

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

12-31-2018

State v. Bolton Appellant's Brief Dckt. 46264

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Bolton Appellant's Brief Dckt. 46264" (2018). *Not Reported*. 5399.
https://digitalcommons.law.uidaho.edu/not_reported/5399

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.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46264-2018
Plaintiff-Respondent,)	
)	BANNOCK COUNTY
v.)	NO. CR-2018-2870
)	
AMANDA N. BOLTON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

HONORABLE ROBERT C. NAFTZ
District Judge

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

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
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**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	3
ARGUMENT	4
The District Court Abused Its Discretion By Ordering Ms. Bolton To Pay Restitution.....	4
A. Introduction.....	4
B. Standard Of Review.....	4
C. The District Court Did Not Exercise Reason By Not Giving Adequate Weight To Ms. Bolton’s Inability To Pay Restitution.....	4
CONCLUSION.....	6
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

Cases

State v. Cunningham, 161 Idaho 698 (2017).....4
State v. Kelley, 161 Idaho 686 (2017).....4
State v. Taie, 138 Idaho 878 (Ct. App. 2003).....5

Statutes

I.C. § 19-5304(7).....4, 5
I.C. § 37-2732.....1, 4, 5

Rules

Idaho Criminal Rule 352

STATEMENT OF THE CASE

Nature of the Case

Amanda N. Bolton appeals from the district court's judgment of conviction that ordered her to pay \$229.50 in restitution. Ms. Bolton contends the district court abused its discretion by ordering restitution because she did not have the ability to pay.

Statement of Facts and Course of Proceedings

The State charged Ms. Bolton with possession of a controlled substance, methamphetamine, in violation of I.C. § 37-2732(c)(1). (R., pp.47–48.) Pursuant to a plea agreement, Ms. Bolton pled guilty as charged. (Tr., p.14, Ls.10–15, p.16, Ls.9–16; R., pp.56–59.) The State agreed to recommend a sentence of five years, with two years fixed. (Tr., p.12, Ls.11–15.)

Before sentencing, the State moved for \$377.50 in restitution. (R., p.60.) Specifically, the State requested \$100.00 to the Idaho State Police Forensic Services (“ISP”) and \$277.50 to the Bannock County Prosecutor’s Office. (R., pp.60, 61–63.) For prosecution costs pursuant to I.C. § 37-2732(k), the State filed an affidavit from the prosecutor. (R., pp.62–63.) The affidavit outlined 3.7 hours spent on various tasks at the “locally accepted rate” of \$75.00 per hour. (R., pp.62–63.) Ms. Bolton objected to the State’s restitution request based on her inability to pay. (R., pp.65–66.)

Consistent with the plea agreement, the State recommended a sentence of five years, with two years fixed. (Tr., p.20, Ls.3–7.) The State also asked for \$377.50 in restitution. (Tr., p.20, Ls.8–19.) Ms. Bolton requested the same sentence plus a period of retained jurisdiction. (Tr., p.24, Ls.18–20.) The district court imposed a sentence of five and one-half years, with one and one-half years fixed. (Tr., p.35, Ls.18–21.) For restitution, the district court did not order

Ms. Bolton to pay the full amount requested by the State. (Tr., p.35, L.23–p.36, L.1.) Although the district court ordered Ms. Bolton to pay \$100.00 to ISP, the district court ordered her to pay only \$129.50 for prosecution costs, for a total of \$229.50. (Tr., p.35, L.23–p.36, L.1.) The district court subsequently entered a judgment of conviction with an order for Ms. Bolton to pay \$229.50 in restitution. (R., pp.71–73.) Ms. Bolton timely appealed. (R., pp.75–77.)

Ms. Bolton later moved, pro se, to reduce her sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”). (R., pp.81–83.) She mistakenly believed that she received a sentence of seven years, with one and one-half years fixed, so she requested that the district court reduce her sentence to seven years, with one year fixed. (R., pp.81–83.) Through counsel, Ms. Bolton filed another Rule 35 motion with the correct sentence. (R., pp.85–86.) The district court granted Ms. Bolton’s motion and reduced her sentence to five years, with one year fixed. (R., pp.89–90.)

ISSUE

Did the district court abuse its discretion by ordering Ms. Bolton to pay restitution?

ARGUMENT

The District Court Abused Its Discretion By Ordering Ms. Bolton To Pay Restitution

A. Introduction

Ms. Bolton argues the district court abused its discretion when it ordered her pay \$100.00 to ISP and the reduced amount of \$129.50 for prosecution costs. She maintains the district court should have further reduced or not ordered restitution due to her inability to pay.

B. Standard Of Review

To determine whether the district court abused its discretion, this Court evaluates whether the district court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with relevant legal standards; and (3) reached its decision by an exercise of reason.

State v. Cunningham, 161 Idaho 698, 700 (2017) (citation omitted).

C. The District Court Did Not Exercise Reason By Not Giving Adequate Weight To Ms. Bolton's Inability To Pay Restitution

Idaho Code § 37-2732(k) “permits the State to recoup its prosecution costs as restitution.” *Cunningham*, 161 Idaho at 700. Pursuant to this statute, the district court may order restitution to county prosecuting attorney offices for “prosecution expenses actually incurred, including regular salaries of employees.” I.C. § 37-2732(k). The district court may also order restitution to law enforcement agencies, including state and city police departments. I.C. § 37-2732(k). Restitution under this statute is discretionary. *Cunningham*, 161 Idaho at 700.

“[T]he general restitution statute, Idaho Code section 19-5304, can be instructive when awarding restitution under section 37-2732(k).” *State v. Kelley*, 161 Idaho 686, 692 (2017). Idaho Code § 19-5304(7) “provides several factors for consideration, which may be relevant

when awarding restitution under section 37-2732(k), depending on the particular case.” *Id.* It provides that the district court “shall consider”:

the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.

I.C. § 19-5304(7). “The offender’s ability to pay is thus only one of several factors for the court’s consideration when it makes a discretionary determination on a claim for restitution.” *State v. Taie*, 138 Idaho 878, 880 (Ct. App. 2003) (citation omitted)

Here, Ms. Bolton asserts the district court did not exercise reason because the district court did not give sufficient weight to her financial resources, needs, and earning ability. As stated in her objection to restitution, Ms. Bolton was indigent. (R., p.65.) Further, although Ms. Bolton reported no difficulty in maintaining steady employment, she was “concerned about having enough money to meet her financial obligations.” (Presentence Investigation Report (“PSI”),¹ pp.13, 15.) She “reported having several medical bills in collections, outstanding court fines, and a loan from her parent.” (PSI, p.15.) In light of this information, Ms. Bolton submits the district court did not exercise reason and should have further reduced or not ordered restitution pursuant to I.C. § 37-2732(k).

¹ Citations to the PSI refer to the thirty-three-page electronic document with the confidential exhibits.

CONCLUSION

Ms. Bolton respectfully requests that this Court vacate the district court's judgment of conviction and remand this case for a new restitution hearing.

DATED this 31st day of December, 2018.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas