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### State v. Carpenter Appellant's Reply Brief Dckt. 45915

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45915
	)	
v.	)	KOOTENAI COUNTY
	)	NO. CR 2016-11389
LUKE AARON CARPENTER,	)	
	)	APPELLANT'S
Defendant-Appellant.	)	REPLY BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Luke Aaron Carpenter pleaded guilty to felony grand theft. The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. After Mr. Carpenter participated in a “rider,” the district court relinquished jurisdiction and ordered into execution his sentence. Mr. Carpenter then filed an Idaho Criminal Rule 35 (“Rule 35”) motion for a reduction of sentence, which the district court denied. Mr. Carpenter appealed, asserting the district court abused its discretion when it imposed his underlying unified sentence, when it relinquished jurisdiction, and when it denied his Rule 35 motion.

In its Respondent's Brief, the State argues Mr. Carpenter did not establish that the district court abused its discretion when it imposed his sentence, when it relinquished jurisdiction, or when it denied his Rule 35 motion. (*See Resp. Br.*, pp.2-10.)

This Reply Brief is necessary to address the State's contention that Mr. Carpenter did not establish any basis for reversal of the district court's order denying his Rule 35 motion, because he did not provide any new information in support of the motion. (*See Resp. Br.*, p.9.) Mr. Carpenter asserts that even if he had not provided any new information in support of his Rule 35 motion, he submitted additional information that provides a basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion. Mr. Carpenter also challenges the State's general arguments that he did not establish the district court abused its discretion when it imposed his sentence, when it relinquished jurisdiction, or when it denied his Rule 35 motion, and he relies on the arguments presented in his Appellant's Brief and will not repeat those arguments here.

#### Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Carpenter's Appellant's Brief, and are incorporated herein by reference thereto.

#### ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of four years, with two years fixed, upon Mr. Carpenter following his plea of guilty to grand theft?
- II. Did the district court abuse its discretion when it relinquished jurisdiction and ordered into execution Mr. Carpenter's sentence?
- III. Did the district court abuse its discretion when it denied Mr. Carpenter's Idaho Criminal Rule 35 motion for a reduction of sentence?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With Two Years Fixed, Upon Mr. Carpenter Following His Plea Of Guilty To Grand Theft

Mr. Carpenter asserts that the district court abused its discretion when it imposed his unified sentence of four years, with two years fixed, because his sentence, given any view of the facts, is excessive. The district court should have followed Mr. Carpenter's recommendations by withholding judgment with a period of probation, or, alternatively, by imposing a unified sentence of three years, with one year fixed.

The State argues Mr. Carpenter has not established the district court abused its discretion when it imposed his sentence. (*See* Resp. Br., pp.2-5.) Because the State's argument is unremarkable, no further reply is necessary, and Mr. Carpenter would refer the Court to pages 4-7 of the Appellant's Brief.

### II.

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction And Ordered Into Execution Mr. Carpenter's Sentence

Mr. Carpenter asserts that the district court abused its discretion when it relinquished jurisdiction and ordered into execution his sentence.

At the rider review hearing, Mr. Carpenter requested an opportunity for another retained jurisdiction. (*See* Tr. Jan. 12, 2018, p.20, Ls.5-15.) The State's point that "I.C. § 19-2601(4) prohibits successive periods of retained jurisdiction without an intervening period of probation" (Resp. Br., p.6), is well-taken. However, Mr. Carpenter's counsel at the rider review hearing also told the district court, "Your Honor, as I'm sure you're aware, most clients or most

individuals would like an opportunity to try probation again or try probation, and I'd just—I know Mr. Carpenter would like that opportunity.” (See Tr. Jan. 12, 2018, p.19, Ls.11-15.)

The State's argument that Mr. Carpenter has not established that the district court abused its discretion by relinquishing jurisdiction (*see* Resp. Br., pp.5-8), is otherwise unremarkable, and Mr. Carpenter would refer the Court to pages 7-9 of the Appellant's Brief.

### III.

#### The District Court Abused Its Discretion When It Denied Mr. Carpenter's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Carpenter asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of new and additional information presented to the district court.

The State argues Mr. Carpenter “did not provide any ‘new’ information in support of his Rule 35 motion.” (Resp. Br., p.9.) The State contends information on Mr. Carpenter's housing plan was before the district court at the time of sentencing, and he could have explained his statements about absconding before the district court relinquished jurisdiction. (*See* Resp. Br., p.9.) Thus, the State argues, “Because [Mr.] Carpenter presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.” (Resp. Br., p.9.)

The Idaho Supreme Court has held that “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*,

144 Idaho 201, 203 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Mr. Carpenter asserts that, even assuming (without conceding) he did not provide any *new* information in support of his Rule 35 motion, he nonetheless has provided a basis for this Court to find that the denial of his Rule 35 motion was an abuse of discretion. At the least, the information on his statement about absconding, and on his acceptance into a halfway house (*see* Tr. June 4, 2018, p.7, L.14 – p.8, L.19), was *additional* information as contemplated by *Huffman*.

Ms. Carpenter submits the State is incorrect in arguing that “new information” serves as the only basis for reversal of the denial of a Rule 35 motion. As discussed above, “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *Huffman*, 144 Idaho at 203. The State quotes that very passage from *Huffman* on the same page it argues Mr. Carpenter did not present any new information. (*See* Resp. Br., p.9.) While the Idaho Supreme Court stated in *Huffman* that “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information,” *Huffman*, 144 Idaho at 203, the Court has indicated that additional information also serves as a basis for an appellate court to find that a denial of a Rule 35 motion was an abuse of discretion.

For example, in *State v. Adair*, 145 Idaho 514 (2008), the Idaho Supreme Court, citing *Huffman*, stated that, “absent the presentation of new evidence, an appeal from a Rule 35 motion merely asks this Court to review the underlying sentence. Without additional information being presented, there is no basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion.” *Adair*, 145 Idaho at 517 (citation omitted). The *Adair* Court, because “[n]o

additional information was provided to the trial court to indicate that the sentence was excessive,” decided that “[t]he trial court operated without its discretion when it denied [the defendant’s] Rule 35 motion for reduction of sentence.” *Id.*

Because the Idaho Supreme Court in *Huffman* and *Adair* recognized “additional information” (alongside “new information”) as a way to show that a sentence is excessive in support of a Rule 35 motion, *Huffman*, 144 Idaho at 203, *Adair*, 145 Idaho at 517, Mr. Carpenter submits that additional information serves as a basis for an appellate court to find that a district court’s denial of a Rule 35 motion was an abuse of discretion. Thus, because Mr. Carpenter presented additional information in support of his Rule 35 motion, he has provided a basis for this Court to find that the denial of the motion was an abuse of discretion.

The State additionally argues that, “Even if the information [Mr.] Carpenter provided was considered ‘new,’ he has still failed to establish an abuse of discretion.” (Resp. Br., p.10.) Mr. Carpenter submits the district court abused its discretion when it denied his Rule 35 motion, for the reasons contained in the Appellant’s Brief and incorporated herein by reference thereto. (See App. Br., pp.9-10.)

#### CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant’s Brief, Mr. Carpenter respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 21<sup>st</sup> day of March, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas