

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

5-2-2018

State v. Matthews Appellant's Reply Brief Dckt. 45295

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Matthews Appellant's Reply Brief Dckt. 45295" (2018). *Idaho Supreme Court Records & Briefs, All*. 7183.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7183

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 Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent-Cross Appellant,)	NO. 45295
)	
v.)	ADA COUNTY
)	NO. CR-FE-2016-5895
RYAN KELLY MATTHEWS,)	
)	
Defendant-Appellant-Cross-Respondent.)	
<hr style="border: 0.5px solid black;"/>		

APPELLANT’S REPLY & CROSS-RESPONDENT’S BRIEF

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE MELISSA MOODY
District Judge**

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-RESPONDENT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUES PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
I. Considering The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion When It Imposed Upon Mr. Matthews A Unified Sentence Of Seven Years, With Three Years Fixed.....	3
II. The District Court Properly Exercised Its Discretion When It Refused To Order Mr. Matthews To Pay The Costs Of Prosecution Pursuant To Idaho Code § 37-2732(k).....	3
CONCLUSION.....	6
CERTIFICATE OF MAILING	7

TABLE OF AUTHORITIES

Cases

State v. Cardoza, 155 Idaho 889 (Ct. App. 2014)5

State v. Cunningham, 161 Idaho 698 (2017).....5

State v. Ehrlick, 158 Idaho 900 (2014).....4, 5

State v. Kelley, 161 Idaho 686 (2017).....3, 4

State v. Mosqueda, 150 Idaho 830 (Ct. App. 2014).....5

State v. Nelson, 161 Idaho 692 (2017)4

Statutes

I.C. § 37-2732(k).....*passim*

STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Ryan Kelly Matthews argued the district court abused its discretion when it sentenced him to a unified term of seven years, with three years fixed, for possession of a controlled substance. In its Respondent's/Cross-Appellant's Brief, the State responded to Mr. Matthews' legal argument on sentencing, and argued the district court abused its discretion when it refused to order Mr. Matthews to pay \$524.12 for the costs of prosecution. Mr. Matthews submits this Appellant's Reply and Cross-Respondent's Brief to respond to the State's legal argument on restitution. The district court did not abuse its discretion when it refused to order Mr. Matthews to pay \$524.12 for the costs of prosecution pursuant to Idaho Code § 37-2732(k) because the court correctly perceived the issue as one of discretion; acted within the outer boundaries of its discretion and consistently with relevant legal standards; and reached its decision by an exercise of reason.

Statement of Facts and Course of Proceedings

Mr. Matthews included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-3.)

ISSUES

- I. Did the district court abuse its discretion when it imposed upon Mr. Matthews a unified sentence of seven years, with three years fixed, considering the mitigating factors that exist in this case?

- II. Did the district court properly exercise its discretion when it refused to order Mr. Matthews to pay the costs of prosecution pursuant to Idaho Code § 37-2732(k)?

ARGUMENT

I.

Considering The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion When It Imposed Upon Mr. Matthews A Unified Sentence Of Seven Years, With Three Years Fixed

On this issue, Mr. Matthews relies on the legal argument in his Appellant's Brief. (*See* Appellant's Br., pp.3-5.)

II.

The District Court Properly Exercised Its Discretion When It Refused To Order Mr. Matthews To Pay The Costs Of Prosecution Pursuant To Idaho Code § 37-2732(k)

The district court properly exercised its discretion when it refused to order Mr. Matthews to pay the costs of prosecution pursuant to Idaho Code § 37-2732(k) because the court correctly perceived the issue as one of discretion; acted within the outer boundaries of its discretion and consistently with relevant legal standards; and reached its decision by an exercise of reason.

This Court reviews a district court's decision to award restitution under Idaho Code § 37-2732(k) for an abuse of discretion. *See State v. Kelley*, 161 Idaho 686, 691 (2017). In determining whether the district court abused its discretion, this Court evaluates "whether the district court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with relevant legal standards; and (3) reached its decision by an exercise of reason." *Id.* (citation omitted).

Idaho Code § 37-2732 states, in pertinent part, that "[u]pon conviction of a felony . . . under this chapter . . . the court may order restitution for costs incurred by law enforcement agencies in investigating the violation." I.C. § 37-2732(k). The Idaho Supreme Court has recognized that "[a]n award of restitution under section 37-2732(k) is not mandatory." *State v.*

Nelson, 161 Idaho 692, 697 (2017); *see also Kelley*, 161 Idaho at 691 (“By its plain terms, restitution under section 37-2732(k) is discretionary”). The State contends the district court abused its discretion when it failed to exercise its discretion to award restitution under this statute because it did not act consistently with relevant legal standards as specifically set forth in *Kelley*. (State’s Br., p.8.) The State is incorrect.

In *Kelley*, the Idaho Supreme Court held section 37-2732(k) does not violate the Sixth and Fourteenth Amendments to the United States Constitution because “it does not impermissibly chill Sixth Amendment rights to stand trial and present a defense” and “by its plain terms, [it] treats equally all defendants who are convicted.” 161 Idaho at 689-91. The fact that section 37-2732(k) does not violate the Sixth and Fourteenth Amendments does not mean the district court has to order restitution where, as here, a defendant objects to “hav[ing] to pay for exercising [his] constitutional rights.” (Presentence Investigation Report (“PSI”), p.14.) Mr. Matthews told the presentence investigator he did not believe he should have to pay \$300 to \$500 for having a hearing to suppress evidence. (PSI, p.14.) In agreeing with Mr. Matthews, the district court did not act inconsistently with the Idaho Supreme Court’s holding in *Kelley* that section 37-2732(d) does not violate the Sixth and Fourteenth Amendments to the United States Constitution. Instead, the district court acted within the outer boundaries of its discretion and consistently with relevant legal standards.

The State cites *State v. Ehrlick*, 158 Idaho 900 (2014), for the proposition that the district court abuses its discretion where its decision is inconsistent with Idaho Supreme Court precedent. (State’s Br., p.8.) The flaw in the State’s argument is that the district court’s decision to not require Mr. Matthews to pay restitution is not inconsistent with Idaho Supreme Court precedent. In *Ehrlick*, the Idaho Supreme Court held the district court’s decision to permit

certain testimony “despite repeated objections” was “inconsistent with [the Court’s] long-standing precedent” and was thus an abuse of discretion. 158 Idaho at 910. Here, the district court did not act inconsistently with long-standing precedent in agreeing with Mr. Matthews that he should not be required to pay the costs of prosecution under section 37-2732(k). That restitution is constitutionally permissible under *Kelley* does not mean it is constitutionally mandated.

The State cites *State v. Cardoza*, 155 Idaho 889 (Ct. App. 2014), for the proposition that this case must be remanded to the district court for it to reconsider the State’s restitution request. (State’s Br., p.9.) This would be a waste of judicial resources, as the district court would surely exercise its discretion and reach the same decision on remand. In *Cardoza*, the Court of Appeals held the district court erred in concluding section 37-2732(k) did not authorize restitution for the prosecutor’s salary for time expended on the case, and thus remanded the case to the district court with instructions for it to reconsider the State’s restitution request. 155 Idaho at 895. Significantly, the Court of Appeals stated that, “[o]n remand, the district court may exercise its discretion in determining the amount, *if any*, to award.” *Id.* (emphasis added). The Court of Appeals cited *State v. Mosqueda*, 150 Idaho 830, 835 (Ct. App. 2014) for the proposition that “the word ‘may’ in [section 13-2732(k)] is permissive, denoting the right of the court to exercise discretion.” *Cardoza*, 155 Idaho at 895. Here, the district court properly exercised its discretion in refusing to order Mr. Matthews to pay the costs of prosecution. There is no indication the district court would exercise its discretion any differently on remand, and the district court’s decision should be affirmed.¹

¹ In the event this Court determines the district court abused its discretion, this Court should affirm rather than remand this case to the district court because the State did not present any evidence supporting its request for \$524.12. (Tr., p.65, Ls.8-19.) See *State v. Cunningham*, 161

CONCLUSION

For the reasons set forth above, as well as those in his Appellant’s Brief, Mr. Matthews respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court remand this case to the district court for a new sentencing hearing. He also requests that this Court affirm the district court’s refusal to order Mr. Matthews to pay the costs of prosecution pursuant to Idaho Code § 37-2732(k).

DATED this 2nd day of May, 2018.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

Idaho 698, 701-02 (2017) (noting restitution must be based on a preponderance of the evidence and holding “unsworn representations, even by an officer of the court, do not constitute ‘substantial evidence’ upon which restitution under section 37-2732(k) may be based”).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of May, 2018, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RYAN KELLY MATTHEWS
INMATE #61111
ISCC
PO BOX 70010
BOISE ID 83707

MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas