

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

2-28-2018

### State v. Anderson Appellant's Reply Brief Dckt. 45097

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Anderson Appellant's Reply Brief Dckt. 45097" (2018). *Not Reported*. 4311.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/4311](https://digitalcommons.law.uidaho.edu/not_reported/4311)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	No. 45097-2017
	)	
v.	)	
	)	
TRAVIS SHANE ANDERSON,	)	
	)	
Defendant-Appellant.	)	
_____	)	

---

**REPLY BRIEF OF APPELLANT**

---

**Appeal From The District Court Of The First Judicial  
District Of The State Of Idaho, In And For The  
County Of Kootenai**

---

**Honorable Rich Christensen  
District Judge**

---

**PAUL E. RIGGINS**  
Riggins Law, P.A.  
P.O. Box 5308  
Boise ID 83705  
(208) 344-4152  
(208) 488-4280 Fax  
[rigginslaw@gmail.com](mailto:rigginslaw@gmail.com)  
I.S.B. # 5303

**ATTORNEY FOR  
DEFENDANT-APPELLANT**

**LORI A. FLEMING**  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	3
ARGUMENT .....	4
I. Mr. Andersons’s Appeal Should Not Be Dismissed Based on Timeliness .....	4
A. Introduction .....	4
B. Discussion .....	4
II. The State Failed to Raise Arguments Against the Merits of Mr. Anderson’s Appeal, and Therefore Has Waived Any Such Arguments .....	9
CONCLUSION.....	10
CERTIFICATE OF MAILING.....	11

TABLE OF AUTHORITIES

Cases

<i>Idah-Best, Inc. v. First Security Bank of Idaho</i> , 99 Idaho 517, 584 P.2d 1242 (1978) ...	5,6
<i>State v. Ciccone</i> , 150 Idaho 305 246 P.3d 958 (2010) .....	6,7
<i>State v. Hancock</i> , 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986) .....	7,8,9
<i>State v. Payan</i> , 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996) .....	6,7
<i>State v. Raudebaugh</i> , 124 Idaho 758, 864 P.2d 596 (1993) .....	9
<i>Suitts v. Nix</i> , 141 Idaho 706, 117 P.3d 120 (2005) .....	9

Constitution

United States Constitution, Fourth Amendment .....	9
--	---

Statutes and Rules

Idaho Appellate Rule 4 .....	4
Idaho Appellate Rule 11(c) .....	5,6, 7,8,9
Idaho Appellate Rule 14 .....	6
Idaho Code §19-2522 .....	11
Idaho Code §19-2801 .....	4
Idaho Criminal Rule 32 .....	11
Idaho Criminal Rule 35 .....	4
Idaho Criminal Rule 36 .....	7

## ARGUMENT

### I. Mr. Anderson's Appeal Should Not Be Dismissed Based on Timeliness.

#### A. Introduction

Mr. Anderson was sentenced on August 11, 2016. (R., p. 104). The District Court issued its initial Judgment of Conviction on August 12, 2016. (R., pp. 108-09). The Court denied the Defendant's I.C.R. 35 Motion by Order filed October 12, 2016. (R., p. 132). The Court subsequently issued a second Judgment on March 8, 2017. (R., pp. 137-38). The Court issued its final Judgment on March 10, 2017. (R., pp. 140-42).

Mr. Anderson, while appearing *pro se*, filed his Notice of Appeal dated April 14, 2017. (R., p. 143). The court clerk filed the Notice on April 19, 2017. (*Id.*). Mr. Anderson's appeal notice was dated 35 days, and filed 40 days, after the issuance of the final Judgment.

The State argued in its "Respondent's Brief" that Mr. Anderson failed to file his Notice of Appeal in a timely manner.

#### B. Discussion

Idaho Code §19-2801 starts the discussion by directing that appeals may taken "from such judgments and orders of the district court, and within such times ... as prescribed by rule of the supreme court." (Idaho Code §19-2801).

The Idaho Supreme Court established rules for filing of appeals in the Idaho Appellate Rules. Rule 4 notes that "[a]ny party aggrieved by an appealable judgment, order or decree, as defined in these rules, ... may appeal such decision to the Supreme Court as provided in these rules." (Idaho Appellate Rule 4).

Appellate Rule 11 sets forth the definition of “appealable” judgments and orders in criminal case proceedings. (*See* Idaho Appellate Rule 11(c)). The rule states that:

An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders ...:

(c) Criminal Proceedings. From the following judgments and orders of the district court in a criminal action, ...

(1) Final judgments of conviction.

\*\*\*

(4) Any order or judgment, *whenever entered and however denominated*, terminating a criminal action ... . (emphasis added).

\*\*\*

(6) Any judgment imposing sentence after conviction ... .

\*\*\*

(9) Any order made after judgment *affecting the substantial rights* of the defendant or the state. (emphasis added).

Mr. Anderson’s appeal is notable because it qualifies under *all four* of the listed provisions. His Amended Judgment was a final judgment of conviction, it terminated a criminal action (regardless of when it was entered and how it was denominated), it was a judgment imposing sentence after conviction, and it affected his substantial rights by addressing and detailing the term of his sentence and incarceration which the Court deemed already satisfied.

The Idaho Supreme Court previously discussed the issue of final judgments, including the matter of the document title in question. In *Idah-Best, Inc. v. First Security Bank of Idaho*, 99 Idaho 517, 584 P.2d 1242 (1978), the Court held that “if the instrument ends the suit, adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties, the instrument constitutes a final judgment regardless of its title”. *Id.*, 99 Idaho at 519 (internal quotations and case citations omitted). The Court’s ruling makes clear that the final document determining the rights of the parties is the “final judgment” regardless of the form or title of the document.

In Mr. Anderson's case, his "rights" were still being defined past the initial judgment, to the amended judgments. Certainly, the amount of time a criminal defendant will serve in prison, and how much time he should receive advanced credit for, is within the purview of "rights" afforded him. Since the Government is holding Mr. Anderson against his will and pursuant to law, he is entitled to due process including notice of the penalties imposed against him. His rights are clearly affected by this determination. As set forth by the Supreme Court in *Idah-Best*, the Amended Judgment "ended the suit", "adjudicated the subject matter of the controversy", and represented a "final determination of the rights of the parties". *See* 99 Idaho at 519. The determination of Mr. Anderson's rights continued through the process of amending the judgment. Therefore, the Amended Judgment constituted a "final judgment" for purposes of appeal. *See id.* Mr. Anderson's Notice of Appeal filed within the 42-day time limit from that Amended Judgment was timely. (*See* Idaho Appellate Rule 14).

The Government cited two cases in support of its argument for dismissal, *State v. Ciccone*, 150 Idaho 305, 246 P.3d 958 (2010) and *State v. Payan*, 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996). Both are distinguishable from the situation at bar, and are not dispositive of Mr. Anderson's appeal.

In *Ciccone*, a clerical error was at issue. 150 Idaho at 306. This did not affect the defendant in any way, nor did it affect the substantial rights of either party. (*See* Idaho Appellate Rule 11 (c)(9)). The district court, via the court clerk, erroneously dated the judgment with a hand-written notation. The district court fixed the date by entering an amended judgment, rather than an order of the court. The defendant appealed from the amended judgment. The Supreme Court reviewed the rules regarding clerical mistakes in judgments, and ruled that the such mistakes may be corrected at any time, after providing

notice, as the Court orders. (*citing* Idaho Criminal Rule 36). The Court held that it did not have “jurisdiction to hear Ciccone’s appeal ... based on the degree of accuracy required of the filing stamp.” 150 Idaho at 306.

This set of facts, and the Supreme Court’s focus on whether the filing stamp inaccuracy trumped the actual filing date, clearly distinguishes the case from Mr. Anderson’s situation. In *Ciccone*, no substantial rights were affected by the amended judgment. In this case, Mr. Anderson’s sentence and freedom were specifically affected. *Ciccone* is not controlling and is clearly distinguishable.

The *Payan* case is also distinguishable, albeit for entirely different reasons. In *Payan*, the defendant filed an untimely notice of appeal initially. 128 Idaho at 867. The district court later issued an amended judgment. The defendant then failed to file a subsequent notice of appeal. Instead, the defendant argued that his notice should be retroactively applied, and therefore was actually premature rather than untimely. *Id.*

Mr. Anderson is making no such argument. Mr. Anderson appealed directly from his Amended Judgment, which affected his substantial rights. (*See* Idaho Appellate Rule 11(c)(9)). He did not fail to file a subsequent appeal after an initial untimely filing, as in *Payan*. He did not file an appeal notice and then argue it was premature based on a future court event, as in *Payan*. Finally, he did not request retroactive application of his appeal notice, as in *Payan*. Based thereon, Mr. Anderson asserts that *Payan* is not controlling and is clearly distinguishable.

The appellate case of *State v. Hancock*, 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986), provides valuable direction to the Court in cases where a defendant’s substantial rights are affected by a final amended judgment, such as in Mr. Anderson’s case. In



*Hancock*, the district court entered an unusual judgment which apparently failed to spell out the exact terms of the defendant's probation. Mr. Hancock was charged with a subsequent crime, and the State filed a probation violation against Mr. Hancock based on the new charges. In a separate proceeding under the original case, the district court issued an amended judgment, in which it detailed the length of the probationary term. Hancock argued that he was not provided proper notice of the probationary term, and therefore could not be held in violation even though he had subsequently violated a state law. The district court found this argument completely without merit, and the Court of Appeals affirmed.

