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State v. Keys Appellant's Reply Brief Dckt. 42915

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 42915
Plaintiff-Appellant,)	
)	Owyhee Co. Case No.
v.)	CR-2013-10681
)	
ANDREW C. KEYS, III,)	
)	
Defendant-Respondent.)	

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REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF OWYHEE

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District Judge

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ARGUMENT

Keys' Argument That The District Court Properly Reversed Its Restitution Order Is Without Merit

A. Introduction

Keys pled guilty to domestic battery with traumatic injury. (R., pp.28-34.) The court granted him a withheld judgment and placed him on probation for three years. (R., pp.57-60.) Almost six months later, the state filed an affidavit for restitution to be paid to the Crime Victim's Compensation Program for payments made on behalf of Keys' victim. (R., pp.64-67.) The district court ordered the restitution. (R., pp.68-69.)

The court denied Keys' motion to set aside the restitution order, finding it had ongoing jurisdiction to order restitution. (R., pp.89-91.) A motion to reconsider was ultimately granted and the restitution order set aside. (R., pp.92-105.) The state appealed from that order asserting the district court correctly ordered restitution based on its ongoing jurisdiction.

In response, Keys argues the district court properly granted the motion to reconsider and set aside the restitution order because the state failed to establish "that it was necessary to award restitution at such a late date." (Respondent's brief, p.6.) Keys fails to address the state's main argument on appeal.

B. The District Court Did Not Exceed Its Jurisdiction In Ordering Restitution

Keys contends that the district court correctly concluded that its order of restitution was erroneously entered absent a finding of necessary delay. (Respondent's brief, pp.7-9.) Keys' argument does not take into consideration the court's continuing jurisdiction to modify the conditions of his probation, including requiring restitution. (See Appellant's brief, pp.7-8.)

Keys has elected to not address Peltier v. State, 119 Idaho 454, 808 P.2d 373 (1991), or the state's position that the district court's jurisdiction to order restitution as part of his probation was ongoing. Rather, citing solely to the district court's misplaced reliance on I.C. § 19-5304(6), Keys asserts the district court made no finding "that extending the statutory period within which restitution may be ordered six months past the sentencing date was 'necessary.'" (Respondent's brief, p.9.) Review of the applicable case law shows Keys' argument is misplaced. "When a defendant is given a withheld judgment and placed on probation, the district court has continuing jurisdiction to modify all aspects of the disposition." State v. Murillo, 135 Idaho 811, 814, 25 P.3d 124, 127 (Ct. App. 2001) (citing Peltier, 119 Idaho at 460, 808 P.2d at 379). The district court, in its original denial of Keys' motion to set aside the restitution order, correctly found: "By virtue of the fact that the Defendant/Probationer Keys is still within the three (3) years supervised probation under the ORDER OF PROBATION ON WITHHELD JUDGMENT, the court has continuing authority in this matter." (R., p.90.)

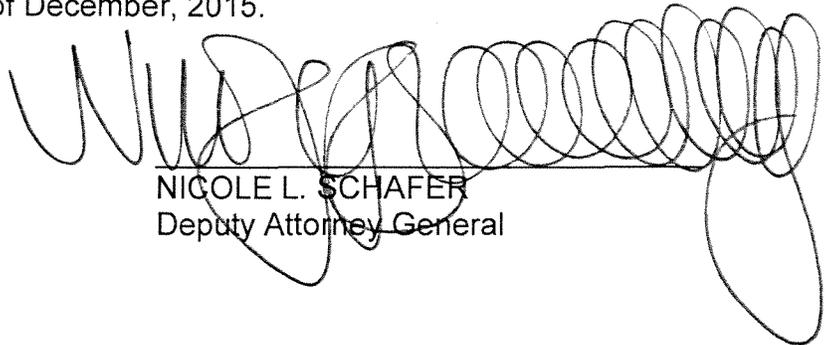
Even if this Court were to consider the argument that the restitution order was improper under I.C. § 19-5304(6), the record does in fact support the original entry of restitution in this case. Keys was given a withheld judgment and placed on three years of probation. (R., pp.57-60.) His case was resolved through plea negotiations with the state. Keys was originally charged with three felonies and one serious misdemeanor, all crimes of violence and all against the same victim. (R., pp.24-27.) The presentence investigator was unable to make contact with the victim to obtain a statement. (PSI, p.4.) The restitution request was filed five months after sentencing, with Keys still on probation for two and a half more years, and still under the jurisdiction of the court. (R., pp.57-60, 64-65.) The amount requested was to the Crime Victim's Compensation Program. (R., p.68.) It is not unreasonable that the state took this period of time to ensure they had all restitution amounts, especially with a victim who had been nonresponsive to the presentence investigator, and such a short delay did not place an unfair burden on Keys. In fact, Keys did not object to the restitution order within the 42 days provided in the order. (R., p.69.) His first action against it came almost six months later when Keys filed a motion to set aside the restitution.

Because the court had jurisdiction to enter the restitution order, the district court erred in granting Keys' motion to reconsider and to set aside the restitution order.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order granting Keys' motion to reconsider and setting aside the order.

DATED this 30th day of December, 2015.



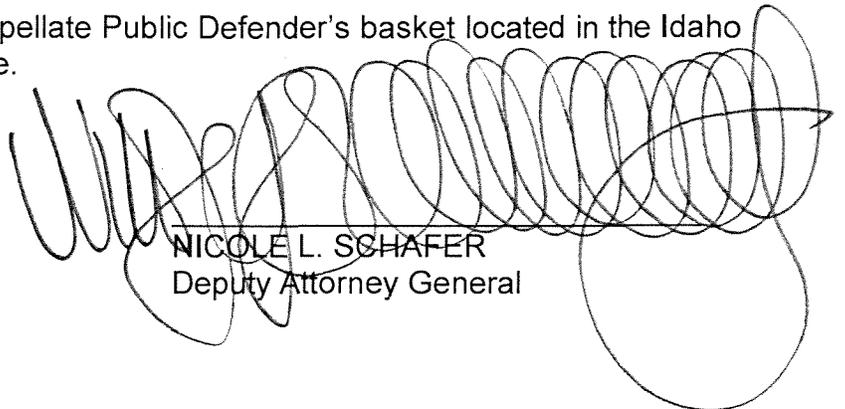
NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of December, 2015, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by causing a copy addressed to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



NICOLE L. SCHAFER
Deputy Attorney General

NLS/dd