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State v. Lemmons Respondent's Brief Dckt. 43720

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) Nos. 43720 & 43721
 Plaintiff-Respondent,)
) Twin Falls County Case Nos.
 v.) CR-2011-14836 & CR-2012-10131
)
 BRYANN KRISTINE LEMMONS,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

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STATEMENT OF THE CASE

Nature Of The Case

Bryann Kristine Lemmons appeals from her sentences for two convictions for trafficking in methamphetamine.

Statement Of The Facts And Course Of The Proceedings

Lemmons “was found guilty by a jury of two counts of trafficking in methamphetamine by delivering methamphetamine and two counts of trafficking in methamphetamine by conspiring to deliver methamphetamine.” State v. Lemmons, 158 Idaho 971, 972, 354 P.3d 1186, 1187 (2015). The district court imposed concurrent sentences of 15 years with three years determinate on each conviction. (R., pp. 35-36, 86-87.) The district court also imposed \$10,000 fines on each conviction. (Id.) Lemmons filed notices of appeal timely from entry of the district court’s judgments. (R., pp. 33, 39, 84, 90.)

ISSUE

Lemmons states the issue on appeal as:

Does the district court have the discretionary authority to run mandatory \$10,000 fines under I.C. § 37-2732B(3) concurrently? If so, did the court here abuse its discretion in declining to do so?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Lemmons failed to show that the district court had discretionary authority to order that Lemmons get \$4.00 of credit toward her fines for every \$1.00 that she pays?

ARGUMENT

Lemmons Has Failed To Show That The District Court Had Discretionary Authority To Order That She Get \$4.00 Of Credit Toward Her Fines For Every \$1.00 That She Pays

A. Introduction

The district court imposed the mandatory minimum fines of \$10,000 on each of Lemmons' four trafficking convictions. (R., pp. 35-36, 86-87.) On appeal Lemmons argues the district court erred by rejecting her argument below that the fines could be run "concurrently." (Appellant's brief, pp. 4-7.) Although the state does not object to Lemmons paying her fines at the same time, her argument that the district court can order that she be given credit for \$4.00 in payments for every \$1.00 she in fact pays is contrary to the plain language of the applicable statutes.

B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The Authority To Run Terms Of Imprisonment Concurrently Or Consecutively Does Not Apply To Fines

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the wording of the statute itself, the

interpretation of a statute must begin with its literal words. Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). The words of a statute “must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” Verska, 151 Idaho at 893, 265 P.3d at 506 (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). “[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.” Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

A person convicted of trafficking in 28 to 200 grams of methamphetamine “shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000).” I.C. § 37-2732B(a)(4)(A). The applicable sentence, therefore, is a mandatory minimum of three years, and the applicable fine is at least \$10,000. Because the applicable fine for each of the four convictions is \$10,000, the minimum total amount of fines applicable to Lemmons was \$40,000, the amount ordered by the district court. The district court did not err by declining Lemmons’ request to effectively reduce the total to \$10,000.

Lemmons argues that the district court had discretion to order the fines for her four convictions run “concurrent.” (Appellant’s brief, pp. 5-7.) For this argument she relies on I.C. § 18-308 and the common law power of courts to

impose sentences either consecutively or concurrently. (Id.) The statute, however, provides that “terms of imprisonment” may be ordered served consecutively. I.C. § 18-308. This statute, “does not limit the authority of the district courts to impose consecutive sentences.” State v. Lawrence, 98 Idaho 399, 401, 565 P.2d 989, 991 (1977). None of the authority cited by Lemmons addresses the concept of “concurrent fines.” Lemmons has failed to show that the statutory and common law authority of the court to run *terms of imprisonment* either consecutively or concurrently extends to fines such that fines on some counts are excused from payment.

Indeed, the concept of “concurrent fines” is an oxymoron. “Concurrent” is defined as “operating or occurring at the same time.” <http://www.merriam-webster.com/dictionary/concurrent> (visited 9/20/16). While it is certainly possible for two terms of imprisonment to operate or occur at the same time, paying two fines at the same time does not change the amount of money paid or owed. It was not within the discretion of the district court to grant Lemmons \$4.00 of credit for every \$1.00 she pays toward her mandatory fines by ordering the fines paid “concurrently.” Lemmons has therefore failed to demonstrate that the district court abused its discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's judgments.

DATED this 26th day of September, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of September, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

DENNIS BENJAMIN
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/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd