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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45176
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-4432
v.)	& CR01-17-4116
)	
RICHARD KELLY DICKSON,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

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

HONORABLE SAMUEL A. HOAGLAND
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Richard Dickson pled guilty to one count of delivery of marijuana, one count of sexual battery, and one count of dispensing alcohol to a minor. He received an aggregate unified sentence of fifteen years, with four years fixed.

On appeal, Mr. Dickson contends that this sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts. He further contends that the district court abused its discretion by failing to reduce his sentence 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 address the State's contention that, despite the fact that the cases were ordered consolidated by the district court, one notice of appeal was insufficient to appeal the judgments in both cases.

Statement of the Facts and Course of Proceedings

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

ISSUES

- I. Did the district court abuse its discretion when it imposed an aggregate unified sentence of fifteen years, with four years fixed, upon Mr. Dickson following his plea of guilty to delivery of marijuana, sexual battery of a minor, and dispensing alcohol to minors?

- II. Did the district court abuse its discretion when it denied Mr. Dickson's Idaho Criminal Rule 35 Motion?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Aggregate Unified Sentence Of Fifteen Years, With Four Years Fixed, Upon Mr. Dickson Following His Plea Of Guilty To Delivery Of Marijuana, Sexual Battery Of A Minor, And Dispensing Alcohol To A Minor And Abused Its Discretion In Denying Mr. Dickson's Idaho Criminal Rule 35 Motion

Ada County case number CR-01-17-4116 (*designated in the Appellant's Brief as, "the marijuana delivery case"*) and Ada County case number CR-01-17-4432 (*designated in the Appellant's Brief as, "the battery case"*) were consolidated by the district court. (R., pp.49-50.)

The State asserts that, because Mr. Dickson did not file a notice of appeal in both 4116 and 4432, this Court does not have jurisdiction to consider his appeal in 4116, and that case must be dismissed.¹ (Respondent's Brief, pp.2-4.) However, the State is incorrect as such an interpretation would effectively render the district court's order consolidating the cases a nullity.

The rules providing for consolidation do not require the order consolidating to specify which case number the consolidated cases shall proceed under.

Local Rule 11.2. provides:

11.2 Criminal Cases. Motions to consolidate pending criminal actions shall be presented to and ruled upon by the judge to whom the lowest numbered case or first filed case has been assigned among those matters sought to be consolidated. Notice shall be given to all parties in each action involved and a copy filed in each case involved. If a motion to consolidate is granted, all further action with regard to the consolidated cases shall be heard by the judge assigned to the lowest numbered case or first filed case involved.

Local Rule 11.2 of the Local Rules of the District Court and Magistrate Division of the Fourth Judicial District. Where the district court failed to specify which case number the consolidated cases would proceed under, Mr. Dickson should be permitted to use either case number in designating the (consolidated) cases.

¹ Throughout its Respondent's Brief, the State references "4416" which is, presumably, a typographical error. Ada County case number CR-17-4116 is the case associated with Mr. Dickson.

The State points out that “the district court entered separate judgments of conviction in case 4432 and case 4416 [sic]” (Respondent’s Brief, p.4); however, the point of consolidation is that the district court and the parties do not have to file documents in each of the separate cases after the cases are consolidated. The district court’s failure to so designate does not erase the order consolidating such that Mr. Dickson must file a notice of appeal in each case or risk dismissal. Where the district court failed to specify a consolidated case number Mr. Dickson could file one Notice of Appeal of both cases using either case number.

CONCLUSION

Mr. Dickson respectfully requests that this Court reduce his sentences as it deems appropriate.

DATED this 6th day of March, 2018.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of March, 2018, 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:

RICHARD KELLY DICKSON
INMATE #75879
ICIO
381 W HOSPITAL DRIVE
OROFINO ID 83544

SAMUEL A HOAGLAND
DISTRICT COURT JUDGE
E-MAILED BRIEF

DAVID A STEWART
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas