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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45818
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-17-6118
v.)	
)	
KEVIN RYAN DURAN,)	APPELLANT'S REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kevin Ryan Duran appeals from his judgment of conviction for aggravated assault with a deadly weapon enhancement. Mr. Duran pleaded guilty and the district court imposed a unified sentence of twenty years, with ten years fixed. Mr. Duran appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence. This Reply Brief serves to clarify the record.

Statement of the Facts & Course of Proceedings

The Statement of Facts & Court of Proceedings are set forth in the Appellant's Brief and are incorporated herein by reference.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon Mr. Duran following his plea of guilty to aggravated assault with a deadly weapon enhancement?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Ten Years Fixed, Upon Mr. Duran Following Plea Of Guilty To Aggravated Assault With A Deadly Weapon Enhancement

In the Respondent's Brief, the State asserts that "Duran fled before the police arrived, but he was found at a truck stop a few days later with a loaded .40 caliber semi-automatic pistol located in his Jeep." (Respondent's Brief, p.4.) However, Mr. Duran was not found several days later; he was arrested the day of the incident. The Presentence Investigation Report (*hereinafter*, PSI), indicates that the police were dispatched to the incident on June 18, 2017. (PSI, p.3.) The PSI also indicates that Mr. Duran "has been in jail since June 18, 2017." (PSI, p.6.) The language on which State relies on is "A few days later when the Jeep Duran had been driving was searched, officers located a loaded Smith and Wesson .40 caliber semi-automatic pistol." (PSI, p.6.) Thus, Mr. Duran wishes to clarify that he was arrested the day of the incident. Further, the affidavit in support of Mr. Duran's arrest indicates that officers found a full magazine to a semi-automatic pistol in the Jeep, not a loaded weapon. (Affidavit in Support of Arrest, p.3.)¹

¹ This document is located on page 116 of the electronic document entitled, "Supreme Court No. 45818 Kevin Ryan Duran Confidential Exhibits.pdf."

CONCLUSION

Mr. Duran respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of January, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
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JMC/eas