

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

1-2-2018

State v. Herrera Clerk's Record Dckt. 45547

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

Recommended Citation

"State v. Herrera Clerk's Record Dckt. 45547" (2018). *Idaho Supreme Court Records & Briefs, All*. 7260. https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7260

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.

CANYON COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CR-2014-26736

State of Idaho
 vs.
 Raul E Herrera

§
§
§
§
§
§
§
§

Location: Canyon County District Court
 Judicial Officer: VanderVelde, Davis
 Filed on: 12/04/2014
 Appear by: 01/09/2015
 Case Number History:
 Appellate Case Number: 43975-2016
 45547-2017
 Previous Case Number: CR-2014-26736-C

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Criminal
Jurisdiction: Nampa City Police Department					
1. Murder I TCN: 1400105983	118-4001-I	FEL	11/08/2014		
2. Robbery TCN: 1400105983	118-6501	FEL	11/08/2014		
3. Burglary TCN: 1400105983	118-1401	FEL	11/08/2014		
4. Kidnapping-Second Degree TCN: 1400105983	118-4501-II	FEL	11/08/2014		
5. Battery-Aggravated TCN: 1400105983	118-907	FEL	11/08/2014		

Statistical Closures
 09/19/2017 Closed

Warrants
 Arrest Warrant - Herrera, Raul E (Judicial Officer: Huskey, Molly J.)
 12/18/2014 Warrant Returned Served
 12/17/2014 Outstanding Arrest Warrant
 Fine: \$0
 Bond: \$0

Bonds
 Transcript Bond #CR-2014-26736 \$334.00
 7/30/2015 Converted
 6/30/2015 Posted
 Counts: 1

DATE CASE ASSIGNMENT

Current Case Assignment	
Case Number	CR-2014-26736
Court	Canyon County District Court
Date Assigned	01/05/2016
Judicial Officer	VanderVelde, Davis

PARTY INFORMATION

State	State of Idaho	<i>Lead Attorneys</i> Canyon County Prosecutor 208-454-7391(W)
Defendant	Herrera, Raul E	Stringfield, Kenneth Frederick <i>Retained</i> 208-459-6879(W)
Victim	Crime Victims Compensation Program Ghostwolf, Ronald James	


CASE SUMMARY

CASE NO. CR-2014-26736

EVENTS & ORDERS OF THE COURT


DATE

INDEX

12/04/2014	 Court Minutes Party: Defendant Herrera, Raul E <i>AUDIO TAPE NUMBER: Mag 7; HEARING TYPE: Arraignment (In Custody); MINUTES CLERK: L. Pearson; PROSECUTOR: Canyon County Prosecutor; START TIME: 12/04/2014 1:33PM STOP TIME: 12/04/2014 1:44PM ENTRY BY: PEARSON; LAST UPDATE BY: PEARSON;</i>
12/04/2014	New Case Filed - Felony Party: Defendant Herrera, Raul E <i>New Case Filed-Felony</i>
12/04/2014	Affidavit of Probable Cause Party: Defendant Herrera, Raul E <i>Affidavit Of Probable Cause</i>
12/04/2014	Criminal Complaint Party: Defendant Herrera, Raul E <i>Criminal Complaint</i>
12/04/2014	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Arraignment (In Custody) 12/04/2014 01:32 PM)</i>
12/04/2014	Miscellaneous Party: Defendant Herrera, Raul E <i>Request to Obtain Approval to Video Record, Broadcast or Photograph a Court Proceedings- Share photos with all other media, meet with Baliff for set up in advance of hearing</i>
12/04/2014	Hearing Held Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Hearing Held</i>
12/04/2014	Arraignment Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Arraignment / First Appearance</i>
12/04/2014	Constitutional Rights Warning Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Constitutional Rights Warning</i>
12/04/2014	Order Appointing Public Defender Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Order Appointing Public Defender</i>
12/04/2014	Miscellaneous Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Commitment On Bond -No Bond</i>
12/04/2014	Hearing Scheduled

CASE SUMMARY

CASE NO. CR-2014-26736

- Party: Defendant Herrera, Raul E
Hearing Scheduled (Preliminary Hearing 12/18/2014 08:30 AM) Mo Bond Redu
- 12/04/2014 **Arraignment (In Custody) (1:32 PM)** (Judicial Officer: Frates, Gregory F.)
Hearing result for Arraignment (In Custody) scheduled on 12/04/2014 01:32 PM: Hearing Held
- 12/08/2014 Notice
 Party: Defendant Herrera, Raul E
Notice of Substitution of Counsel for the Defendant/Bujak
- 12/10/2014 Request for Discovery
 Party: Defendant Herrera, Raul E
Defendant's Request For Discovery
- 12/17/2014 Indictment
 Party: Defendant Herrera, Raul E
SUPERCEDING Indictment
- 12/17/2014 Hearing Vacated
 Party: Defendant Herrera, Raul E
Hearing result for Preliminary Hearing scheduled on 12/18/2014 08:30 AM: Hearing Vacated Mo Bond Redu
- 12/17/2014 Warrant/Det Order Issued - Arrest
 Party: Defendant Herrera, Raul E
Warrant Issued - Arrest Bond amount: .00 NO BOND Defendant: Herrera, Raul E
- 12/17/2014 Case Sealed
 Party: Defendant Herrera, Raul E
Case Sealed
- 12/17/2014 Status Changed
 Party: Defendant Herrera, Raul E
Case Status Changed: Inactive
- 12/18/2014  Court Minutes
 Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: Mag7;
 DEFENSE ATTORNEY: John Bujak;
 HEARING TYPE: Arraignment (In Custody);
 MINUTES CLERK: K. Fullerton;
 PROSECUTOR: Canyon County Prosecutor;
 START TIME: 12/18/2014 1:38PM
 STOP TIME: 12/18/2014 1:39PM
 ENTRY BY: FULLERTON;
 LAST UPDATE BY: FULLERTON;*
- 12/18/2014 Hearing Scheduled
 Party: Defendant Herrera, Raul E
Hearing Scheduled (Arraignment (In Custody) 12/18/2014 01:30 PM)
- 12/18/2014 Warrant Returned - Served
 Party: Defendant Herrera, Raul E
Warrant Returned Defendant: Herrera, Raul E
- 12/18/2014 Case Un-sealed
 Party: Defendant Herrera, Raul E
Case Un-sealed

CASE SUMMARY**CASE NO. CR-2014-26736**

12/18/2014	Status Changed Party: Defendant Herrera, Raul E <i>Case Status Changed: Pending</i>
12/18/2014	Miscellaneous Party: Defendant Herrera, Raul E <i>Request To Obtain Approval To Video Record, Broadcast Or Photograph A Court Proceeding/DENIED</i>
12/18/2014	Hearing Held Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/18/2014 01:30 PM: Hearing Held</i>
12/18/2014	Arraignment Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/18/2014 01:30 PM: Arraignment / First Appearance</i>
12/18/2014	Constitutional Rights Warning Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/18/2014 01:30 PM: Constitutional Rights Warning</i>
12/18/2014	Miscellaneous Party: Defendant Herrera, Raul E <i>Hearing result for Arraignment (In Custody) scheduled on 12/18/2014 01:30 PM: Commitment On Bond- NO BOND</i>
12/18/2014	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Arrn. - District Court 01/09/2015 09:00 AM) Motion Bond Reduction</i>
12/18/2014	Motion Party: Defendant Herrera, Raul E <i>Ex Parte Motion For Disclosure Of Wire Intercepts</i>
12/18/2014	Order Party: Defendant Herrera, Raul E <i>Ex Parte Order For Disclosure Of Wire Intercepts</i>
12/18/2014	Motion Party: Defendant Herrera, Raul E <i>Motion For Grand Jury Transcript</i>
12/18/2014	CANCELED Preliminary Hearing (8:30 AM) (Judicial Officer: Frates, Gregory F.) <i>Vacated</i> <i>Mo Bond Redu Hearing result for Preliminary Hearing scheduled on 12/18/2014 08:30 AM: Hearing Vacated</i>
12/18/2014	Arraignment (In Custody) (1:30 PM) (Judicial Officer: Frates, Gregory F.) <i>Hearing result for Arraignment (In Custody) scheduled on 12/18/2014 01:30 PM: Hearing Held</i>
12/22/2014	Order Party: Defendant Herrera, Raul E <i>Order for Grand Jury Transcript</i>
12/22/2014	Miscellaneous Party: Defendant Herrera, Raul E

CASE SUMMARY

CASE NO. CR-2014-26736

Estimated Cost of Transcript


- 12/30/2014 Motion to Dismiss
Party: Defendant Herrera, Raul E
Defendant's Motion to Dismiss or Compel Discovery

- 12/31/2014 Request for Discovery
Party: Defendant Herrera, Raul E
Request For Discovery

- 12/31/2014 Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's Response And Objection To Request For Discovery

- 12/31/2014 Demand for Notice of Defense of Alibi
Party: Defendant Herrera, Raul E
Demand For Notice Of Defense Of Alibi

- 01/07/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's First Supplemental Response to Request for Discovery

- 01/09/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 5;
COURT REPORTER: Debra Kreidler;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Arrn. - District Court;
MINUTES CLERK: C. Robinson;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 01/09/2015 0:52AM
STOP TIME: 01/09/2015 0:59AM
ENTRY BY: ROBINSONC;
LAST UPDATE BY: ROBINSONC;*

- 01/09/2015 Hearing Held
Party: Defendant Herrera, Raul E
*Hearing result for Arrn. - District Court scheduled on 01/09/2015 09:04 AM: Hearing Held
Motion Bond Reduction
HUSKEY
PT: MARCH 2@1:30
JT: APRIL 14-24@9:00 w/HUSKEY*

- 01/09/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Arrn. - District Court scheduled on 01/09/2015 09:04 AM: District Court
Hearing Held
Court Reporter: Debra Kreidler
Number of Transcript Pages for this hearing estimated: less than 100 pages*

- 01/09/2015 Arraignment
Party: Defendant Herrera, Raul E
*Hearing result for Arrn. - District Court scheduled on 01/09/2015 09:04 AM: Arraignment /
First Appearance Motion Bond Reduction
HUSKEY
PT: MARCH 2@1:30
JT: APRIL 14-24@9:00 w/HUSKEY*

- 01/09/2015 Appear & Plead Not Guilty
Party: Defendant Herrera, Raul E

CASE SUMMARY

CASE NO. CR-2014-26736

*Hearing result for Arrn. - District Court scheduled on 01/09/2015 09:04 AM: Appear & Plead
Not Guilty Motion Bond Reduction
HUSKEY
PT: MARCH 2@1:30
JT: APRIL 14-24@9:00 w/HUSKEY*

01/09/2015

Notice

Party: Defendant Herrera, Raul E
*Hearing result for Arrn. - District Court scheduled on 01/09/2015 09:04 AM: Notice Motion
Bond Reduction
HUSKEY
PT: MARCH 2@1:30
JT: APRIL 14-24@9:00 w/HUSKEY*

01/09/2015

Hearing Scheduled

Party: Defendant Herrera, Raul E
Hearing Scheduled (Pre Trial 03/02/2015 01:30 PM)

01/09/2015

Hearing Scheduled

Party: Defendant Herrera, Raul E
Hearing Scheduled (Jury Trial 04/14/2015 09:00 AM) strw

01/09/2015

Arraignment - District Court (9:04 AM) (Judicial Officer: Carey, George D.)

*Motion Bond Reduction
HUSKEY
PT: MARCH 2@1:30
JT: APRIL 14-24@9:00 w/HUSKEY Hearing result for Arrn. - District Court scheduled on
01/09/2015 09:04 AM: Hearing Held*

01/09/2015

Plea

1. Murder I
Not Guilty
TCN: 1400105983 :

01/09/2015

Plea

2. Robbery
Not Guilty
TCN: 1400105983 :

01/09/2015

Plea

3. Burglary
Not Guilty
TCN: 1400105983 :

01/09/2015

Plea

4. Kidnapping-Second Degree
Not Guilty
TCN: 1400105983 :

01/09/2015

Plea

5. Battery-Aggravated
Not Guilty
TCN: 1400105983 :

01/12/2015

Supplemental Response to Request for Discovery

Party: Defendant Herrera, Raul E
PA's Second Supplemental Response to Request for Discovery

CASE SUMMARY
CASE NO. CR-2014-26736

- 01/14/2015 Motion
 Party: Defendant Herrera, Raul E
Defendant's Motion for Return of Property

- 01/14/2015 Notice of Hearing
 Party: Defendant Herrera, Raul E
Notice Of Hearing

- 01/14/2015 Hearing Scheduled
 Party: Defendant Herrera, Raul E
Hearing Scheduled (Motion Hearing 01/26/2015 09:00 AM) Return of Property

- 01/16/2015 Objection
 Party: Defendant Herrera, Raul E
Objection to Motion for Return of Property

- 01/23/2015 Notice
 Party: Defendant Herrera, Raul E
Notice Withdrawing Motion for Return of Property and Vacating Hearing

- 01/23/2015 Hearing Vacated
 Party: Defendant Herrera, Raul E
Hearing result for Motion Hearing scheduled on 01/26/2015 09:00 AM: Hearing Vacated Return of Property

- 01/23/2015 Supplemental Response to Request for Discovery
 Party: Defendant Herrera, Raul E
PA Third Supplemental Response to Request for Discovery


- 01/26/2015 **CANCELED Motion Hearing (9:00 AM)** (Judicial Officer: Huskey, Molly J.)
Vacated
Return of Property Hearing result for Motion Hearing scheduled on 01/26/2015 09:00 AM: Hearing Vacated

- 01/30/2015 Supplemental Response to Request for Discovery
 Party: Defendant Herrera, Raul E
PA's Fourth Supplemental Response to Request for Discovery

- 02/06/2015 Supplemental Response to Request for Discovery
 Party: Defendant Herrera, Raul E
PA Fifth Supplemental Response to Request for Discovery

- 02/20/2015 Supplemental Response to Request for Discovery
 Party: Defendant Herrera, Raul E
PA Sixth Supplemental Response to Request for Discovery

- 02/27/2015 Hearing Scheduled
 Party: Defendant Herrera, Raul E
*Hearing Scheduled (Pre Trial 03/02/2015 10:15 AM) *reset for earlier time per Def counsel request; no objt from PA*

- 03/02/2015  Court Minutes
 Party: Defendant Herrera, Raul E


*AUDIO TAPE NUMBER: DCRT 2;
 COURT REPORTER: Laura Whiting;
 DEFENSE ATTORNEY: John Bujak;
 HEARING TYPE: Pre Trial;
 MINUTES CLERK: S. Fennell;*

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE No. CR-2014-26736

PROSECUTOR: Canyon County Prosecutor;
START TIME: 03/02/2015 0:24AM
STOP TIME: 03/02/2015 0:34AM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;

- 03/02/2015 Hearing Held
Party: Defendant Herrera, Raul E
*Hearing result for Pre Trial scheduled on 03/02/2015 10:15 AM: Hearing Held *reset for earlier time per Def counsel request; no objt from PA*
- 03/02/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Pre Trial scheduled on 03/02/2015 10:15 AM: District Court Hearing Held Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: less than 100 pages*
- 03/02/2015 Hearing Vacated
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 04/14/2015 09:00 AM: Hearing Vacated stnw
- 03/02/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 03/16/2015 02:30 PM)
- 03/02/2015 **Pre Trial (10:15 AM)** (Judicial Officer: Huskey, Molly J.)
**reset for earlier time per Def counsel request; no objt from PA Hearing result for Pre Trial scheduled on 03/02/2015 10:15 AM: Hearing Held*
- 03/09/2015 Order
Party: Defendant Herrera, Raul E
Order Re: Jail Visits
- 03/10/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Seventh Supplemental Response to Request for Discovery
- 03/10/2015 Notice
Party: Defendant Herrera, Raul E
Notice of Intent
- 03/16/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Conference - Status;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 03/16/2015 2:18PM
STOP TIME: 03/16/2015 2:30PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*
- 03/16/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 03/16/2015 02:30 PM: Hearing Held
- 03/16/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

*Hearing result for Conference - Status scheduled on 03/16/2015 02:30 PM: District Court
Hearing Held
Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: less than 100 pages*

03/16/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 05/19/2015 08:15 AM)

03/16/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Pre Trial 06/08/2015 01:30 PM)

03/16/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Jury Trial 07/07/2015 09:00 AM) STNW

03/16/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Jury Trial 07/13/2015 09:00 AM) STNW

03/16/2015 **Status Conference (2:30 PM)** (Judicial Officer: Huskey, Molly J.)
Hearing result for Conference - Status scheduled on 03/16/2015 02:30 PM: Hearing Held

03/17/2015 Notice of Hearing
Party: Defendant Herrera, Raul E
Notice Of Hearing

04/09/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's Eighth Supplemental Response to Request for Discovery

04/14/2015 **Jury Trial (9:00 AM)** (Judicial Officer: Huskey, Molly J.)
04/15/2015-04/24/2015
stnw Hearing result for Jury Trial scheduled on 04/14/2015 09:00 AM: Hearing Vacated

04/17/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Ninth Supplemental Response to Request for Discovery

04/22/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 05/18/2015 09:00 AM)

04/22/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Amended Notice of Hearing

04/23/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Tenth Supplemental Response to Request for Discovery

05/01/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's Eleventh Supplemental Response to Request for Discovery

05/12/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Twelfth Supplemental Response to Request for Discovery


05/15/2015 Miscellaneous

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

Party: Defendant Herrera, Raul E
Disclosure of Expert Witness Pursuant To I.C.R. 16(b)(7) and IRE 702,703,705

05/18/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Pre Trial;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 05/18/2015 8:53AM
STOP TIME: 05/18/2015 9:01AM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*

05/18/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's 13th Supplemental Response to Request for Discovery

05/18/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 05/18/2015 09:00 AM: Hearing Held

05/18/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Conference - Status scheduled on 05/18/2015 09:00 AM: District Court Hearing Held
Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: less than 100 pages*

05/18/2015 **Status Conference (9:00 AM)** (Judicial Officer: Huskey, Molly J.)
Hearing result for Conference - Status scheduled on 05/18/2015 09:00 AM: Hearing Held

05/20/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA's 14th Supplemental Response to Request for Discovery

05/20/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Mediation - DC 06/18/2015 01:30 PM)

05/20/2015 Order
Party: Defendant Herrera, Raul E
Mediation Order


05/21/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Second Disclosure of Expert Witness Pursuant to I.C.R. 16(b)(7) and IRE 702, 703, 705

05/28/2015 Notice
Party: Defendant Herrera, Raul E
Notice of Intent Rule 404(b), I.R.E. Evidence

06/01/2015 Request for Discovery
Party: Defendant Herrera, Raul E
Defendant's Response to Request For Discovery and Notice of Intent to Present Alibi Defense

06/03/2015 Miscellaneous
Party: Defendant Herrera, Raul E

CASE SUMMARY**CASE NO. CR-2014-26736***Witness List*

- 06/05/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Fifteenth Supplemental Response to Request for Discovery
- 06/05/2015 Notice
Party: Defendant Herrera, Raul E
Response to Notice of Alibi
- 06/05/2015 Stipulation
Party: Defendant Herrera, Raul E
Stipulation to Enlarge Time for Hearing Pre-Trial Motions
- 06/08/2015  Court Minutes
Party: Defendant Herrera, Raul E


*AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Pre Trial;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 06/08/2015 3:20PM
STOP TIME: 06/08/2015 3:23PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*
- 06/08/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Pre Trial scheduled on 06/08/2015 01:30 PM: Hearing Held
- 06/08/2015 Continued
Party: Defendant Herrera, Raul E
Hearing result for Pre Trial scheduled on 06/08/2015 01:30 PM: Continued
- 06/08/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Pre Trial scheduled on 06/08/2015 01:30 PM: District Court Hearing Held
Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: less than 100 pages*
- 06/08/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Pre Trial 06/24/2015 08:15 AM)
- 06/08/2015 **Pre Trial (1:30 PM)** (Judicial Officer: Huskey, Molly J.)
Hearing result for Pre Trial scheduled on 06/08/2015 01:30 PM: Hearing Held
- 06/15/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Sixteenth Supplemental Response to Request for Discovery
- 06/16/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Seventeenth Supplemental Response to Request for Discovery
- 06/18/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Mediation - DC scheduled on 06/18/2015 01:30 PM: Hearing Held

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

06/18/2015 **Mediation** (1:30 PM) (Judicial Officer: Culet, Gregory M.)
Hearing result for Mediation - DC scheduled on 06/18/2015 01:30 PM: Hearing Held

06/24/2015  **Court Minutes**
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Pre Trial;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 06/24/2015 8:13AM
STOP TIME: 06/24/2015 8:31AM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*

06/24/2015 **Hearing Held**
Party: Defendant Herrera, Raul E
Hearing result for Pre Trial scheduled on 06/24/2015 08:15 AM: Hearing Held

06/24/2015 **DC Hearing Held: Court Reporter: # of Pages:**
Party: Defendant Herrera, Raul E
*Hearing result for Pre Trial scheduled on 06/24/2015 08:15 AM: District Court Hearing Held
Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: less than 100 pages*

06/24/2015 **Hearing Scheduled**
Party: Defendant Herrera, Raul E
*Hearing Scheduled (Special Setting 07/02/2015 01:00 PM) 404(b) Motion
Pre-draw jury*

06/24/2015 **Motion**
Party: Defendant Herrera, Raul E
Defendant's Motion To Suppress Statements Made To Det Peck

06/24/2015 **Notice of Hearing**
Party: Defendant Herrera, Raul E
Notice Of Hearing

06/24/2015 **Pre Trial** (8:15 AM) (Judicial Officer: Huskey, Molly J.)
Hearing result for Pre Trial scheduled on 06/24/2015 08:15 AM: Hearing Held

06/25/2015 **Miscellaneous**
Party: Defendant Herrera, Raul E
Motion to Transport Witness

06/25/2015 **Order to Transport**
Party: Defendant Herrera, Raul E
Order to Transport Witness (no hearing set)

06/25/2015 **Memorandum**
Party: Defendant Herrera, Raul E
Memorandum in Support of Admission of 404(b), I.R.E. Evidence

06/29/2015 **Miscellaneous**
Party: Defendant Herrera, Raul E
Defendant's Request for Jury Instructions

06/29/2015

CASE SUMMARY

CASE NO. CR-2014-26736

Miscellaneous
Party: Defendant Herrera, Raul E
Defendant's Witness List

06/29/2015 Motion
Party: Defendant Herrera, Raul E
Defendants Motion in Limine re: 404(b) Evidence

06/29/2015 Memorandum
Party: Defendant Herrera, Raul E
Memorandum of Law in Support of Defendant's Motion in Limine re: 404(b) Evidence

06/29/2015 Notice of Hearing
Party: Defendant Herrera, Raul E
Notice Of Hearing

06/29/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Defendant's Exhibit List

06/29/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Eighteenth Supplemental Response to Request for Discovery


06/30/2015 Brief Filed
Party: Defendant Herrera, Raul E
Brief in Opposition to Motion to Suppress

06/30/2015 Bond Posted - Cash
Party: Defendant Herrera, Raul E
Bond Posted - Cash (Receipt 38317 Dated 6/30/2015 for 334.00)(Transcript)

07/01/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E
PA Nineteenth Supplemental Response to Request for Discovery

07/01/2015 Miscellaneous
Party: Defendant Herrera, Raul E
State's Proposed Jury Instructions

07/01/2015 Motion
Party: Defendant Herrera, Raul E
Defendant's Reply In Support Of Motion To Suppress Statements Made To Det. Peck

07/02/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Kathy Klemetson;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: PT Motions / Pre-draw Jury;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/02/2015 2:57PM
STOP TIME: 07/02/2015 2:18PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*

07/02/2015 Supplemental Response to Request for Discovery
Party: Defendant Herrera, Raul E

CASE SUMMARY

CASE NO. CR-2014-26736

PA Twentieth Supplemental Response to Request for Discovery

- 07/02/2015 Affidavit of Service
Party: Defendant Herrera, Raul E
Affidavit Of Service (subpoena Duces Tecum for Det Becky Doney)

- 07/02/2015 Affidavit of Service
Party: Defendant Herrera, Raul E
Affidavit Of Service (Subpoena Duces Tecum for Det Donald Peck)

- 07/02/2015 Hearing Held
Party: Defendant Herrera, Raul E
*Hearing result for Special Setting scheduled on 07/02/2015 01:00 PM: Hearing Held 404(b) Motion
Pre-draw jury
Motn to suppress*


- 07/02/2015 Motion Denied
Party: Defendant Herrera, Raul E
*Hearing result for Special Setting scheduled on 07/02/2015 01:00 PM: Motion Denied /
Motn to suppress*

- 07/02/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Special Setting scheduled on 07/02/2015 01:00 PM: District Court Hearing Held
Court Reporter: Kathy Klemetson
Number of Transcript Pages for this hearing estimated: less than 100 pages*

- 07/02/2015 **Special Setting (1:00 PM) (Judicial Officer: Huskey, Molly J.)**
*404(b) Motion
Pre-draw jury
Motn to suppress Hearing result for Special Setting scheduled on 07/02/2015 01:00 PM:
Hearing Held*

- 07/06/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Request to Obtain Approval to Video Record, Broadcast or Photograph a Court Proceeding (w/order)

- 07/06/2015 Order
Party: Defendant Herrera, Raul E
Order Denying Request to Video Record, Broadcast or Photograph a Court Proceeding

- 07/07/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 4/PMR;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 1;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/07/2015 8:32AM
STOP TIME: 07/07/2015 4:10PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*

- 07/07/2015 Transcript Filed
Party: Defendant Herrera, Raul E
Transcript Filed (Grand Jury)

CASE SUMMARY
CASE NO. CR-2014-26736

- 07/07/2015 Miscellaneous
 Party: Defendant Herrera, Raul E
 Request to Obtain Approval to Video Record, Broadcast or Photograph a Court Proceeding (w/order)

- 07/07/2015 Miscellaneous
 Party: Defendant Herrera, Raul E
 Motion to Transport Witness


- 07/07/2015 Order to Transport
 Party: Defendant Herrera, Raul E
 Order to Transport Witness

- 07/07/2015 Hearing Held
 Party: Defendant Herrera, Raul E
 Hearing result for Jury Trial scheduled on 07/07/2015 09:00 AM: Hearing Held STNW

- 07/07/2015 Miscellaneous
 Party: Defendant Herrera, Raul E
 Jury Instructions Filed - Preliminary

- 07/07/2015 Jury Trial Started
 Party: Defendant Herrera, Raul E
 Hearing result for Jury Trial scheduled on 07/07/2015 09:00 AM: Jury Trial Started


- 07/07/2015 **Jury Trial (9:00 AM) (Judicial Officer: Huskey, Molly J.)**
 07/07/2015-07/09/2015
 STNW Hearing result for Jury Trial scheduled on 07/07/2015 09:00 AM: Hearing Held

- 07/08/2015  Court Minutes
 Party: Defendant Herrera, Raul E

 *AUDIO TAPE NUMBER: DCRT 4;
 COURT REPORTER: Laura Whiting;
 DEFENSE ATTORNEY: John Bujak;
 HEARING TYPE: Jury Trial - Day 2;
 MINUTES CLERK: S. Fennell;
 PROSECUTOR: Canyon County Prosecutor;
 START TIME: 07/08/2015 8:44AM
 STOP TIME: 07/08/2015 3:36PM
 ENTRY BY: FENNELL;
 LAST UPDATE BY: FENNELL;*

- 07/08/2015 Order
 Party: Defendant Herrera, Raul E
 Order Denying Request to Video Record, Broadcast or Photgraph a Court Proceeding

- 07/08/2015 Hearing Held
 Party: Defendant Herrera, Raul E
 Hearing result for Jury Trial scheduled on 07/08/2015 09:00 AM: Hearing Held - Day 2

- 07/09/2015  Court Minutes
 Party: Defendant Herrera, Raul E

 *AUDIO TAPE NUMBER: DCRT 4;
 COURT REPORTER: Laura Whiting;
 DEFENSE ATTORNEY: John Bujak;
 HEARING TYPE: Jury Trial - Day 3;
 MINUTES CLERK: S. Fennell;*

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/09/2015 8:48AM
STOP TIME: 07/09/2015 2:06PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;


07/09/2015

Order to Transport
Party: Defendant Herrera, Raul E
Order to Transport Witness

07/09/2015

Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/09//2015 09:00 AM: Hearing Held - Day 3

07/13/2015


 Court Minutes
Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 4;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/13/2015 9:16AM
STOP TIME: 07/13/2015 3:40PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;

07/13/2015

Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/13/2015 09:00 AM: Hearing Held - Day 4

07/14/2015


 Court Minutes
Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 5;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/14/2015 8:52AM
STOP TIME: 07/14/2015 1:30PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;

07/14/2015

Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/14/2015 09:00 AM: Hearing Held - Day 5

07/17/2015


 Court Minutes
Party: Defendant Herrera, Raul E


AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 6;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;

CASE SUMMARY

CASE NO. CR-2014-26736

START TIME: 07/17/2015 8:55AM
STOP TIME: 07/17/2015 0:03AM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;

- 07/17/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/17/2015 09:00 AM: Hearing Held - Day 6
- 07/20/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 7;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/20/2015 9:05AM
STOP TIME: 07/20/2015 3:35PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*
- 07/20/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/20/2015 09:00 AM: Hearing Held - Day 7
- 07/21/2015  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: DCRT 4;
COURT REPORTER: Laura Whiting;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Jury Trial - Day 8;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 07/21/2015 9:01AM
STOP TIME: 07/21/2015 4:32PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*
- 07/21/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Jury Trial scheduled on 07/21/2015 09:00 AM: Hearing Held - Day 8
- 07/21/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Jury Instructions Filed - Final
- 07/21/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Verdict Filed
- 07/21/2015 Found Guilty after Trial
Party: Defendant Herrera, Raul E
Found Guilty After Trial - all counts
- 07/21/2015 Statement of Defendant's Rights - Immigration Status
Party: Defendant Herrera, Raul E
Statement of Rights - Immigration Status

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

07/21/2015 Miscellaneous
Party: Defendant Herrera, Raul E
Pre-Sentence Investigation Evaluation Ordered

07/21/2015 Miscellaneous
Party: Defendant Herrera, Raul E
PSI Face Sheet Transmitted


07/21/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
District Court Hearing Held: 7, 8, 9, 13, 14, 17, 20, 21 July 2015
Court Reporter: Laura Whiting
Number of Transcript Pages for this hearing estimated: more than 500 pages

07/21/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Sentencing 09/25/2015 09:00 AM) BLOCK A.M.

07/30/2015 Bond Converted
Party: Defendant Herrera, Raul E
Bond Converted (Transaction number 2776 dated 7/30/2015 amount 334.00)(transcript)

07/31/2015 Motion
Party: Defendant Herrera, Raul E
Defendant's Motion for Judgment of Acquittal (no order)

08/19/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 08/24/2015 02:45 PM)

08/24/2015  Court Minutes
Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Patricia Terry;
DEFENSE ATTORNEY: John Bujak;
HEARING TYPE: Conference - Status;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 08/24/2015 2:48PM
STOP TIME: 08/24/2015 2:55PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;


08/24/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 08/24/2015 02:45 PM: Hearing Held

08/24/2015 Motion Granted
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 08/24/2015 02:45 PM: Motion Granted / Oral Motion to Withdraw as Attorney of Record (Bujak to submit order)

08/24/2015 Order Appointing Public Defender
Party: Defendant Herrera, Raul E
Order Appointing Public Defender

08/24/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 08/24/2015 02:45 PM: District Court


CASE SUMMARY**CASE No. CR-2014-26736***Hearing Held**Court Reporter: Patricia Terry**Number of Transcript Pages for this hearing estimated: less than 100 pages*

- 08/24/2015 **Status Conference (2:45 PM)** (Judicial Officer: Huskey, Molly J.)
Hearing result for Conference - Status scheduled on 08/24/2015 02:45 PM: Hearing Held
- 08/26/2015 Notice
Party: Defendant Herrera, Raul E
Notice of Conflict of Interest and Assignment of Conflict Counsel / Aaron Bazzoli
- 09/11/2015 Memorandum
Party: Defendant Herrera, Raul E
Sentencing Memorandum
- 09/21/2015 Motion
Party: Defendant Herrera, Raul E
Motion to Continue Sentencing and Notice of Hearing
- 09/25/2015  Court Minutes
Party: Defendant Herrera, Raul E
- AUDIO TAPE NUMBER: DCRT 3;
COURT REPORTER: Kathy Klemetson;
DEFENSE ATTORNEY: Aaron Bazzoli;
HEARING TYPE: Sentencing;
MINUTES CLERK: S. Britton;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 09/25/2015 9:01AM
STOP TIME: 09/25/2015 9:17AM
ENTRY BY: BRITTON;
LAST UPDATE BY: BRITTON;*
- 09/25/2015 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Sentencing scheduled on 09/25/2015 09:00 AM: District Court Hearing Held
Court Reporter: Kathy Klemetson
Number of Transcript Pages for this hearing estimated: Less than 100*
- 09/25/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Sentencing scheduled on 09/25/2015 09:00 AM: Hearing Held
- 09/25/2015 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Sentencing scheduled on 09/25/2015 09:00 AM: Motion Held- Motion to Continue
- 09/25/2015 Motion Granted
Party: Defendant Herrera, Raul E
Hearing result for Sentencing scheduled on 09/25/2015 09:00 AM: Motion Granted- Motion to Continue
- 09/25/2015 Motion
Party: Defendant Herrera, Raul E
Motion for Production of Trial Transcripts
- 09/25/2015 Order
Party: Defendant Herrera, Raul E
Order to Produce Trial Transcripts

CANYON COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CR-2014-26736

- 09/25/2015 Notice of Hearing
Party: Defendant Herrera, Raul E
Notice Of Hearing
- 09/25/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 11/02/2015 11:00 AM)
- 09/25/2015 Notice of Hearing
Party: Defendant Herrera, Raul E
Notice Of Hearing
- 09/25/2015 **Sentencing (9:00 AM)** (Judicial Officer: Kerrick, Juneal C.)
Hearing result for Sentencing scheduled on 09/25/2015 09:00 AM: District Court Hearing Held
Court Reporter: Kathy Klemetson
Number of Transcript Pages for this hearing estimated: Less than 100
- 10/20/2015 Transcript Filed
Party: Defendant Herrera, Raul E
Transcript Filed (Jury Trial July 7-21, 2015)
- 10/28/2015 Order
Party: Defendant Herrera, Raul E
Order Vacating and Resetting Hearing Scheduling Order
- 10/28/2015 Hearing Vacated
Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 11/02/2015 11:00 AM: Hearing Vacated scheduling
- 10/28/2015 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 12/14/2015 08:15 AM) scheduling
- 11/02/2015 **CANCELED Status Conference (11:00 AM)** (Judicial Officer: Kerrick, Juneal C.)
Vacated
scheduling Hearing result for Conference - Status scheduled on 11/02/2015 11:00 AM: Hearing Vacated
- 11/25/2015 Memorandum
Party: Defendant Herrera, Raul E
Memorandum Of Points and Authorities On Motion For Judgment of Acquittal Under Idaho Criminal Rule 29
- 12/08/2015 Objection
Party: Defendant Herrera, Raul E
Objection to Defendant's Motion for Judgment of Acquittal Under Idaho Rule 29
- 12/08/2015 Brief Filed
Party: Defendant Herrera, Raul E
Brief in Support of Objection to Motion for Judgment of Acquittal Under Idaho Rule 29
- 12/14/2015  Court Minutes
Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: DCRT 2;
COURT REPORTER: Tamara Weber;
DEFENSE ATTORNEY: Aaron Bazzoli;


CASE SUMMARY**CASE NO. CR-2014-26736***HEARING TYPE: Motion for Judgment of Acquittal;**MINUTES CLERK: S. Fennell;**PROSECUTOR: Canyon County Prosecutor;**START TIME: 12/14/2015 8:12AM**STOP TIME: 12/14/2015 8:20AM**ENTRY BY: FENNELL;**LAST UPDATE BY: FENNELL;*

12/14/2015	Hearing Held Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 12/14/2015 08:15 AM: Hearing Held judg of acquital</i>
12/14/2015	DC Hearing Held: Court Reporter: # of Pages: Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 12/14/2015 08:15 AM: District Court Hearing Held</i> <i>Court Reporter: Tamara Weber</i> <i>Number of Transcript Pages for this hearing estimated: less than 100 pages</i>
12/14/2015	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Motion Hearing 01/13/2016 08:15 AM) Oral Argument on Motion for Judgment of Acquittal or Sentencing</i>
12/14/2015	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Sentencing 01/25/2016 08:15 AM) BLOCK A.M.</i>
12/14/2015	Motion Hearing (8:15 AM) (Judicial Officer: Huskey, Molly J.) <i>judg of acquital Hearing result for Motion Hearing scheduled on 12/14/2015 08:15 AM: Hearing Held</i>
12/23/2015	Notice Party: Defendant Herrera, Raul E <i>Notice to Court and Counsel</i>
12/23/2015	Brief Filed Party: Defendant Herrera, Raul E <i>Defendant's Reply Brief to State's Objection for Motion for Judgment of Acquittal</i>
01/04/2016	Order Party: Defendant Herrera, Raul E <i>Order on Rule 29 Motion</i>
01/04/2016	Hearing Vacated Party: Defendant Herrera, Raul E <i>Hearing result for Sentencing scheduled on 01/25/2016 08:15 AM: Hearing Vacated BLOCK A.M.</i>
01/05/2016	Change Assigned Judge Party: Defendant Herrera, Raul E <i>Change Assigned Judge (batch process)</i>
01/12/2016	Letter Party: Defendant Herrera, Raul E <i>Letter from Defendant</i>
01/12/2016	Miscellaneous Party: Defendant Herrera, Raul E <i>Supplemental Material for Sentencing</i>

CASE SUMMARY

CASE NO. CR-2014-26736

01/13/2016

 Court Minutes

Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: DCRT 2;
 COURT REPORTER: Tamara Weber;
 DEFENSE ATTORNEY: Aaron Bazzoli;
 HEARING TYPE: Sentencing;
 MINUTES CLERK: S. Fennell;
 PROSECUTOR: Canyon County Prosecutor;
 START TIME: 01/13/2016 8:20AM
 STOP TIME: 01/13/2016 9:43AM
 ENTRY BY: FENNELL;
 LAST UPDATE BY: FENNELL;

01/13/2016

Hearing Held

Party: Defendant Herrera, Raul E

Hearing result for Sentencing scheduled on 01/13/2016 08:15 AM: Hearing Held

01/13/2016

Final Judgment, Order Or Decree Entered

Party: Defendant Herrera, Raul E

Hearing result for Sentencing scheduled on 01/13/2016 08:15 AM: Final Judgement, Order Or Decree Entered

01/13/2016

Sentenced to Incarceration

Party: Defendant Herrera, Raul E

Sentenced To Incarceration (I18-4001-I Murder I) Confinement terms: Credited time: 406 days. Penitentiary determinate: 35 years. Penitentiary indeterminate: 99 years.

01/13/2016

Sentenced to Pay Fine

Party: Defendant Herrera, Raul E

Sentenced To Pay Fine 5245.50 charge: I18-4001-I Murder I

01/13/2016

Sentenced to Incarceration

Party: Defendant Herrera, Raul E

Sentenced To Incarceration (I18-6501 Robbery) Confinement terms: Credited time: 406 days. Penitentiary determinate: 30 years. Penitentiary indeterminate: 99 years.

01/13/2016

Sentenced to Pay Fine

Party: Defendant Herrera, Raul E

Sentenced To Pay Fine 5245.50 charge: I18-6501 Robbery

01/13/2016

Sentenced to Incarceration

Party: Defendant Herrera, Raul E

Sentenced To Incarceration (I18-1401 Burglary) Confinement terms: Credited time: 406 days. Penitentiary determinate: 10 years.

01/13/2016

Sentenced to Pay Fine

Party: Defendant Herrera, Raul E

Sentenced To Pay Fine 5245.50 charge: I18-1401 Burglary

01/13/2016

Sentenced to Incarceration

Party: Defendant Herrera, Raul E

Sentenced To Incarceration (I18-4501-II Kidnapping-Second Degree) Confinement terms: Credited time: 406 days. Penitentiary determinate: 20 years. Penitentiary indeterminate: 99 years.

01/13/2016

Sentenced to Pay Fine

Party: Defendant Herrera, Raul E

Sentenced To Pay Fine 5245.50 charge: I18-4501-II Kidnapping-Second Degree

01/13/2016

Sentenced to Incarceration

CASE SUMMARY

CASE NO. CR-2014-26736

Party: Defendant Herrera, Raul E
Sentenced To Incarceration (118-907 Battery-Aggravated) Confinement terms: Credited time: 406 days. Penitentiary determinate: 15 years.

- 01/13/2016 Sentenced to Pay Fine
 Party: Defendant Herrera, Raul E
Sentenced To Pay Fine 5245.50 charge: 118-907 Battery-Aggravated

- 01/13/2016 Miscellaneous
 Party: Defendant Herrera, Raul E
Notice of Post Judgment Rights

- 01/13/2016 Judgment
 Party: Defendant Herrera, Raul E
Judgment and Commitment

- 01/13/2016 DC Hearing Held: Court Reporter: # of Pages:
 Party: Defendant Herrera, Raul E
Hearing result for Sentencing scheduled on 01/13/2016 08:15 AM: District Court Hearing Held
Court Reporter: Tamara Weber
Number of Transcript Pages for this hearing estimated: less than 100 pages

- 01/13/2016 Status Changed
 Party: Defendant Herrera, Raul E
Case Status Changed: closed pending clerk action

- 01/13/2016 Miscellaneous
 Party: Defendant Herrera, Raul E
Restitution Order and Judgment

- 01/13/2016 Restitution Ordered
 Party: Defendant Herrera, Raul E
Restitution Ordered 3689.75 victim # 1

- 01/13/2016 **Sentencing (8:15 AM)** (Judicial Officer: Huskey, Molly J.)
Hearing result for Sentencing scheduled on 01/13/2016 08:15 AM: Hearing Held

- 01/13/2016 **Disposition**
 1. Murder I
 Guilty
 TCN: 1400105983 :

- 01/13/2016 **Disposition**
 2. Robbery
 Guilty
 TCN: 1400105983 :

- 01/13/2016 **Disposition**
 3. Burglary
 Guilty
 TCN: 1400105983 :

- 01/13/2016 **Disposition**
 4. Kidnapping-Second Degree
 Guilty
 TCN: 1400105983 :

CASE SUMMARY
CASE NO. CR-2014-26736

01/13/2016

Disposition

5. Battery-Aggravated
 Guilty
 TCN: 1400105983 :

01/13/2016

Sentence (Judicial Officer: VanderVelde, Davis)

1. Murder I
 Felony Sentence
 Confinement
 Type:
 Facility: Idaho Department of Correction
 Effective Date: 01/13/2016
 Determinate: 35 Years
 Indeterminate: 99 Years
 Concurrent with case
 Details: Counts II, III, IV and V
 Credit Term: 406 Days

01/13/2016

Sentence (Judicial Officer: VanderVelde, Davis)

2. Robbery
 Felony Sentence
 Confinement
 Type:
 Facility: Idaho Department of Correction
 Effective Date: 01/13/2016
 Determinate: 30 Years
 Indeterminate: 99 Years
 Concurrent with case
 Details: Counts I, III, IV and V.
 Credit Term: 406 Days

01/13/2016

Sentence (Judicial Officer: VanderVelde, Davis)

3. Burglary
 Felony Sentence
 Confinement
 Type:
 Facility: Idaho Department of Correction
 Effective Date: 01/13/2016
 Determinate: 10 Years
 Concurrent with case
 Details: Counts I, II, IV and V.
 Credit Term: 406 Days

01/13/2016

Sentence (Judicial Officer: VanderVelde, Davis)

5. Battery-Aggravated
 Felony Sentence
 Confinement
 Type:
 Facility: Idaho Department of Correction
 Effective Date: 01/13/2016
 Determinate: 15 Years
 Concurrent with case
 Details: Counts I, II, III and IV.
 Credit Term: 406 Days

01/25/2016

CANCELED Sentencing (8:15 AM) (Judicial Officer: Huskey, Molly J.)
Vacated
BLOCK A.M. Hearing result for Sentencing scheduled on 01/25/2016 08:15 AM: Hearing
Vacated

01/25/2016

CANCELED Sentencing (8:15 AM) (Judicial Officer: Huskey, Molly J.)
Vacated

CANYON COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CR-2014-26736

BLOCK A.M. Hearing result for Sentencing scheduled on 01/25/2016 08:15 AM: Hearing Vacated

02/02/2016	Judgment Party: Defendant Herrera, Raul E <i>Judgment for Victims</i>
02/02/2016	Restitution Ordered Party: Defendant Herrera, Raul E <i>Restitution Ordered 5000.00 victim # 2</i>
02/19/2016	Notice of Appeal Party: Defendant Herrera, Raul E <i>Notice of Appeal</i>
02/19/2016	Appeal Filed in Supreme Court Party: Defendant Herrera, Raul E <i>Appealed To The Supreme Court</i>
02/19/2016	Motion Party: Defendant Herrera, Raul E <i>Motion for Appointment of State Appellate Public Defender (w/order)</i>
02/22/2016	Order Appointing Public Defender Party: Defendant Herrera, Raul E <i>Order Appointing State Appellate Public Defender</i>
03/23/2016	Notice of Appeal Party: Defendant Herrera, Raul E <i>AMENDED Notice of Appeal</i>
05/06/2016	Motion Party: Defendant Herrera, Raul E <i>Motion for Rule 35 and Motion to Extend Time for Filing Additional Information</i>
05/11/2016	Order Party: Defendant Herrera, Raul E <i>Order Granting Motion to Extend Time for Filing Additional Information</i>
05/11/2016	Objection Party: Defendant Herrera, Raul E <i>Objection to Rule 35 Motion and Request for Hearing</i>
06/22/2016	Order Party: Defendant Herrera, Raul E <i>Order Denying Rule 35 Motion</i>
06/24/2016	Motion Party: Defendant Herrera, Raul E <i>Supplemental Material in Support of Motion for Rule 35</i>
06/28/2016	Motion Party: Defendant Herrera, Raul E <i>Motion to Reconsider Order Denying Rule 35 Motion</i>
07/06/2016	Miscellaneous Party: Defendant Herrera, Raul E <i>copy</i>
07/13/2016	Order Party: Defendant Herrera, Raul E

CASE SUMMARY
CASE NO. CR-2014-26736

Order Denying Motion To Reconsider

- 12/13/2016 Miscellaneous
 Party: Defendant Herrera, Raul E
SC - Unpublished Opinion (Affirmed Judgment of Conviction)

- 01/20/2017 Remittitur
 Party: Defendant Herrera, Raul E
Remittitur

- 02/23/2017 Memorandum
 Party: Defendant Herrera, Raul E
Memorandum In Support Of Motion To Correct Sentence (Pro-Se)


- 03/01/2017 Order Appointing Public Defender
 Party: Defendant Herrera, Raul E
Order Appointing Public Defender

- 03/01/2017 Hearing Scheduled
 Party: Defendant Herrera, Raul E
Hearing Scheduled (Conference - Status 03/20/2017 10:00 AM)

- 03/06/2017 Notice
 Party: Defendant Herrera, Raul E
Notice of Conflict of Interest and Assignment of Conflict Counsel/ Aaron Bazzoli

- 03/06/2017 Motion
 Party: Defendant Herrera, Raul E
Motion For Correction or Reduction of Sentence, ICR 35 (pro se) (no order)

- 03/16/2017 Objection
 Party: Defendant Herrera, Raul E
Objection to Rule 35 Motion and Request for Hearing

- 03/20/2017  Court Minutes
 Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: 2C-CRT 130;
 COURT REPORTER: Christine Rhodes;
 DEFENSE ATTORNEY: Aaron Bazzoli;
 HEARING TYPE: Conference - Status / Rule 35;
 MINUTES CLERK: S. Fennell;
 PROSECUTOR: Canyon County Prosecutor;
 START TIME: 03/20/2017 0:25AM
 STOP TIME: 03/20/2017 0:30AM
 ENTRY BY: FENNELL;
 LAST UPDATE BY: FENNELL;*

- 03/20/2017 Hearing Held
 Party: Defendant Herrera, Raul E
Hearing result for Conference - Status scheduled on 03/20/2017 10:00 AM: Hearing Held

- 03/20/2017 DC Hearing Held: Court Reporter: # of Pages:
 Party: Defendant Herrera, Raul E
*Hearing result for Conference - Status scheduled on 03/20/2017 10:00 AM: District Court
 Hearing Held
 Court Reporter: Christine Rhodes
 Number of Transcript Pages for this hearing estimated: less than 100 pages*


- 03/20/2017 Hearing Scheduled
 Party: Defendant Herrera, Raul E

CANYON COUNTY DISTRICT COURT

CASE SUMMARY


CASE NO. CR-2014-26736

Hearing Scheduled (Motion Hearing 04/24/2017 02:00 PM) Rule 35

- 03/20/2017 **Status Conference** (10:00 AM) (Judicial Officer: VanderVelde, Davis)
Hearing result for Conference - Status scheduled on 03/20/2017 10:00 AM: Hearing Held
- 03/27/2017 Motion
Party: Defendant Herrera, Raul E
Motion For Conflict Free Counsel
- 03/29/2017 Miscellaneous
Party: Defendant Herrera, Raul E
copies-CCPA
- 04/03/2017 Order
Party: Defendant Herrera, Raul E
Order to Transport Defendant to Hearing
- 04/13/2017 Notice
Party: Defendant Herrera, Raul E
Notice of Conflict of Interest and Assignment of Conflict Counsel/ Kenneth Stringfield
- 04/24/2017  Court Minutes
Party: Defendant Herrera, Raul E

*AUDIO TAPE NUMBER: 2C-CRT 130;
COURT REPORTER: Christine Rhodes;
DEFENSE ATTORNEY: Kenneth Stringfield;
HEARING TYPE: Motion Rule 35 - cont;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 04/24/2017 2:07PM
STOP TIME: 04/24/2017 2:11PM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;*
- 04/24/2017 Continued
Party: Defendant Herrera, Raul E
Hearing result for Motion Hearing scheduled on 04/24/2017 02:00 PM: Continued Rule 35
- 04/24/2017 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
*Hearing result for Motion Hearing scheduled on 04/24/2017 02:00 PM: District Court
Hearing Held
Court Reporter: Christine Rhodes
Number of Transcript Pages for this hearing estimated: less than 100 pages*
- 04/24/2017 Hearing Scheduled
Party: Defendant Herrera, Raul E
*Hearing Scheduled (Motion Hearing 06/19/2017 10:00 AM) BLOCK 45 MINUTES
I.C.R. 35*
- 04/24/2017 **Motion Hearing** (2:00 PM) (Judicial Officer: VanderVelde, Davis)
Rule 35 Hearing result for Motion Hearing scheduled on 04/24/2017 02:00 PM: Continued
- 05/30/2017 Memorandum
Party: Defendant Herrera, Raul E
Defendant's Memorandum in Support of Rule 35 Motion to Correct Sentence
- 06/06/2017 Notice
Party: Defendant Herrera, Raul E
Notice of Non-Filing

CASE SUMMARY
CASE NO. CR-2014-26736

06/19/2017	Continued Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 06/19/2017 10:00 AM: Continued BLOCK 45 MINUTES</i> <i>I.C.R. 35</i>
06/19/2017	DC Hearing Held: Court Reporter: # of Pages: Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 06/19/2017 10:00 AM: District Court Hearing Held</i> <i>Court Reporter: Christine Rhodes</i> <i>Number of Transcript Pages for this hearing estimated: less than 100 pages</i>
06/19/2017	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Motion Hearing 06/30/2017 11:00 AM) Rule 35</i>
06/19/2017	Motion Hearing (10:00 AM) (Judicial Officer: VanderVelde, Davis) <i>BLOCK 45 MINUTES</i> <i>I.C.R. 35 Hearing result for Motion Hearing scheduled on 06/19/2017 10:00 AM: Continued</i>
06/22/2017	Order to Transport Party: Defendant Herrera, Raul E <i>Order to Transport</i>
06/30/2017	 Court Minutes Party: Defendant Herrera, Raul E <i>AUDIO TAPE NUMBER: 2CCRT130;</i> <i>COURT REPORTER: Christine Rhodes;</i> <i>DEFENSE ATTORNEY: Kenneth Stringfield;</i> <i>HEARING TYPE: Motion Hearing rule 35;</i> <i>MINUTES CLERK: C. Robinson;</i> <i>PROSECUTOR: Canyon County Prosecutor;</i> <i>START TIME: 06/30/2017 1:47AM</i> <i>STOP TIME: 06/30/2017 2:07PM</i> <i>ENTRY BY: ROBINSONC;</i> <i>LAST UPDATE BY: ROBINSONC;</i>
06/30/2017	Continued Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 06/30/2017 11:00 AM: Continued Rule 35</i>
06/30/2017	DC Hearing Held: Court Reporter: # of Pages: Party: Defendant Herrera, Raul E <i>Hearing result for Motion Hearing scheduled on 06/30/2017 11:00 AM: District Court Hearing Held</i> <i>Court Reporter: Christine RHodes</i> <i>Number of Transcript Pages for this hearing estimated: less than 100 pages</i>
06/30/2017	Hearing Scheduled Party: Defendant Herrera, Raul E <i>Hearing Scheduled (Motion Hearing 08/08/2017 10:00 AM) Block one hour</i>
06/30/2017	Motion Hearing (11:00 AM) (Judicial Officer: VanderVelde, Davis) <i>Rule 35 Hearing result for Motion Hearing scheduled on 06/30/2017 11:00 AM: Continued</i>
07/11/2017	Order to Transport Party: Defendant Herrera, Raul E <i>Order to Transport</i>

CASE SUMMARY**CASE NO. CR-2014-26736**

07/21/2017 Memorandum
Party: Defendant Herrera, Raul E
Defendant's Supplemental Memorandum In Support Of Rule 35 Motion To Correct Sentence

08/08/2017 Hearing Held
Party: Defendant Herrera, Raul E
Hearing result for Motion Hearing scheduled on 08/08/2017 10:00 AM: Motion Held / Rule 35 (UNDER ADVISEMENT)


08/08/2017 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E
Hearing result for Motion Hearing scheduled on 08/08/2017 10:00 AM: District Court Hearing Held
Court Reporter: Christine Rhodes
Number of Transcript Pages for this hearing estimated: less than 100 pages

08/08/2017 **Motion Hearing (10:00 AM)** (Judicial Officer: VanderVelde, Davis)
Block one hour Hearing result for Motion Hearing scheduled on 08/08/2017 10:00 AM: Motion Held / Rule 35 (UNDER ADVISEMENT)

08/15/2017 Hearing Scheduled
Party: Defendant Herrera, Raul E
Hearing Scheduled (Sentencing 09/18/2017 11:00 AM)

08/16/2017 Order
Party: Defendant Herrera, Raul E
Order Re: Defendant's Motion For Reconsideration Pursuant To ICR 35

08/16/2017 Order
Party: Defendant Herrera, Raul E
Order Setting Case For Sentencing And Order to Transport Defendant

09/18/2017  Court Minutes
Party: Defendant Herrera, Raul E

AUDIO TAPE NUMBER: 2C-CRT 130;
COURT REPORTER: Christine Rhodes;
DEFENSE ATTORNEY: Kenneth Stringfield;
HEARING TYPE: Re-sentence count IV;
MINUTES CLERK: S. Fennell;
PROSECUTOR: Canyon County Prosecutor;
START TIME: 09/18/2017 0:55AM
STOP TIME: 09/18/2017 1:04AM
ENTRY BY: FENNELL;
LAST UPDATE BY: FENNELL;

09/18/2017 Disposition with Hearing
Party: Defendant Herrera, Raul E
Hearing result for Sentencing scheduled on 09/18/2017 11:00 AM: Disposition With Hearing

09/18/2017 Sentenced Modified
Party: Defendant Herrera, Raul E
Sentenced Modified Sentence modified on 9/19/2017. (I18-4501-II Kidnapping-Second Degree)

09/18/2017 Commitment - Held to Answer
Party: Defendant Herrera, Raul E
Commitment - Held To Answer (Count IV only)

09/18/2017 DC Hearing Held: Court Reporter: # of Pages:
Party: Defendant Herrera, Raul E

CANYON COUNTY DISTRICT COURT

CASE SUMMARY





CASE NO. CR-2014-26736

Hearing result for Sentencing scheduled on 09/18/2017 11:00 AM: District Court Hearing

Held

Court Reporter: Christine Rhodes

Number of Transcript Pages for this hearing estimated: less than 100 pages

09/18/2017	Sentencing (11:00 AM) (Judicial Officer: VanderVelde, Davis) <i>Hearing result for Sentencing scheduled on 09/18/2017 11:00 AM: Disposition With Hearing</i>
09/18/2017	Sentence (Judicial Officer: VanderVelde, Davis) 4. Kidnapping-Second Degree Felony Sentence Confinement Type: Facility: Idaho Department of Correction Effective Date: 01/13/2016 Determinate: 20 Years Concurrent with case Details: Counts I, II, III, and V. Comment: 09-18-17 Defendant re-sentenced to correct error (from 20 + life to 20 +0).
09/19/2017	Status Changed Party: Defendant Herrera, Raul E <i>Case Status Changed: closed pending clerk action</i>
10/05/2017	Amended Judgment
10/25/2017	 Notice of Appeal
10/25/2017	Appeal Filed in Supreme Court
10/25/2017	 Motion for Appointment of Public Defender <i>State Appellate Public Defender</i>
10/25/2017	 Order <i>to Appoint State Appellate Public Defender</i>
12/01/2017	 Order <i>Augmenting Appeal</i>

DATE

FINANCIAL INFORMATION

Defendant Herrera, Raul E	
Total Charges	34,928.25
Total Payments and Credits	268.00
Balance Due as of 12/18/2017	34,660.25
Defendant Herrera, Raul E	
Criminal Cash Bond Account Type Balance as of 12/18/2017	0.00

Bazzoli Law, PLLC
Aaron Bazzoli
815 Fillmore St.
Caldwell, Idaho 83605
Telephone: (208) 402-5827
Facsimile: (208) 874-4307
Idaho State Bar No. 5512

FILED
A.M. 4:45 P.M.

MAY 06 2016

CANYON COUNTY CLERK
S ALSUP, DEPUTY

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

RAUL E. HERRERA

Defendant.

Case Number CR-2014-26736

**MOTION FOR RULE 35 AND
MOTION TO EXTEND TIME FOR
FILING ADDITIONAL
INFORMATION**

COMES NOW, the above-named Defendant, Raul E. Herrera, by and through his Attorney of Record, BAZZOLI LAW OFFICE, PLLC, Aaron Bazzoli, handling attorney and contract public defender, and hereby moves this Honorable Court, pursuant to Idaho Criminal Rule 35 for leniency and to reduce the fixed portions of the sentence received on January 13, 2016.

Defendant was sentenced on the following charges to the following fixed and indeterminate periods: Murder I: thirty-five years fixed, indeterminate life, Robbery, thirty years fixed, indeterminate life, Burglary, ten years fixed, Kidnapping in the Second Degree, twenty years fixed, indeterminate life, and

**MOTION FOR RULE 35 AND MOTION
TO EXTEND TIME TO FILE ADDITIONAL
MATERIAL**

1

Aggravated Battery, fifteen years fixed. Defendant was given credit for days spent in County jail.

Defendant, respectfully requests, upon a hearing or upon this motion, that this Honorable Court further consider the information provided at Sentencing and contained in the Pre-Sentence Investigation.

Defendant also requests an extension of time for the filing of additional supplemental material to support the Rule 35 motion with the Court setting a deadline for supplementing material. Defendant is requesting the Court reduce the fixed portion of his sentences.

DATED, Friday, May 06, 2016



Aaron Bazzoli
Attorney for Defendant

CERTIFICATE OF SERVICE:

I hereby certify that on Friday, May 06, 2016, I served a true and correct copy of the within Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35 and Motion to Extend Time upon the individual(s) names below in the manner noted:

- **By hand delivering copies of the same to the office(s) indicated below.**

RAUL EDGAR HERRERA #116611
IDAHO STATE CORRECTIONAL INSTITUTION UNIT 11
P.O. Box 14
Boise , Idaho 83707

Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, Idaho 83605

DATED Friday, May 06, 2016



Aaron Bazzoli
Attorney for the Defendant

FILED
9:15 A.M. P.M.

MAY 11 2016

CANYON COUNTY CLERK
S ALSUP. DEPUTY

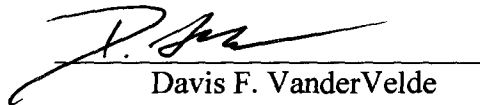
**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

<p>STATE OF IDAHO,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>RAUL E. HERRERA,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">CASE NO. CR14-26736</p> <p style="text-align: center;">ORDER GRANTING MOTION TO EXTEND TIME FOR FILING ADDITIONAL INFORMATION</p>
--	--

The defendant filed his Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35 and a Motion to Extend Time for Filing Additional Information on May 6, 2016.

NOW THEREFORE, IT IS HEREBY ORDERED that the defendant shall have an additional thirty (30) days from the date of this order in which to file any additional supporting documents to supplement the record in reference to his Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35.

Dated this 10 day of May, 2016.


Davis F. VanderVelde
District Judge

ORDER GRANTING MOTION TO EXEND TIME FOR FILING ADDITIONAL
INFORMATION PAGE-1

CERTIFICATE OF SERVICE

STATE OF IDAHO)
) ss
COUNTY OF CANYON)

I hereby certify that I served true and correct copies of the foregoing document upon the following:


Bryan F. Taylor
CANYON COUNTY PROSECUTOR'S OFFICE
1115 Albany St
Caldwell, ID 83605

Aaron J. Bazzoli
BAZZOLI LAW
815 Filmore St.
Caldwell, ID 83605

either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

Dated this 11 day of May, 2016.

Chris Yamamoto, Clerk
Clerk of District Court



Deputy Clerk

FILED
A.M. P.M.

MAY 11 2016

CANYON COUNTY CLERK
A YOUNG, DEPUTY

glw

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

RAUL EDGAR HERRERA,

Defendant.

CASE NO. CR2014-26736

**OBJECTION TO RULE 35 MOTION
AND REQUEST FOR HEARING**

COMES NOW GEARLD L. WOLFF, Deputy Prosecuting Attorney of the
Canyon County Prosecuting Attorney's Office, on behalf of the State of Idaho, who objects to
the Rule 35 Motion filed by the Defendant RAUL EDGAR HERRERA herein, for the reasons
that:

1. The Defendant has provided no information relative to sentencing that was not previously supplied to the Court for consideration herein.
2. No reason has been given to show that the sentence was illegal or unreasonable or unduly harsh when entered.

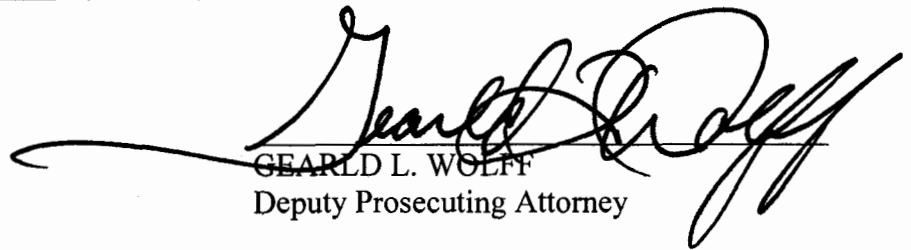
OBJECTION TO RULE 35 MOTION
AND REQUEST FOR HEARING

3. The victims herein wish to address the Court on the Rule 35 motion, prior to the Court's ruling on the motion.

5. The sentence imposed is consistent with the illegal conduct and activities of the Defendant. The crimes were committed in a premeditated and deliberate manner, with intent to cause the death of Jeffrey Dyer.

Oral argument and public hearing is requested on the Rule 35 Motion and this objection.

DATED this 11th day of May, 2016.

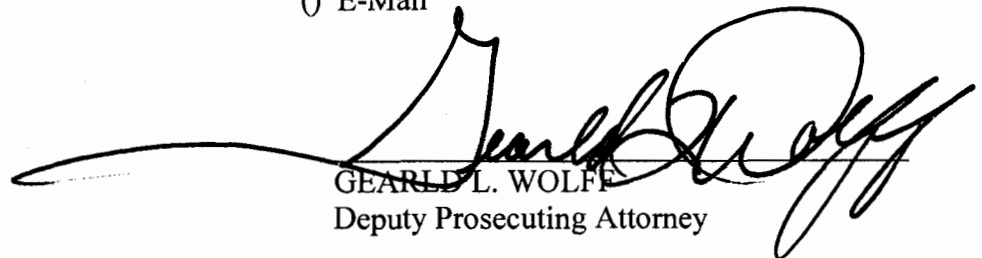

GERALD L. WOLFF
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 11th day of May, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Aaron J Bazzoli
815 Fillmore Street
Caldwell, ID 83605
FAX: (208) 874-4307

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail


GERALD L. WOLFF
Deputy Prosecuting Attorney

F I L E D
A.M. P.M.

JUN 22 2016

**CANYON COUNTY CLERK
M. NYE, DEPUTY**

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

RAUL EDGAR HERRERA,

Defendant.

CASE NO. CR-2014-26736

ORDER DENYING RULE 35 MOTION

After a trial by jury, Defendant was found guilty of Murder in the First Degree, Robbery, Burglary, Second Degree Kidnapping, and Aggravated Battery. For the crime of Murder, Defendant was sentenced to a unified term of life, with the first thirty-five years fixed. For the crime of Robbery, Defendant was sentenced to life, with the first thirty years, fixed. For the crime of Burglary, Defendant was sentenced to ten years fixed. For the crime of Second Degree Kidnapping, Defendant was sentenced to life, with the first twenty years fixed. Finally, for the crime of Aggravated Battery, Defendant was sentence to fifteen years fixed. All sentences were ordered to run concurrently. The sentences were executed. An appeal was filed and is currently pending.

Defendant now seeks relief pursuant to Idaho Criminal Rule 35 (hereinafter, Rule 35). His motion was filed on May 6, 2016, and requested an extension of time to file

ORDER DENYING RULE 35 MOTION -1-

supplemental material. The Court granted an extension of time until June 11, 2016. No additional information was filed.

Defendant's motion is one for leniency. He requests that the Court further consider the information provided at sentencing and contained in the Pre-Sentence Investigation Report and reduce the fixed portion of his sentences. The State requested a hearing and objected to the motion on the following grounds:

1. Defendant provided no information relative to sentencing that was not previously supplied to the Court for consideration;
2. No reason was given to show that the sentence was illegal, or unreasonable, or unduly harsh when entered;
3. The victims wish to address the Court prior to the Court's ruling; and
4. The sentence imposed is consistent with the illegal conduct and activities of the Defendant. The crimes were committed in a premeditated and deliberate manner, with the intent to cause the death of Jeffrey Dyer.

The decision whether to hold a hearing on a Rule 35 motion is directed at the sound discretion of the trial court. In deciding whether an oral hearing is necessary, the inquiry is whether the defendant could have presented the desired evidence through affidavits filed with the motion, or whether the denial of a hearing unduly limits the information considered in the decision. *State v. Thomas*, 133 Idaho 682, 689, 991 P.2d 870, 877 (Ct. App. 1999). Because there is no indication that denial of a hearing in this case would unduly limit the Defendant's presentation of evidence, no hearing is required.

The decision to grant or deny a request to reduce an otherwise legal sentence is within the discretion of the Court. *State v. Knighton*, 143 Idaho 318, 318, 144 P.3d 23, 24 (2006). The defendant must show that the sentence is excessive in light of new or additional information subsequently presented to the district court in support of the Rule 35 motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

The Defendant has failed to offer any additional evidence that would indicate the sentences were excessively harsh in this circumstance, and the Court does not have any information which would warrant a reduction of the sentences.

The crimes in this case were particularly egregious. In the early morning of November 18, 2014, the Defendant, angry with Jeffrey Dyer because Dyer had allegedly “ripped off” Herrera over \$700 in prescription pills, took an associate, Angelo Cervantes, and went to the home of Jeffrey Dyer and his father, Ronald Ghostwolf. When Ghostwolf opened the back door for his dog, Herrera forced his way in the house, knocked Ghostwolf down and beat him, resulting in Ghostwolf suffering multiple broken bones in his face and skull. Cervantes then tied Ghostwolf and left him on the floor. Herrera proceeded to Dyer’s room and began yelling at him and beating him. At some point during this time, Ghostwolf was moved into the bathroom and told to stay there and do nothing for twenty minutes. Herrera and Cervantes then left, taking a number of items from the house, along with Dyer’s vehicle. When Ghostwolf emerged from the bathroom, he discovered a large amount of blood in the room and that his son, Dyer was missing. The following day, Dyer’s vehicle was found in Ontario. Dyer’s body was in the trunk, wrapped in a blanket. The cause of death was determined to be blunt force trauma to the head, with injuries including lacerations, abrasions, a skull fracture

from at least four blows to the back of the head, and subdural and subarachnoid hemorrhage with brain swelling and central herniation. There were also multiple defensive wounds on Dyer's arms and hands. The murder weapon was eventually determined to be a collapsible metal baton. At the time of sentencing, the Court specifically stated that the sentences were not reached lightly, that it understood the significance of the sentences and also felt it would not have been inappropriate to impose a fixed life sentence; however, the Court did not do so due to the rehabilitative potential of the Defendant. Even so, the protection of society required a sentence that precluded the Defendant from being in a position to engage in similar behavior again. The Defendant has not presented any information that changes this conclusion.

Given the foregoing, this Court finds that the four goals of sentencing ("protecting society, and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case") support the sentence imposed as it sufficiently balances the need for society's protection, the deterrence of the Defendant and society in general, the Defendant's rehabilitation, and his punishment. *See State v. McGiboney*, 274 P.3d 1284 (Idaho Ct. App. 2012) *citing State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct.App.1982)). A reduction in the fixed portion of the sentence(s) at this time is neither warranted nor appropriate.

In light of the above, the motion for Rule 35 relief is HEREBY DENIED.

Dated this 22 day of June, 2016.



Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 22 day of June, 2016, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for the state:

Canyon County Prosecuting Attorney
Courthouse P.A. Box
Caldwell, Idaho 83605

- upon counsel for the Defendant:

Aaron Bazzoli
Attorney at Law
815 Fillmore St.
Caldwell, Idaho 83605

- Upon the Defendant:


Raul Herrera
IDOC #116611
ISCI
Unit 11
P.O. Box 14
Boise, Idaho 83707

- And upon:

Sara B. Thomas
IDAHO STATE APPELLATE PUBLIC DEFENDER'S OFFICE
P.O. Box 2816
Boise, ID 83701

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

CHRIS YAMAMOTO,
Clerk of the Court

By: 
Deputy Clerk of the Court

Bazzoli Law, PLLC
Aaron Bazzoli
815 Fillmore St.
Caldwell, Idaho 83605
Telephone: (208) 402-5827
Facsimile: (208) 874-4307
Idaho State Bar No. 5512

FILED
A.M. 1:57 P.M.

JUN 24 2016

**CANYON COUNTY CLERK
M. NYE, DEPUTY**

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

RAUL E. HERRERA

Defendant.

Case Number CR-2014-26736

**SUPPLEMENTAL MATERIAL IN
SUPPORT OF MOTION FOR RULE
35**

COMES NOW, the above-named Defendant, Raul E. Herrera, by and through his Attorney of Record, BAZZOLI LAW OFFICE, PLLC, Aaron Bazzoli, handling attorney and contract public defender, and hereby provides this Court and the Canyon County Prosecuting Attorney with the following three letters in support of his Rule 35 request for leniency. The letters are from Defendant, his wife, and an additional family member.

DATED, Friday, June 24, 2016



Aaron Bazzoli
Attorney for Defendant

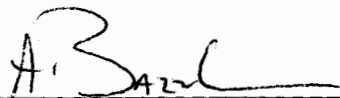
CERTIFICATE OF SERVICE:

I hereby certify that on Friday, June 24, 2016, I served a true and correct copy of the within Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35 and Motion to Extend Time upon the individual(s) names below in the manner noted:

- **By hand delivering copies of the same to the office(s) indicated below.**

Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, Idaho 83605

DATED Friday, June 24, 2016



Aaron Bazzoli
Attorney for the Defendant

To whom it may concern,

I would like to write this letter in concerns to my rule 35. I believe I should be able to get a reduced sentence based on the facts that my co-defendant was given less time than I was. During that time I was not offered any deals that were reasonable or any chance to testify against him as he did against me. Regardless of what actually happened the day of the crime we were both convicted of the same crime.

Due to the facts that were identified differently against me, nothing has actually matched up. There were so many inconsistencies in the testimonies of those who testified. There was evidence that I had asked my Private attorney John Bujak to put in and he didn't. I had seen my lawyer maybe 5 or 6 times during the "preparation of my trial". I was never able to listen to the full audio or videos that were held against me, we never even went through the whole discovery. He would tell my wife that he had come to see me and he never had. He was being disbarred in the middle of my trial. He took a break in the middle of my trial. There were questions to be aske and witnesses' that were never called. I was not represented correctly.

I believe that my codefendant and I should be around the same sentence. I was found guilty of first degree murder; he took a plea bargain that was promised to him long before he was even arrested. His sentence was 15 to life and I was given 35 years, which is 20 more years than he was given. I am asking for leniency on my behalf. I do not have a criminal history and I think that that should have been considered as it was not during my sentencing. If I were able to get out at an earlier time than I think I would be able to go back into society and re-adjust to being a good citizen. I do have the potential at rehabilitation.

The main issue I am trying to get at right now is the difference between us. The prosecutor was not willing to work with me as he did my co-defendant. It is the same crime and I understand the extent of this case. I took the stand and I told the truth without inconstancies and without a deal on the table. I was not offered a thing in exchange as others were. I told my side of events from that day and I was sentenced worse than anyone else. Even though I knew there was a chance that nobody would believe me I still stood up and told my side of the story. Nobody listened or believed me, because there were others saying things already. I was painted as this bad terrible person. Yes I was on the wrong path and I did some things that I am truly not proud of. If I could go back in time and do things differently I would have never picked up a friend. I would have stayed home with my family in our home where I should be now.

I am not living in the past anymore I've been gone for 17 months now. My son was 18 months old when I was arrested he is now 3 years old. He only knows me through pictures and a phone call. This is not the kind of father I ever wanted to be. I want to hold my son and play with him. To walk into my home to my wife and son smiling because I am home like before.

Please give me the chance to live again. . I continue to fight for the second chance that I was not given yet others were. I feel as if the prosecutor picked and chose who he wanted to work with and from the moment I was arrested I was already guilty in their eyes. Please take your time in making this

decision; again I understand the extent of these crimes. I also understand that since day one I have fought every second for this second chance to be hopefully given to me. I will not lose my faith and hope that one day I will be able to come home to my son my wife and my family. I hope that you will take the time to reconsider this sentence I would like the chance to be a father to my son a husband to my wife a family man again as I once was. I have admitted my bad choices that I did make.

Raul Herrera

To whom it may concern,

I am writing this letter in regards to Raul Edgar C. Herrera. This letter is for the purpose of his rule 35. I have known Raul for 7 years we have been together for 6 years. We will be married July 3rd 2016. Now this letter is not going to be as others are. I will give my points and hopefully you can have an open mind and take into consideration what I am about to say.

I met Raul 7 years ago, we automatically just magnetized to each other since that day we have been inseparable. We now own our own home and car we have a beautiful son who is now three years old. As far back as I can remember Raul has always worked hard for what he had. Not a day would go by that he was not working employed or not he still found a way to get odd jobs done and provide for his family. He graduated high school when I was pregnant with our son he worked full time and went to night school to graduate. He has always helped others out no matter how hard times were for us he would find a way to help someone in need. I believe that personally knowing Raul and being by his side through this whole ordeal yes he has grown. To some it may not seem like he could have matured so much in such a short time of 17 months, but who would honestly not mature and grow when they have been put through something they have no control over. I do not believe my fiancé should be in jail for this crime one bit which is why I continue to fight for him and his innocence.

Now Raul wasn't always perfect, he has had his bad days just like any other person in this world. Yet he always has strived to make himself a better person. He is not a perfect man he is not a perfect anything but yet I still think and feel like he has gotten the bad end of the stick. I do not believe in any way he was given any kind of chance at his life. He has always had it rough but he has never been that person from the streets who was in and out of jail, and always in trouble he was the "one of a kind of person" from the streets who was going to make it. Then all of this happened. Now I stand and believe in my fiancé's innocence by no means do I believe he is guilty but this letter is only due to the facts of his rule 35.

Now on the grounds of a rule 35 states that a person is requesting for a reduction in sentence, the grounds for requesting a reduction in sentencing is that of new evidence has been discovered that the judge was not able to see before sentencing, to ask for leniency on the sentence they were given, also allows the judge to correct an "illegal" sentence.

I believe his sentence was too harsh due to the fact that not everything was taken into consideration. Like the evidence that was not presented in court that should have been among other things that were withheld. The others involved either got no time or a substantial amount of less time than my fiancé Raul. They were also offered deals on behalf of the states Prosecuting Attorney's office. The fact that another involved was given less time for the same charge. His plea bargain was given to him before he was even arrested, during an interrogation his plea bargain was offered, he was also facing different charges yet they withheld these charges in exchange for testimony. A testimony that is wrong and also that contradicted with one of the victims. Another individual is still walking free, and

was paid money as well to testify. This person was paid the amount of \$5,000.00 to testify. His interrogation was never recorded, or at a police station like procedures should have been. Instead he was picked by one of the detectives where they "took him for a cruise" to get his testimony. Then there is the fact that, his hired private attorney was being disbarred right before my fiancé Raul's trial started. His trial was postponed because of this, and his lawyer took a week of work to get his mind straight. This should have been a mistrial but it was also not considered. We were told no. Seemed if and when we fight for everything it is just kicked out and not even considered. Seems as if the truth is not being recognized and a lie is better than the truth to some. This case has been nothing short of a nightmare for my little family and fiancé. He was given the "bad hand" in this mess. Every person was given a deal or a second chance. My fiancé was not.

I understand that every case is significantly different. Yet sometimes there is favoritism or someone might feel as if they are stuck, like they must give a harsher sentence to set an example or maybe they are kind of forced to give a harsher sentence. Due to the media coverage or some other odd reason. The fact still lies that my fiancé has had no criminal record, besides two minor tickets. His criminal history was not taken into consideration which is supposed to be a factor in every case, especially when sentencing someone. I am asking for you to please review my Fiancé's case and take into consideration the time he was given, and how it is such a long time that I believe if he were to do all 35 years there would be no hope left for him. He would be institutionalized.

Please give him a chance to be able to come home and be a father and husband again. I do think yes he did deserve to go to prison for some things that he made the wrong choices for, but to spend the rest of his life in there without a real second chance doesn't seem fair. I believe he can continue to change and be able to rehabilitate himself so when and if he is ever able to come home he can be a productive citizen in this world. Even now he continues to stay positive and have the highest of faith. Time is all he has left to look forward to and I pray that maybe you or someone else will be able to make that decision that will bring him home.

I thank you for your time, and I hope you have a blessed day.

Sophia Sanchez

Print | Close window

From : phiac14@gmail.com
To : "Aaron Bazzoli" <aaron@bazzolilaw.com>
Reply to : phiac14@gmail.com
Subject : Fwd: RAUL HERRERA RULE 35 LETTER
Date : Mon, 06 Jun 2016 20:38:05 -0700

Get Outlook for Android

From: Babiigurl Babiigurl
Sent: Monday, June 6, 9:35 PM
Subject: RAUL HERRERA RULE 35 LETTER
To: Sophia Sanchez

Dear your Honorable Judges,

I am writing this letter to you in regards of the Rule 35 motion filed by my brother Raul Edgar Cantu Herrera. Throughout the 21 years growing up together, I have been blessed to have built a strong bond with my little brother being a year and a half younger than myself. In all them years, I know for a fact that my little brother Raul has a very passionate and considerate heart for myself and others. He is the only man who solely is the motivation behind the goals in my life to succeed and one of which I have look up to. If it weren't for my mother and my little brother Raul's encouragement growing up, I wouldn't have made it as far as being the first generation to graduate and continue onto college. And so I believe that the thirty-five year sentence decided for Raul's life has been unjust and he did not receive a fair trial in court because of facts withheld and an attorney that had neglected to give him any chance of a good representation due to being disbarred in the middle of Raul's trial.

Without a hesitation, I know Raul Edgar Cantu Herrera is and could continue to be a positive role modeled citizen for his son, family, and others if eligible for the reduction of his sentencing. I have first-handedly seen Raul go out of his way to help others as well as myself even if not asked. For example, there was a baby, no older than two, who had walked into the road and he had dropped everything he was doing and saved that baby's life before getting hit by the car coming. We could be driving and he would give money to the homeless or a ride to a hitchhiker. This one time, my moms' dog had been lost, from following the ambulance to the hospital, and he spent all day looking for him until he finally found him and brought the state of depression out of my mom and happiness in it. There had been a time while I was attending college and was short five hundred dollars and he was right there to give to pay for my books. Each time I had struggled in writing english papers, a subject he excelled in, I knew I could count on him to enlighten my train of thought and accomplish what I needed to do; whether it be for what ever problem I had big and small, in school and in life. I admired his dedication to succeed and becoming someone in life. For example, we had moved alot and he had gone to school in boise and we lived in nampa and every morning he would ride his bike to school until he had graduated from high school instead of getting his GED with a 3.9 like myself.

Raul has tried his hardest and worked very hard to have a brighter future for his son his wife, and himself and been a very independent young hardworking father, brother and son. Thus believing that my little brother Raul's sentence to prison for thirty-five years be too harsh because and so I ask and plead that you may review all the facts in Raul's case considerably and grant him a reduction of his modified sentence, so that he may once again provide and be another role model for his son and continue to excel in life, giving and having the necessities of which we had not had growing up, only having a single parent provide for us. I thank you for all your time and consideration.

Sincerely,
Florinda Iysha Cantu Herrera

BAZZOLI LAW, PLLC
Aaron Bazzoli
815 Fillmore St
Caldwell, ID 83605
Phone: 208-402-5827
Fax: 208-874-4307
ISB #: 5512

F I L E D
A.M. *4:30* P.M.

JUN 28 2016

**CANYON COUNTY CLERK
M. NYE, DEPUTY**

Attorney for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

RAUL EDGAR HERRERA;

Defendant.

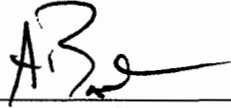
Case No. CR-2014-26736

**MOTION TO RECONSIDER
ORDER DENYING RULE 35
MOTION**

COMES NOW the Defendant, by and through Defendant's attorney of record, Aaron Bazzoli, conflict public defender, and hereby files with this Honorable Court a Motion for Reconsideration of the Order Denying Rule 35 and requests that the Court consider the letters filed on June 27, 2016 before final ruling on Defendant's Motion for Rule 35.

The defense counsel was involved in a jury trial on the 9, 10 and 13th of June and preparation for said jury trial. The letters were received a few days before they were due and defense counsel simply overlooked getting them submitted immediately after being received. Defendant requests this Court review the letters and reconsider the order denying Rule 35.

DATED this ___ day of June, 2016.



Aaron Bazzoli
Attorney for Defendant

CERTIFICATE OF SERVICE

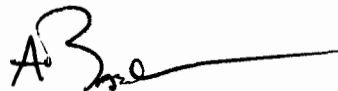
I hereby certify that on the 27th day of June, 2016, I served a true and correct copy of this Motion to Reconsider upon the individual(s) named below in the manner noted:

- ✓ By depositing copies of the same in the individual(s) designated courthouse box.

Bryan F. Taylor
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, Idaho 83605

- ✓ By sending a copy of the same via U.S. Mail, postage prepaid to the individual(s) designated below.

Raul Herrera
IDOC # 11611'
ISCI Unit 11
P.O.Box 14
Boise, ID 83707



Aaron Bazzoli
Attorney for Defendant

JUL 13 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

RAUL EDGAR HERRERA,

Defendant.

CASE NO. CR-2014-26736

**ORDER DENYING MOTION
TO RECONSIDER**

After a trial by jury, Defendant was found guilty of Murder in the First Degree, Robbery, Burglary, Second Degree Kidnapping, and Aggravated Battery. For the crime of Murder, Defendant was sentenced to a unified term of life, with the first thirty-five years fixed. For the crime of Robbery, Defendant was sentenced to life, with the first thirty years fixed. For the crime of Burglary, Defendant was sentenced to ten years fixed. For the crime of Second Degree Kidnapping, Defendant was sentenced to life, with the first twenty years fixed. Finally, for the crime of Aggravated Battery, Defendant was sentence to fifteen years fixed. All sentences were ordered to run concurrently. The sentences were executed. An appeal was filed and is currently pending.

On May 6, 2016, Defendant filed a Motion for Rule 35 and Motion to Extend Time for Filing Additional Information. The Court issued an Order on May 11, 2016, granting Defendant an additional 30 days from the date of the order to file any additional supporting documents. Also on May 11th, the State filed an objection to Defendant's Rule 35 motion. The Court received no further documentation and on June 22, 2016 issued its Order Denying Rule 35 Motion. Two days later, on June 24, 2016, Defendant filed supplemental material consisting of three letters in support of his motion. The letters were from Mr. Herrera, his fiancé¹, Sophia Sanchez, and his sister, Florinda Cantu Herrera.

On June 28th, Defendant filed a motion to reconsider the Order Denying Rule 35 Motion on the grounds that defense counsel was preparing for and in jury trial on the 9th, 10th, and 13th of June, and that he received the letters a few days prior to the deadline, but inadvertently failed to submit them immediately. The underlying facts of this case are set forth in this Court's Order Denying Rule 35 Motion, and will therefore not be repeated here.

Initially, the Court notes that a motion to reconsider the denial of a Rule 35 motion is an improper successive motion and is prohibited by Rule 35. *State v. Bottens*, 137 Idaho 730, 52 P.3d 875 (Ct. App. 2002). Further, the prohibition of successive motions under Rule 35 is a jurisdictional limit. *Id.* As such, this Court is without the authority to consider this motion.

However, even if the letters had been timely submitted, the motion would still have been denied. The letters outline three general reasons in support of Defendant's

¹ Sophia Sanchez states in her letter that she and the Defendant were planning to be married on July 3, 2016. The Court has no information regarding whether or not the marriage took place as planned.

plea for leniency: (1) that he received ineffective assistance of counsel, (2) that he is a good person with a young family who simply did one bad thing, and (3) that a co-defendant received a significantly lower sentence.

As to the first reason, a Rule 35 motion is not the appropriate forum in which to address claims of ineffective assistance of counsel. Therefore, the Defendant would not have been granted relief on this ground. The remaining two grounds for relief are not new information, and were addressed at the sentencing hearing. Defense counsel pointed out both that the Defendant's fiancé and son would be without him, as well as the sentence received by the co-defendant. The Court also heard from the Defendant who expressed his regret as well as his desire for the opportunity to be a part of his family's life at some point in the future.

Upon pronouncement of sentence, the Court noted the impact this crime and the respective sentences would have on the Defendant and his family. It also recognized that the Defendant was a beloved son and family member, as well as, by all accounts, an extraordinarily loving and devoted father. Knowing this, the Court still chose to impose the sentences set forth above in light of the egregious circumstances of this case. There is no information presented in the letters provided that alters the appropriateness of the sentences imposed or justifies a reduction in the time imposed.

As to the differences in the sentences received by Mr. Herrera and the co-defendant, the Court specifically stated that it would not engage in a comparative analysis of sentences as each defendant's circumstances are unique.

For all of the foregoing reasons, as well as the reasons set forth in the Order Denying Rule 35 Motion, the Defendant's Motion for Reconsideration is DENIED.

Dated this 12 day of July, 2016.



Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 13 day of July, 2016, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for plaintiff:

Bryan Taylor
CANYON COUNTY PROSECUTOR'S OFFICE
1115 Albany St
Caldwell, ID 83605

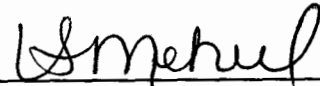
- upon counsel for defendant:

Aaron J. Bazzoli
BAZZOLI LAW, PLLC
815 Fillmore St.
Caldwell, ID 83605

- Kathy Waldemer
Appeals Clerk
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

CHRIS YAMAMOTO,
Clerk of the Court

By: 
Deputy Clerk of the Court

FILED
A.M. 1:52 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43975

DEC 13 2016
CANYON COUNTY CLERK
K WALDEMER, DEPUTY

STATE OF IDAHO,	)	2016 Unpublished Opinion No. 817
)	
Plaintiff-Respondent,	)	Filed: December 13, 2016
)	
v.	)	Stephen W. Kenyon, Clerk
)	
RAUL EDGAR HERRERA aka EDGAR	)	THIS IS AN UNPUBLISHED
CANTU,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Molly J. Huskey, District Judge.

Judgment of conviction and concurrent unified sentences of life with thirty-five years determinate for murder in the first degree; life with thirty years determinate for robbery; ten years determinate for burglary; life with twenty years determinate for kidnapping second degree; and fifteen years determinate for aggravated battery, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before MELANSON, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Raul Edgar Herrera was found guilty of murder in the first degree, Idaho Code §§ 18-4001, 18-4002, 18-4003(a), 18-204; robbery, I.C. §§ 18-6501, 18-6502, 18-6503, 18-204; burglary, I.C. §§ 18-1401, 18-204; kidnapping second degree, I.C. §§ 18-4501, 18-4503, 18-204; and aggravated battery, I.C. §§ 18-903(a), 18-907(a), 18-204. The district court imposed concurrent unified sentences of life with thirty-five years determinate for murder in the first

degree; life with thirty years determinate for robbery; ten years determinate for burglary; life with twenty years determinate for kidnapping second degree;¹ and fifteen years determinate for aggravated battery. Herrera appeals, contending that his sentences are excessive.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Therefore, Herrera's judgment of conviction and sentences are affirmed.

¹ The State acknowledges that the maximum sentence for kidnapping second degree is twenty-five years. However, the claim of an illegal sentence may not be raised for the first time on appeal without the trial court having first had an opportunity to consider the legality of the terms of the sentence. *State v. Martin*, 119 Idaho 577, 578-79, 808 P.2d 1322, 1323-24 (1991); *State v. Boss*, 122 Idaho 747, 748 n.1, 838 P.2d 876, 877 n.1 (Ct. App. 1992); *State v. Hernandez*, 122 Idaho 227, 229, 832 P.2d 1162, 1164 (Ct. App. 1992).

In the Court of Appeals of the State of Idaho

FILED
A.M. 3:37 P.M.

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 PAUL EDGAR HERRERA aka EDGAR)
 CANTU,)
)
 Defendant-Appellant.)

JAN 20 2017
 CANYON COUNTY CLERK
 K WALDEMER, DEPUTY
 REMITTITUR
 Docket No. 43975
 Canyon County D.C. No. CR-2014-
 26736

TO: THIRD JUDICIAL DISTRICT, COUNTY OF CANYON.

The Court having announced its Unpublished Opinion in this cause December 13, 2016, and having denied Appellant's Petition for Review on January 17th, 2017; therefore,

IT IS HEREBY ORDERED that the District Court shall forthwith comply with the directive of the Unpublished Opinion, if any action is required.

DATED this 17th day of January, 2017.

Stephen Kaym

 Clerk of the Court of Appeals
 STATE OF IDAHO

cc: Counsel of Record
 District Court Clerk
 District Judge

Raul Edgar Herrera, # 116611
I.S.C.I., Unit 11B 35 B
Post Office Box 14
Boise, Idaho
83707

FILED A.M. P.M.

FEB 23 2017

CANYON COUNTY CLERK
A NICKEL, DEPUTY

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CANYON
STATE OF IDAHO

Raul E. Herrera,)
Petitioner,)
) NO:CR-2014-26736-C
VS:)
) Memorandum In
) Support Of Motion
State Of Idaho,) To Correct Sentence
Respondent,)
)

COMES NOW, Raul Edgar Herrera, The Petitioner in the instant action, and pursuant to **Idaho Criminal Court Rule 35**, who has moved this court for an order correcting the sentence imposed illegally upon him.

The Petitioner was convicted in this Court before a jury, and such Trial was **presided over by the Honorable Judge Molly J. Huskey**, of the Third Judicial District of the State of Idaho.

The Petitioner was sentenced to the Idaho State Department of Corrections for the following terms:

- 1). Murder in the First Degree, 35 years determinate, followed by life indeterminate;
 - 2). Robbery, 30 years Determinate, followed by life indeterminate;
 - 3). Burglary, 10 Determinate, followed by -0- years indeterminate;
 - 4). Kidnapping in the Second Degree, 25 years Determinate, followed by life indeterminate.
 - 5). Aggravated Battery, 15 years Determinate, followed by -0- years indeterminate.
- All of the above sentences were ordered to be served concurrently to each other.

ARGUMENT PRESENTED

"A criminal Court Rule 35 Motion can be used for leniency or to correct a sentence that is illegal from the face of the record at any time". "A Motion to correct an illegal sentence is not subject to any time constraints and may be filed at any time". See e.g., **State V. Kerrigan, 143 Idaho 185, 141 P.3d 1054, (2006); State V. Vetsch, 101 Idaho 596, 618 P.2d 773, (1980).**

THE SENTENCES IMPOSED VIOLATE DOUBLE JEOPARDY

On the record, in open Court the Jury found that the commission of the crime of Murder was perpetrated in the commission of Robbery, Kidnapping, and Burglary. Please see Exhibit A as attached.

It is without question that a person cannot be punished or placed into jeopardy twice for the same offense, please see the United States Constitution, Amendment(s) Five and Fourteen.

Theses Constitutional prohibitions means that a criminal defendant maynot be convicted of both a greater and a lesser included offense. **State V. Thompson, 101 Idaho 430, (1980).**

In Idaho, it is the "indictment" or "pleading" theory that is used to determine if one offense is a lesser included of another. **State V. Thompson, Supra.**

This theory holds, "that an offense is an included offense if it is alleged in the information as a ways or means to commit another greater offense". **State V. Anderson, 82 Idaho 293, 352 P.2d 972, (1960).**

A lesser included offense may also be one which is necessarily committed in the commission of another offense." **State V. Hall, 86 Idaho 63, 383 P.2d 602, (1963).**

Attached as Exhibit B is a copy of the indictment that was served upon the Petitioner, and was duly signed by the grand jury of the State of Idaho. It is clear that in Count 1, under the alternative theory, it is very clear, that the charging document, in conjunction with the Jury instructions, and the jury verdict form, (Exhibit A), show that when the Court sentenced the Petitioner to serve a sentence for each crime, the Court violated the provisions of the United States Constitution against being punished twice for the same offense(s), because the jury did in fact find that the underlying crimes were committed during the pertetration of the Murder.

The Idaho State Supreme Court, in the case of **State V. Bates, 106 Idaho 395, 679 P.2d 672, (1984)**, has clearly held, "...in such circustances the District Court

judge is required to set aside the lesser conviction (s)".

Whether the prohibition against double jeopardy prevents the Petitioner, (Mr. Herrera), from being punished for Robbery, Burglary, and Kidnapping, as well as the predicate crime of First degree Murder would depend on whether or not the Jury found Mr. Herrera guilty of these offenses during the perpetration or the commission of the predicate crime of First Degree Murder.

If the Jury did find the Petitioner guilty of these offenses during the perpetration of the crime of First degree Murder, then the individual convictions for these crimes are illegal and must be stricken from the judgment and sentence, and from the records of this case.

Exhibit A, which is the jury verdict form, does show that the jury found the Petitioner guilty under the felony murder rule, and therefore the District Court is required to dismiss the lesser convictions, and the sentences thereof.

THE SENTENCE FOR SECOND DEGREE KIDNAPPING EXCEEDS THE STATUTORY MAXIMUM

The State of Idaho has conceded that the sentence for the crime of second degree kidnapping is above the statutory limits for such crime. Please see order of the Court of Appeals, dated December 13th, 2016, case number 43975, opinion number 817, foot-note at page two.

When the Court imposed the sentence upon the Petitioner, it imposed a sentence of 20 years fixed, or determinate, to be followed by term of life indeterminate.

Because the Statutory maximum penalty for the crime of second degree kidnapping is 25 years, and the court imposed an indeterminate life sentence, it is clear that the Court did not have authority to impose such a term, and therefore the sentence is illegal and must be stricken from the record.

"Subject matter Jurisdiction is the power to determine cases over a general type or class of dispute". **Bach V. Miller, 144 Idaho 142, 158 P.3d 305, (2007).**

As stated, the Court at the time of the pronouncement of the sentence only had authority, or subject matter, to impose a maximum sentence of 25 years. When the Court sentenced the Petitioner to a term of life, (when the maximum term is 25 years), the Court lacked statutory authority to impose such a sentence, and therefore it is illegal on its face.

"Any Order entered by a Court without Subject Matter Jurisdiction is Void" **State V. Peterson, 148 Idaho 610, 226 P.3d 552, (2010).**

"A sentence is illegal within the meaning of Rule 35 only if it is in excess of statutory limits or otherwise contrary to applicable law" **State V. Alsanea, 138 Idaho 733, 69 P.3d 153, Ct. App. 2003).**

Because the sentence imposed does in fact exceed the statutory limits for the crime of Kidnapping, it is mandatory upon this court to hold a new sentencing

hearing.

**THE SENTENCE OF 35 YEARS DETERMINATE IS ILLEGAL FOR THE
CRIME OF NON-CAPITAL MURDER**

Idaho Code, section 18-4004, and 19-2513, (2), when read In Para Materia, mandated that the sentencing court, in first degree murder cases, impose a sentence of precisely ten years determinate, with an indeterminate term of life. Consequently, the sentence imposed upon the Petitioner of 35 years determinate is illegal for the following reasons.

In the case of **Booth V. State, 151 Idaho _____, 262 P.3d 255, (2011)**, the Idaho State Supreme Court when looking at the first degree murder statute, found as follows, "...following a conviction for first degree murder, in cases where the death penalty is not sought, the Court is REQUIRED to impose an indeterminate life sentence with a minimum period of confinement of not less than 10 years. **I.C. 18-4004**. In other words, a defendant convicted of first degree murder automatically receives an indeterminate life sentence with a fixed term of ten years". Booth, Supra, at 266.

The reasons and the rationale for this statement is very clear and is a matter of Statutory construction and Statutory interpretation.

Idaho Code section 18-4004 is very clear in that there is a set mandatory minimum term of ten, (10) years that is to be ordered upon a conviction for first degree murder when the Death penalty is not sought.

The authority to impose a "fixed" or a determinate term is provided to the District Court through the Unified Sentencing Act, which is codified as **19-2513**. However, this authority to impose a "fixed" or a determinate term is not unlimited.

In the second paragraph of **19-2513**, the Legislature of the State of Idaho, when passing the Unified Sentencing Act made the following provision in the Second paragraph:

"If the offense carries a mandatory minimum penalty as provided in the Statute, the Court shall specify a minimum period of confinement that is consistent with such Statute".

The Idaho State Supreme Court has held that, "...the word SHALL when used in a Statute, is mandatory". **Goff V. H.J.H. Co., 95 Idaho 837, 521 P.2d 661, (1974)**.

19-2513, in the second paragraph uses the word SHALL. It commands that the Court, when pronouncing a criminal sentence, if the Statute for which the Criminal Defendant is accused of violating, has a mandatory minimum in that statute, then the determinate term of the sentence SHALL be consistent with that statute.

In this case, the statute in question is 18-4004, and it does in fact have a mandatory minimum term of ten years in that statute. So, when the court ordered the Petitioner to serve a 35 year fixed, or determinate term, that is three and one half times the 10 year mandatory minimum term in 18-4004, and it is clearly not CONSISTENT with that statute, and therefore it is an illegal sentence.

"Statutes must be interpreted to mean what the Legislature intended for the Statute to mean". In **Re Miller, 110 Idaho 298, 715 P.2d 968, (1986)**, quoting, **Grumprecht V. City of Coeur d' Alene, 104 Idaho 615, 661 P.2d 1214, (1983)**. In addition, statutes that are in Pari Materia are to be construed together, so as to further Legislative intent **State V. Creech, 105 Idaho 362, 670 P.2d 463, (1983)**. Where as here, the Statutes deal with the same subject matter, i.e., sentencing, the Statutes are Pari Materia; and therefore **I.C. 18-4004 and 19-2513(2)** must be read and construed together to understand the Legislative meaning.

A Court must adhere to the letter and intent of the law, even if the Court does not agree with the result, or it's logical strict construction. **Ravencroft V. Boise County, 154 Idaho 613, 301 P.3d 271, (2013)**.

Applying these rules of Statutory construction and interpretation, this Court should conclude that the Statutes when read together mean that the sentencing Court "SHALL" impose a fixed term of confinement that is "CONSISTENT" with the mandatory minimum term required by 18-4004, i.e., a term that is precisely 10 years.

The second paragraph of the Unified Sentencing Act, 19-2513, (2), is only to be used for those offenses that have a set mandatory minimum term in the Statute. In all other cases, the District Court must act under the first paragraph of 19-2513, which grants to the sentencing Court the ability to impose any fixed term, up to and including the Statutory maximum as is provided for in Statute. The second paragraph clearly limits the Court's discretion to impose a fixed term in those cases where there is a mandatory minimum term in the statute, and it is because of this that this Court is mandated to resentence the Petitioner to a term of 10 years, with an indeterminate life term to follow.

This is not just a matter of Statutory interpretation of State law, but it is also a Federal Due Process right under the Fourteenth Amendment to the United States Constitution. "The failure of a State to follow it's own laws and statutory commands may implicate a liberty interest that violates the "Fourteenth Amendment". **Fetterly V. Paskett, 997 F.2d 1295, (9th Cir. 1993); Ballard V. Estelle, 937 F.2d 453, (9th Cir. 1991)**.


Both of the aforementioned cases, are from the State of Idaho, whereas Idaho would not follow it's own sentencing statutes, very similar to the case before this Court.

CONCLUSION

For the reasons as listed, this Court should enter an order that allows a new sentencing hearing to take place, whereas the Petitioner should have the assistance of conflict free counsel, and the ability to present any evidence in mitigation of the sentence.

OATH OF PETITIONER

Comes now, Raul Edgar Herrera, the Petitioner herein, who does now declare under the **United States Code, Title 28, Section 1746**, that the information contained herein is true and correct to the best of his knowledge and belief.


Raul Edgar Herrera

2/17/17
Dated

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 03-01-17 AT 11:21 a.m.
CLERK OF THE DISTRICT COURT
BY K. O'Connell, Deputy

THE STATE OF IDAHO/or

Raul E. Herrera

Case No. CR 2014-20731e* C

ORDER APPOINTING PUBLIC
DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

THE MATTER IS SET FOR Status Conference
on March 20, 2017 at 10:00a before Judge VanderVelde
 THE MATTER SHALL BE SET FOR _____
before Judge _____

Dated: 3-1-17

Signed: [Signature]
Judge

In Custody -- ~~Bond~~ IDOC
 Released: O.R.
 on bond previously posted
 to PreTrial Release

Juvenile: In Custody
 Released to _____

- No Contact Order entered.
- Cases consolidated.
- Discovery provided by State.
- Interpreter required.
- Additional charge of FTA.

Original--Court File Yellow--Public Defender Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC
DEFENDER

Raul Edgar Herrera
Inmate name ^{AKA} Edgar Paul Herrera
IDOC No. _____
Address Post Office Box 14
Boise, Idaho
83707

FILED
MAR 08 2017
CANYON COUNTY CLERK
C JIMENEZ, DEPUTY

Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)
)
) Plaintiff,)
)
 vs.)
)
 Raul Edgar Herrera,)
)
) Defendant.)

Case No. CR-2014-26736-C

**MOTION FOR
CORRECTION OR
REDUCTION OF
SENTENCE, ICR 35**

COMES NOW, Raul Edgar Herrera Defendant in the instant action, and pursuant to Idaho Criminal Rule 35, moves this Honorable Court for its Order:

Correcting the Defendant's illegal sentence, or 1

Reducing Defendant's sentence for the reasons stated on page two of this motion:

1. The Defendant was convicted of Murder, 1st degree before the Honorable Judge Molly Huskey and sentenced to a term of imprisonment in the custody of the Idaho Department of Correction for:

a unified term of Life years including 35 years fixed followed by Life years indeterminate,

a fixed term of _____ years.

2. The Defendant has been incarcerated since December 04, 2014 and has served 2 years 2 months (months/years) of the sentence.

3. The Defendant believes:

The Court should reconsider its earlier sentence and reduce the same on the following grounds, or,

The sentence is illegal and should be changed on the following grounds:

(State the reasons why you believe your sentence should be reduced. You may add extra pages if necessary. Any additional documentation must be attached hereto.)

~~First, the sentence is illegal because the Jury found~~
~~that all of the lesser crimes were done in the perpetration~~
~~of the First Degree Homicide, and therefore it is Felony Murder,~~
~~and the Court should not have imposed a sentence for each offense.~~

~~Next, the Court imposed a sentence of life for the crime~~
~~of Second Degree Kidnapping when the Statute for such a crime~~
~~clearly only provides for a sentence of 25 years.~~

~~Finally, the crime of First Degree Murder, when the death~~
~~penalty is not sought, is determined by Statute, and it is a~~
~~maximum penalty of life indeterminate, with ten, (10), years~~
~~fixed. The Court in violation of 19-2513, (2), did not give~~
~~to the Defendant a fixed term that was "consistent" to the first~~
~~degree homicide statute. It sentenced the Defendant to 3 1/2~~
~~times the amount provided for and inasmuch violated 19-2513,(2),~~
~~and 18-4004. These facts and argument is contained in the~~
~~memorandum in Support of this Motion, also filed herein.~~

MOTION FOR REDUCTION OR CORRECTION OF SENTENCE, ICR 35 - 2

Revised: 3/24/16

Defendant additionally submits the following documentation for consideration:

The Memorandum in Support of the Rule 35 Motion; and,
the Jury's verdict form, (Exhibit A), and the Charging Document,
(Exhibit B), filed therein.

WHEREFORE, the Defendant, Paul Edgar Herrera, respectfully prays
this Honorable Court to reduce or correct the sentence as follows:

Resentence the Defendant to a term of life, with ten, (10)
years fixed, such as is provided for within the Statutory scheme
of the laws of the State of Idaho. or grant such
other and further relief, as the Court deems appropriate.

Respectfully submitted this 2nd day of March, 2017.

