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State v. Garcia-Pineda Appellant's Reply Brief Dckt. 39782

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,)
) SUPREME COURT NO. 39782-2012
Plaintiff/Respondent,)
)
vs.)
)
MARTIN GARCIA-PINEDA,)
)
Defendant/Appellant.)
)
)

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fifth Judicial District for Gooding County

Honorable John K. Butler, District Judge presiding

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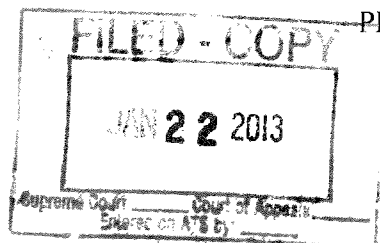
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COPY

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I
STATEMENT OF CASE

A. Nature of the Case

This matter is an appeal from the Memorandum Decision on Appeal, entered on the 19th day of January, 2012, by the Honorable John K. Butler, District Judge, which reversed the decision of the Honorable Casey U. Robinson, Magistrate Judge, to suspend 80 hours of the 100 hours of community service imposed in the Judgment of Conviction. Further, this matter is an appeal from the District Court's Memorandum Decision on Appeal, wherein the District Court reversed the Magistrate Court's denial of the State of Idaho's Motion to Correct an Illegal Sentence.

B. Statement of Facts and Procedural History.

The factual and procedural histories of this case were previously articulated in Mr. Garcia-Pineda's Appellant's Brief and, therefore, are not repeated herein.

II
ISSUES PRESENTED ON APPEAL

- 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.

III ARGUMENT

A. **The 100-hour Community Service Requirement Set Forth in I.C. § 37-2738 Is Not a Mandatory Sentence as Contemplated by ID Const. Art V, § 13 .**

The Plaintiff-Respondent, State of Idaho (“the State”), contends that the 100-hour community service requirement set forth in I.C. § 37-2738 does not set forth a term of probation, but rather provides a mandatory sentencing requirement. (Resp. Brief, pp. 5-6.) The State is incorrect. By its specific terms, I.C. § 37-2738 only requires a service of one hundred (100) hours of community service when a person has pled to, or is found guilty of, certain offenses and is granted a period of probation. I.C. § 37-2739(5).

The Defendant-Appellant, Martin Garcia-Pineda (“Mr. Garcia-Pineda”) pled guilty to the misdemeanor charge of possession of a controlled substance, a violation of I.C § 37-2732(c)(3). (R., Vol. I, p.9). The maximum possible sentence for such offense is imprisonment for not more than one (1) year, or fine of not more than one thousand dollars (\$1,000.00), or both. *Id.* The offense to which Mr. Garcia-Pineda pled guilty does not carry a mandatory minimum sentence. *Id.* However, the legislature did include mandatory minimum sentencing provisions under the Uniform Controlled Substance Act, all of which were not applicable to Mr. Garcia-Pineda. See, I.C. § 37-2732B; I.C. § 37-2739A; and I.C. § 37-2739B.

The requirement to perform 100 hours of community service set forth in I.C. § 37-2738 provides a term of probation, and is not a mandatory sentencing requirement as contemplated by ID Const. Art V, § 13. Accordingly, the Magistrate Court acted within the boundaries of its discretion in suspending 80 hours of the 100 hours of community service imposed on Mr. Garica-Pineda.

B. The Magistrate Court's Sentence Was Within its Authority and Not Subject to Correction as an Illegal Sentence Pursuant to Idaho Criminal Rule 35.


The State contends that the Court of Appeals decision in *State v. Steelsmith*, 288 P.3d 132 (Ct. App. 2012) is similar to the present matter. The State's reliance is misplaced. In *Steelsmith*, the lower court did not impose a mandatory driver's license suspension until it relinquished jurisdiction. *Steelsmith*, 288 P.3d. at 135. In the present matter, the Magistrate Court entered its judgment imposing 100 hours of community service as required by I.C. § 37-2738 and then further suspended execution of 80 hours of the community service imposed. (R. Vol. I, p.12).

Steelsmith, simply holds that the District Court has authority under I.C.R. 35(a) to correct an illegal sentence at any time. *Steelsmith*, 288 P.3d at 37. Mr. Garcia-Pineda does not assert that the court cannot correct an illegal sentence at any time. Rather, Mr. Garcia-Pineda asserts that the Magistrate Court's imposition of 100 hours of community service, followed by suspension of the execution of 80 hours of community service was within its authority and therefore not subject to correction as an illegal sentence. As provided by I.C. §19-2601, the courts in Idaho have the authority to suspend a judgment of conviction and place the defendant on probation under such terms and conditions as the court sees fit. I.C. §19-2601.

**IV
CONCLUSION**

For the foregoing reasons, and for the reasons set forth in Appellant's Brief, Mr. Garcia-Pineda respectfully requests that this court vacate the District Court's decisions set forth in a Memorandum Decision on Appeal, entered on the 19th day of January, 2012.

BROWN & JAMES

By: 
Joseph F. James

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of January, 2013. I served a true and correct copy of the foregoing document on the person listed below, in the manner indicated:

Lawrence Wasden	<input checked="" type="checkbox"/>	United States Mail, Postage Prepaid
Attorney General, State of Idaho	<input type="checkbox"/>	Express overnight delivery
Jessica M. Lorello	<input type="checkbox"/>	Hand delivered
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