

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

2-25-2021

### State v. Clarke Respondent's Brief Dckt. 48163

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Clarke Respondent's Brief Dckt. 48163" (2021). *Not Reported*. 6987.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6987](https://digitalcommons.law.uidaho.edu/not_reported/6987)

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](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

COLLEEN D. ZAHN  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48163-2020
Plaintiff-Respondent,	)	
	)	Elmore County Case No.
v.	)	CR20-19-3526
	)	
VICTORIA RACHEL CLARKE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Clarke failed to show that the district court abused its sentencing discretion when it followed her sentencing recommendation and imposed a sentence of three years with one year determinate, suspended with probation, upon her conviction for forgery?

ARGUMENT

Clarke's Claim Of Error Is Barred By The Invited Error Doctrine

Victoria Rachel Clarke presented a forged document to her landlord telling the landlord to cease eviction proceedings against Clarke because she qualified for rent assistance. (PSI, p. 73.) She also testified and presented the document to the court in civil eviction proceedings. (PSI, pp. 73-74.) The state charged Clarke with forgery, perjury, and offering false or forged instruments.

(R., pp. 24-26.) Clarke pled guilty to forgery as part of a plea agreement with the state. (R., pp. 41, 42-43; 3/2/20 Tr., p. 4, L. 5 – p. 12, L. 10.)

At sentencing the defense requested a sentence of three years with one year fixed, suspended, with probation. (5/28/20 Tr., p. 9, Ls. 20-23.) The district court imposed a sentence of three years with one year fixed, suspended, with probation. (R., pp. 48-51; 5/28/20 Tr., p. 12, Ls. 5-11.) Clarke filed a notice of appeal timely from entry of judgment. (R., pp. 57-59.)

On appeal Clarke, “[m]indful that the district court imposed the sentence she requested,” contends that the sentence is excessive. (Appellant’s brief, pp. 3-4.) Clarke’s argument is barred by the doctrine of invited error.

“[T]he doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error.” State v. Pentico, 151 Idaho 906, 915, 265 P.3d 519, 528 (Ct. App. 2011). “A defendant may not request a particular ruling by the trial court and later argue on appeal that the ruling was erroneous. This doctrine applies to sentencing decisions as well as to rulings during trial.” State v. Griffith, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986) (citation omitted). “[I]nvited errors are not reversible.” State v. Edghill, 155 Idaho 846, 849, 317 P.3d 743, 746 (Ct. App. 2014).

The district court imposed the sentence recommended by the defense. (Compare 5/28/20 Tr., p. 9, Ls. 20-23 with R., pp. 48-51; 5/28/20 Tr., p. 12, Ls. 5-11.) Because the district court imposed the sentence Clarke requested at the sentencing hearing, Clarke’s claim that the sentence is excessive is barred by the invited error doctrine.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 25th day of February, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of February, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JASON C. PINTLER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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

KKJ/dd