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### State v. Chaput Appellant's Reply Brief Dckt. 46747

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 46747-2019 & 46826-2019
Plaintiff-Respondent,	)	
	)	JEROME COUNTY NO. CR-2015-1349 &
	)	TWIN FALLS CO. NO. CR42-18-11461
v.	)	
	)	
THOMAS BUCK CHAPUT,	)	APPELLANT'S REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated cases, Thomas Buck Chaput appeals from the district court's order revoking his probation and executing a modified sentence of ten years, with five years fixed, in Docket No. 46747 and from his judgment of conviction for grand theft in Docket No. 46826, where the district court imposed a concurrent sentence of ten years, with five years fixed. Mr. Chaput submits that the district court abused its discretion by failing to retain jurisdiction, or, alternatively, by failing to further reduce his sentence in No. 46747 and by imposing an

excessive sentence in No. 46826. This Reply Brief addresses the State's assertion that No. 46826 should be dismissed.

### Statement of the Facts & Course of Proceedings

The Statement of the Fact and Course of Proceedings are set forth in the Appellant's Brief and are incorporated herein by reference.

### ISSUE

Did the district court abuse its discretion by failing to retain jurisdiction, or, alternatively, by failing to further reduce Mr. Chaput's sentence in No. 46747 and by imposing an excessive sentence in No. 46826?

### ARGUMENT

#### The District Court Abused Its Discretion By Failing To Retain Jurisdiction, Or Alternatively, By Failing To Further Reduce Mr. Chaput's Sentence In No. 46747 And By Imposing An Excessive Sentence In No. 46826

The State argues that, based on language contained in the plea agreement, that Mr. Chaput has waived his right to appeal in No. 46826. (Respondent's Brief, p.3.) The State then faults Mr. Chaput for not bringing the waiver to this Court's attention. (Respondent's Brief, p.3.) The State's arguments are misplaced.

First, it is not Mr. Chaput's obligation or burden to show that the waiver is unenforceable. Waiver is an affirmative defense that must be raised by the State. The United States Supreme Court has very recently confirmed this in a case coming from Idaho. The Court expressly stated, "a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver." *Garza v. Idaho*, 139 S.Ct. 738, 745 (2019). Thus, it is the State's obligation to assert and prove the enforceability of the waiver and the State would forfeit the claim by failing to raise it. It is

not Mr. Chaput's initial burden to show that the waiver is invalid. It is up to the State to show that the waiver is valid.

The State has not done so in this case. While the State is correct that the written plea agreement contains a waiver, Mr. Chaput was explicitly told by the district court that he retained his right to appeal his sentence. (Respondent's Brief, p.3.) The following exchange happened at the entry of plea hearing in this case, which demonstrates that Mr. Chaput did *not* understand that he would be waiving his appellate rights to this claim:

[The Court]: You waive any and all possible defenses to the charges, both factual and legal; *and you waive the right to appeal anything except as to the sentence imposed.*

Do you have any questions about those rights?

[Mr. Chaput]: No.

(No. 46826 Tr., p.11, Ls.3-10) (emphasis added). Given this record, the State cannot demonstrate that a valid, enforceable appellate waiver exists in this case.

#### CONCLUSION

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

DATED this 19<sup>th</sup> day of November, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of November, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

JMC/eas