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State v. Thomas Appellant's Brief 2 Dckt. 43934

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43934
)	
v.)	CANYON COUNTY NO. CR 2014-3302
)	
SEAN ANTHONY THOMAS,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

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 CANYON**

**HONORABLE BRADLY S. FORD
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

In his appellant's brief, Mr. Thomas argued that his Idaho Criminal Rule 35(b) motion was timely filed because his period of retained jurisdiction began when the court filed its written order retaining jurisdiction. In response, the State contends that the period of retained jurisdiction began to run when the district court orally pronounced sentence. This reply addresses the State's reliance on *State v. Wallace*, 116 Idaho 930 (Ct. App. 1989), for that argument.

ISSUE

Did Mr. Thomas timely file his Rule 35 Motion because his period of retained jurisdiction began to run when the district court filed its order retaining jurisdiction?

ARGUMENT

Mr. Thomas Timely Filed His Rule 35 Motion Because His Period Of Retained Jurisdiction Began To Run When The District Court Filed Its Order Retaining Jurisdiction

The State relies on the statement in *Wallace* that “the only legally cognizable sentence in a criminal case is the actual oral pronouncement in the presence of the defendant,” for the proposition that a period of retained jurisdiction begins to run from the oral pronouncement of sentence. (Resp. Br., p.8 (quoting *Wallace*, 116 Idaho at 932).) Contrary to the State’s assertion, that statement does not support its argument.

In *Wallace*, the court orally imposed a fixed sentence but the judgment of conviction appeared to impose an indeterminate sentence. *Wallace*, 116 Idaho at 931. The question was thus whether the oral pronouncement or the judgment of conviction controlled—*Wallace* did not address *when* the sentence begins to run. *Id.* at 931–33. This much is clear from the passage as a whole:

Although a written judgment is presumably a correct statement of the judgment pronounced in open court, and for that reason is ordinarily treated as an expression of the judgment itself, the principle remains that the only legally cognizable sentence in a criminal case is the “actual oral pronouncement in the presence of the defendant.” The legal sentence consists of the words pronounced in open court by the judge, not the words appearing in the written order of commitment. If an order of commitment does not accurately represent the court’s oral sentence pronouncement that constitutes the judgment, it is manifestly proper to correct the error under Rule 36 so the written expression is consistent with that judgment.

Id. at 932 (internal citations omitted). Because *Wallace* addressed a different issue entirely, it does not support the State’s position. Mr. Thomas’s period of retained jurisdiction began when the court filed its written order retaining jurisdiction, and the district court had jurisdiction to consider Mr. Thomas’s motion.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of November, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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