineda is incorrect.

Because Garcia-Pineda pled guilty to a qualifying offense and was granted probation, the plain language of I.C. § 37-2738(5) required the magistrate to order Garcia-Pineda to **complete** a minimum of 100 hours of community service. Nothing in I.C. § 37-2738(5) or any other provision of law authorized the magistrate to suspend any portion of the community service

requirement. The Court of Appeals' recent opinion in State v. Steelsmith, 288 P.3d 132 (Ct. App. 2012), is instructive.

In Steelsmith, the district court did not impose the statutorily mandated driver's license suspension until it relinquished jurisdiction. 288 P.3d at 135. The Court of Appeals held that although a trial court generally cannot increase a sentence once it has been executed, which occurs when the defendant is transferred to the custody of the Board of Correction, Rule 35 allowed the court to impose the suspension when it did because the absence of a mandatory license suspension in Steelsmith's original sentence made the sentence illegal. Id. at 137. As explained by the Court of Appeals, "A suspension of driving privileges under [I.C. § 18-8005(6)(d)] is mandatory, and therefore Steelsmith's original sentence was illegal to the extent that it did not include a license suspension." Id. The Court reached the same conclusion with respect to the court's addition of certain mandatory fines. Id.

As in Steelsmith, Garcia-Pineda's original sentence was illegal because it failed to order him to complete the 100-hour community service requirement mandated by I.C. § 37-2738(5). Thus, the district court correctly concluded the magistrate erred in denying the state's motion to correct Garcia-Pineda's illegal sentence. In reaching this conclusion, the district court interpreted the 100-hour community service requirement as a term of probation that the sentencing court could not modify unless the defendant showed he was "not capable of performing" the requirement. (R., pp.27-28.) Although the 100-hour requirement set forth in I.C. § 37-2738 is only required when the defendant is granted

probation, the state submits it is not a term of probation, but is a mandatory sentencing requirement that may not be modified by the court under any circumstance.<sup>1</sup>

However, even if the community service requirement is a statutorily mandated condition of probation as opposed to a mandatory sentence, as Garcia-Pineda argues, he has failed to cite any authority to support his claim that a court has inherent authority to suspend a statutory condition of probation. Garcia-Pineda's reliance on State v. McCoy, 94 Idaho 236, 486 P.2d 247 (1971), to support such a proposition is misplaced. (Appellant's Brief, p.3.) In McCoy, the Court considered the constitutionality of a statute that required mandatory imposition of 10 days in jail upon conviction for driving under the influence. The Court held the statute "unconstitutional and therefore null, void and unenforceable" because, the Court concluded, it interfered with the common law authority of the judicial branch to suspend a defendant's sentence. McCoy, 94 Idaho at 241, 486 P.2d at 252. The opinion in McCoy, however, predated the amendment to section 13, article V of the Idaho Constitution, which states, in relevant part: "the legislature can provide mandatory minimum sentences for any crimes, and any sentence imposed shall be not less than the mandatory minimum sentence so provided. Any mandatory minimum sentence so imposed shall not be reduced."

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<sup>1</sup> To the extent this Court concludes the district court's rationale was erroneous, the Court may still affirm the result based upon the correct interpretation of the statute. Boise Tower Assoc., LLC. v. Hogland, 147 Idaho 774, 782, 215 P.3d 494, 502 (2009) ("Where the lower court reaches the correct result by an erroneous theory, this Court will affirm the order on the correct theory.").

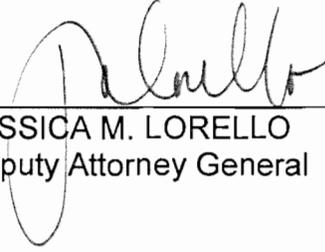
Garcia-Pineda acknowledges, as he must, that regardless of what the Court held in McCoy, the Idaho Constitution authorizes the legislature to require mandatory sentences and the courts must enforce those statutes. (Appellant's Brief, p.3.) Nevertheless, Garcia-Pineda attempts to draw a distinction between the legislative authority over sentences recognized in section 13, article V, and legislative control over probationary terms, asserting that the absence of any language in the constitution governing probation necessarily means a court can disregard a statutorily mandated term of probation. (Appellant's Brief, pp.2-3.) McCoy certainly does not support such a claim, as it did not address this particular issue, and Garcia-Pineda has failed to cite any other authority that does.

Moreover, Garcia-Pineda's attempt to parse the constitutional authority set forth in section 13, article V, is not persuasive. The 100-hour community service requirement in I.C. § 37-2738(5) is part of a legislative scheme governing the sentencing criteria for defendants convicted of certain drug offenses, and it falls squarely within the authority granted to the legislature by the Idaho Constitution. The magistrate had no discretion to disregard the mandate of I.C. § 37-2738(5) and Garcia-Pineda has failed to offer any reasoned legal basis for concluding otherwise. His claim that the district court erred in reversing the magistrate's denial of the state's Rule 35 motion fails.

CONCLUSION

The state respectfully requests that this Court affirm the district court's decision reversing the magistrate's denial of the state's motion to correct Garcia-Pineda's illegal sentence.

DATED this 13th day of December, 2012.

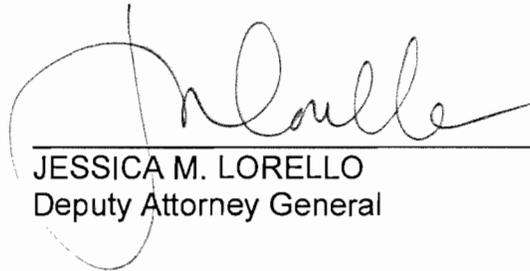


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JESSICA M. LORELLO  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of December 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

JOSEPH F. JAMES  
Brown & James  
130 4th Avenue West  
Gooding, ID 83330



\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

JML/pm