However, in the course of the appeal regarding the probation issue, Hancock also argued that his original sentence was excessive. The Court held that the appeal was untimely. In doing so, the Court declared that *the amended judgment*, which set forth the terms of probation, “*was a final judgment of conviction and was appealable* under Idaho Appellate Rule 11(c)(1) and (6).” *Id.* at 839 (emphasis added)

This case is important for the simple declaration set forth above. In *Hancock*, the Court found that an amended judgment which affected the defendant was a “final judgment” and was a “judgment imposing sentence after conviction”. Both of these types of judgments constitute appealable judgments, according to Idaho appellate rules. Appellate Rule 11(c)(1) allows appeals of “final” judgments, while Rule 11(c)(6) allows appeals of judgments imposing sentence after conviction.

The *Hancock* Court's ruling should be applied to Mr. Anderson's case. Mr. Anderson's Amended Judgment was the “final Judgment” in a series of judgments issued by the district court. Therefore, it should qualify as an appealable order, as in *Hancock*. Mr. Anderson's Amended Judgment was a “judgment imposing sentence” (and clarifying

that sentence) “after conviction”. Therefore, it should qualify as an appealable order, as in *Hancock*.

Finally, as discussed above, Mr. Anderson’s Amended Judgment “affected the substantial rights of the defendant.” (*See* Idaho Appellate Rule 11(c)(9)). As discussed above, the amendment unequivocally affected the terms of his imprisonment, a “seizure” by the government under the Fourth Amendment to the United States Constitution. Under the plain language of the Court rule, the “order affecting the substantial rights” of Mr. Anderson was appealable.

Based thereon, dismissal is not in order. The Court should reject this argument, and decide Mr. Anderson’s appeal on the merits of the case.

II. The State Failed to Raise Arguments Against the Merits of Mr. Anderson’s Appeal, and Therefore Has Waived Any Such Arguments.

The State’s brief included the sole issue of “timeliness”. The State failed to raise any arguments concerning the merits of Mr. Anderson’s appeal.

In choosing to do so, the State chose to waive any and all such arguments. Issues on appeal that are not supported by propositions of law or authority are deemed waived and will not be considered by the Supreme Court. *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005). The Supreme Court explained its rationale, indicating that the reason it will not consider issues not addressed in the opening brief[s] is that “the issues presented ... are the arguments and authority to which the [opposing party] has an opportunity to respond.” *Id.*; *see also State v. Raudebaugh*, 124 Idaho 758, 763, 864 P.2d 596, 601 (1993)(stating that “raising the issue at this late stage of the briefing does not allow for full consideration of the issue, and we will not address it”). Mr. Anderson

would be substantially prejudiced by allowing the government to proceed with arguments it did not offer or submit in its Reply Brief.

In his Opening Brief, Mr. Anderson discussed in detail numerous mitigating factors present in his case, all of which indicated that a more lenient determinate sentence would have been appropriate. Those included the fact that Mr. Anderson accepted responsibility for his conduct and expressed remorse for his actions, had no prior violent felony record or record of similar charges, his more-culpable co-defendant was sentenced to a lesser sentence (ten years determinate and fifteen years indeterminate), thereby creating unnecessary and unwarranted sentencing disparities, he had severe substance abuse issues, and he suffered from significant mental health issues. (*See* Appellant's Opening Brief, pp. 10-23).

The District Court's insufficient consideration of all the mitigating factors, and therefore, its insufficient consideration of Idaho's recognized sentencing objectives, caused it to impose an excessive determinate sentence in an abuse of its discretion. Anderson then urged this Court to address and remedy that abuse.

The State offered no objection or reply to these arguments on appeal. Since the State failed to object to any of these arguments, which Mr. Anderson presented in detail in his Opening Brief, they have waived those arguments. The Court should accept Mr. Anderson's arguments without opposition from the government.

#### CONCLUSION

Based upon the above and foregoing, Mr. Anderson's appeal should proceed with this Court.

Mr. Anderson respectfully requests that this Court reduce the fixed or determinate portion of his sentence as it deems appropriate and just, based on his personal characteristics and under the circumstances of the case.

In the alternative, Mr. Anderson respectfully requests that the Court vacate his sentence, and remand his case for a new sentencing hearing after the district court conducts a comprehensive evaluation of Mr. Anderson's mental health condition, in accordance with applicable Idaho law, including Idaho Code §19-2522 and Idaho Criminal Rule 32.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of February, 2018.

/s/ Paul E. Riggins  
PAUL E. RIGGINS  
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2018, I served a true and correct copy of the foregoing document, by emailing an electronic copy to:

.....  
Lori A. Fleming  
Deputy Attorney General  
Criminal Division  
P.O. Box 83720  
Boise ID 83720-0010

Via email: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Paul E. Riggins  
Paul E. Riggins