Paul Edgar Herrera
Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2nd day of March, 2017, I
delivered to prison authorities for the purpose of mailing a true and correct copy of the MOTION
FOR REDUCTION OF CORRECTION OF SENTENCE, ICR 35 via prison mail system for
processing to the U.S. mail system to:

<u>Clerk of the Court</u> <u>Canyon County Courthouse</u> <u>1115 Albany Street</u> <u>Caldwell, Idaho</u> <u>83605</u>	<u>Canyon</u> County Prosecuting Attorney <u>Canyon County Courthouse</u> <u>1115 Albany Street</u> <u>Caldwell, Idaho</u> <u>83605</u>
---	---

[Signature]
Defendant

dm

F I L E D
A.M. P.M.

DEC 17 2014

**CANYON COUNTY CLERK
D KENNEL, DEPUTY**

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

RAUL EDGAR HERRERA
DOB: [REDACTED]

Defendant.

CASE NO. CR2014-26736

SUPERCEDING INDICTMENT

for the crime of:

COUNT I - MURDER IN THE FIRST DEGREE

Felony, I.C. §18-4001, 18-4002; 18-4003(a) and 18-204

or in the alternative

COUNT I - FELONY MURDER (FIRST DEGREE)

Felony, I.C. 18-4001, 18-4002, 18-4003(d); and 18-204

COUNT II - ROBBERY

Felony, I.C. §18-6501, 18-6502, 18-6503, and 18-204

COUNT III - BURGLARY

Felony, I.C. §18-1401 and 18-204

COUNT IV - KIDNAPPING SECOND DEGREE

Felony, I.C. §18-4501, 18-4503 and 18-204

COUNT V - AGGRAVATED BATTERY

Felony, I.C. §18-903(a), 18-907(a) and 18-204

RAUL EDGAR HERRERA is accused by the Grand Jury of Canyon County of the crimes of MURDER IN THE FIRST DEGREE, a felony, Idaho Code Section 18-4001, 18-4002;18-4003(a) and 18-204, or in the alternative FELONY MURDER (FIRST DEGREE), a felony, Idaho Code Section 18-4001, 18-4002, 18-4003(d); and 18-204; ROBBERY, a felony, Idaho Code Section 18-6501, 18-6502, 18-6503, and 18-204; BURGLARY, a felony, Idaho Code Section 18-1401 and 18-204; KIDNAPPING SECOND DEGREE, a felony, Idaho Code Section 18-4501, 18-4503 and 18-204; and AGGRAVATED BATTERY, a felony, Idaho Code Section 18-903(a), 18-907(a) and 18-204, committed as follows:

COUNT I

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did wilfully, unlawfully, deliberately, with premeditation, and with malice aforethought, kill and murder Jeffrey Dyer, a human being, by striking Jeffrey Dyer in the head with a blunt object creating injuries from which he died, or did aid, abet or assist Angelo Cervantes who did willfully, unlawfully, deliberately, with premeditation, and with malice aforethought, kill and murder Jeffrey Dyer, a human being, by striking him in the head with a blunt object inflicting wounds from which he died.

All of which is contrary to **Idaho Code**, Section 18-4001, 18-4002;18-4003(a) and 18-204, and against the power, peace and dignity of the State of Idaho.

or in the alternative

COUNT I

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did in the perpetration of, or an attempt to perpetrate, a robbery and/or burglary and/or kidnapping, kill and murder Jeffrey Dyer, or did aid, abet or

assist Angelo Cervantes who did in the perpetration of, or an attempt to perpetrate, a robbery and/or burglary and/or kidnapping, kill and murder Jeffrey Dyer.

All of which is contrary to **Idaho Code**, Section 18-4001, 18-4002, 18-4003(d); 18-204 and against the power, peace and dignity of the State of Idaho.

COUNT II

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did feloniously, intentionally and by means of force and/or fear take from the possession of Jeffrey Dyer and/or Ronald Ghostwolf certain personal property, to-wit: oxycodone pills and/or hydrocodone pills and/or a samurai style sword and/or cellular telephones and/or buffalo meat and/or gold coins and/or a television, the property of Jeffrey Dyer and/or Ronald Ghostwolf, which was accomplished against the will of Jeffrey Dyer and/or Ronald Ghostwolf, or did aid, abet or assist Angelo Cervantes who did feloniously, intentionally and by means of force and/or fear take from the possession of Jeffrey Dyer and/or Ronald Ghostwolf certain personal property, to-wit: oxycodone pills and/or hydrocodone pills and/or a samurai style sword and/or cellular telephones and/or buffalo meat and/or gold coins and/or a television, the property of Jeffrey Dyer and/or Ronald Ghostwolf, which was accomplished against the will of Jeffrey Dyer and/or Ronald Ghostwolf.

All of which is contrary to **Idaho Code**, Section 18-6501, 18-6502, 18-6503, and 18-204 and against the power, peace and dignity of the State of Idaho.

COUNT III

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did enter into a certain building, to-wit: a house, the property of Ronald Ghostwolf, located at 1110 West Dakota in the City of Nampa, with the

intent to commit the crime of theft and/or robbery and/or aggravated battery and/or kidnapping and/or murder.

All of which is contrary to **Idaho Code**, Section 18-1401 and 18-204 and against the power, peace and dignity of the State of Idaho.

COUNT IV

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did wilfully seize and/or confine and/or detain Ronald Ghostwolf with the intent to inflict serious bodily injury upon him and to cause him to be kept or detained against his will within Idaho.

All of which is contrary to **Idaho Code**, Section 18-4501, 18-4503 and 18-204 and against the power, peace and dignity of the State of Idaho.

COUNT V

That the Defendant, Raul Herrera, on or about the 8th day of November, 2014, in the County of Canyon, State of Idaho, did willfully and unlawfully use force or violence upon the person Ronald Ghostwolf causing great bodily harm by beating him and/or kicking him and/or hitting him in the head causing great bodily harm, to wit: severe lacerations, broken bones and/or cranial bleeding.

All of which is contrary to **Idaho Code**, Section 18-903(a), 18-907(a) and 18-204 and against the power, peace and dignity of the State of Idaho.

A TRUE BILL

FILED
A.M. P.M.

DEC 18 2014

CANYON COUNTY CLERK
D KENNEL, DEPUTY

am

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

RAUL EDGAR HERRERA,

Defendant.

CASE NO. CR2014-26736

Superseding
WARRANT OF ARREST

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR POLICEMAN
IN THE STATE OF IDAHO:

A SUPERCEDING INDICTMENT having been found on the 17 day of December, 2014, in the District Court of the Third Judicial District, in and for the County of Canyon, State of Idaho, charging RAUL EDGAR HERRERA with the crimes of MURDER IN THE FIRST DEGREE, a felony, Idaho Code Section 18-4001, 18-4002; 18-4003(a) and 18-204, or in the alternative FELONY MURDER (FIRST DEGREE), a felony, Idaho Code Section 18-4001, 18-4002, 18-4003(d); and 18-204; ROBBERY, a felony, Idaho Code Section 18-6501, 18-6502, 18-6503, and 18-204; BURGLARY, a felony, Idaho Code Section 18-1401 and 18-204; KIDNAPPING SECOND DEGREE, a felony, Idaho Code Section 18-4501, 18-4503 and 18-

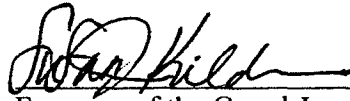
WARRANT OF ARREST

1

DOCKETED

26
75

Presented in Open Court this 17th day of December, 2014.



Foreman of the Grand Jury of
Canyon County, State of Idaho

NAMES OF WITNESSES EXAMINED BEFORE THE GRAND JURY

1. Ronald Ghostwolf
2. Dr. Joseph Kranz
3. Don Peck
4. **CI # 1413**
5. Christine Cannon
6. Cameron Cowdery
7. Angela Weeks

F I L E D
A.M. 4:32 P.M.

JUL 21 2015

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR- 2014-26736
)	
vs.	)	VERDICT
)	
RAUL EDGAR HERRERA,)	
)	
Defendant.)	

We, the Jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is Raul Edgar Herrera guilty or not guilty of Murder in the First Degree?

Not Guilty _____ Guilty X

VERDICT

1

ORIGINAL

INSTRUCTION NO. 47

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.

If your answer to Question No. 1 is "Guilty," proceed to answer Question Nos. 1(a)-1(d).
If your answer to Question No. 1 is "Not Guilty," skip Question Nos. 1(a)-1(d), and proceed to answer Question No. 2.

QUESTION NO. 1(a): Is Raul Edgar Herrera guilty or not guilty of First Degree Murder with Malice Aforethought?

Not Guilty _____ Guilty X

QUESTION NO. 1(b): Is Raul Edgar Herrera guilty or not guilty of Murder in the Perpetration of Robbery?

Not Guilty _____ Guilty X

QUESTION NO. 1(c): Is Raul Edgar Herrera guilty or not guilty of Murder in the Perpetration of Burglary?

Not Guilty _____ Guilty X

QUESTION NO. 1(d): Is Raul Edgar Herrera guilty or not guilty of Murder in the Perpetration of Kidnapping?

Not Guilty _____ Guilty X

VERDICT

2

319
79

QUESTION NO. 2: Is Raul Edgar Herrera guilty or not guilty of Robbery?

Not Guilty _____ Guilty X

QUESTION NO. 3: Is Raul Edgar Herrera guilty or not guilty of Burglary?

Not Guilty _____ Guilty X

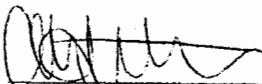
QUESTION NO. 4: Is Raul Edgar Herrera guilty or not guilty of Kidnapping?

Not Guilty _____ Guilty X

QUESTION NO. 5: Is Raul Edgar Herrera guilty or not guilty of Aggravated Battery?

Not Guilty _____ Guilty X

Dated this 21 day of July, 2015.



Presiding Juror

342

Juror No.

VERDICT

3

320
80

cb

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. ~~4:10~~ P.M.
MAR 16 2017
CANYON COUNTY CLERK
M. CERROS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

RAUL EDGAR HERRERA,

Defendant.

CASE NO. CR2014-26736

**OBJECTION TO RULE 35 MOTION
AND REQUEST FOR HEARING**

COMES NOW CHRISTOPHER BOYD, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office, on behalf of the State of Idaho, and objects in part to the Defendant's rule 35 motion. With the exception of the indeterminate portion of Herrera's sentence on the second degree kidnapping count, the state objects to the Defendant's motion as having no basis in law or fact. However, the State moves the court for a correction of the sentence on the count of second degree kidnapping to remove the indeterminate portion. As no new substantive information was provided by Defendant, there is no need for a new Sentence Hearing.

OBJECTION TO RULE 35 MOTION
AND REQUEST FOR HEARING


ORIGINAL

A trial court may correct an illegal sentence at any time. Idaho Criminal Rule 35 (a). The maximum sentence for second degree kidnapping is 25 years. Idaho Code 18-4504(2). On the count of second degree kidnapping, the sentence pronounced was 25 fixed and life indeterminate. While the court's sentence on that particular count was in error, it may be corrected on the judgement without need for a hearing by simply removing the indeterminate portion. Defendant would not be prejudiced by this correction in any way because the court already imposed an indeterminate life sentence legally on the first degree murder conviction.

A new Sentence Hearing is not required, however, as Defendant has not provided any new or additional information that the court ought to have considered in sentencing. See *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Accordingly the state respectfully requests the Court deny in part, grant in part the Defendant's motion.

DATED this 16th day of March, 2017.



CHRISTOPHER BOYD
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

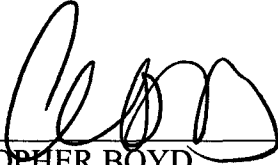
I HEREBY CERTIFY that on or about this 16th day of March, 2017, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
111 N. 11th Ave, Suite 120
Caldwell, ID 83605

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail

Raul Edgar Herrera
Inmate # 116611
IDOC
PO Box 14
Boise, ID 83707

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



CHRISTOPHER BOYD
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DAVIS F. VANDERVELDE** DATE: MARCH 20, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2014-26736-C
)	
vs.	)	TIME: 10:00 A.M.
)	
RAUL EDGAR HERRERA,	)	REPORTED BY: Christine Rhodes
)	
Defendant.	)	2C-CRT 130 (1025-1030)
_____)	

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Mr. Matthew Bever, Deputy Prosecuting Attorney for Canyon County. The defendant was not personally present in court, but was represented by counsel, Mr. Aaron Bazzoli.

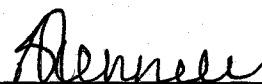
The Court noted the Motion to Reduce Sentence pursuant to I.C.R. 35, filed by the defendant, as well as the State's objection.

Mr. Bazzoli requested additional time to submit briefing.

The Court instructed Mr. Bazzoli to submit any briefing no later than the 14th day of April 2017. The State shall respond no later than the 20th day of April 2017.

The Court set this matter for oral argument the 24th day of April 2017 at 2:00 p.m.

Mr. Bazzoli stated he wished to have the defendant present for oral argument and would submit a transport order.


Deputy Clerk

FILED
10:18 A.M. P.M.

Raul Edgar Herrera, # 11661
I.S.C.I., Unit 11, Cell, 36B
Post Office Box 14
Boise, Idaho
83707

MAR 27 2017

CANYON COUNTY CLERK
A NICKEL, DEPUTY

**IN THE THIRD JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CANYON
STATE OF IDAHO**

Raul Edgar Herrera,)
Defendant,)
)
)
VS:)
)
)
)
)
)
State of Idaho,)
Plaintiff,)

NO: Cr-14-26736-C
Motion For Conflict
Free Counsel

Comes now, Raul Edgar Herrera, the Defendant herein who does now move this Court for the re-appointment of counsel due to a conflict which is herein shown to this Court. The Defendant seeks an order from this Court for the appointment of conflict free representation. For assistance in this matter, this Court should be aware of the following facts:

- 1). That during the trial in this case, the Defendant was represented by Attorney John Bujak.
- 2). That as a result of having Idaho State Bar proceedings against him Mr. Bujak subsequently moved to withdraw from the case, and this Court, (For purposes of sentencing), appointed Mr. Buzzoli.
- 3). During the sentencing hearing Mr. Buzzoli did not present to the Court the mitigating information the Court, which would have perhaps served to ameliorate the sentence imposed.
- 4). Mr Buzzoli informed the defendant that he would file a Criminal Court Rule 35 Motion, seeking to reduce the sentence imposed, and that he would at that time produce the information that would ameliorate the sentence imposed.
- 5). Mr. Buzzoli went so far as to seek permission from this Court, for an extension of time to file such information, yet never filed such information in this Court.
- 6). Mr. Buzzoli, at the time of sentencing, did not even realize that the Court had imposed an illegal sentence, (which the Court of appeals and the attorney general during the direct appeal process, all recognized as illegal), for the charge of second degree kidnapping.
- 7). Furthermore, the issues that are inherent in the present Motion to correct an illegal sentence are all issues that reelect that counsel was ineffective during sentencing, or during Trial, and therefore it is not logical or permissible for this Court to allow Mr. Buzzoli to be appointed for any further action in this case.

ORIGINAL

8). It is because of the errors of Counsel Buzzoli and counsel Bujak that the Defendant is being compelled to prepare and present, (In the near future), a petition for Post conviction Relief, which is based upon these errors.

Therefore, in keeping with the Sixth Amendment and the Fourteenth Amendment to the United States Constitution, it is mandated to this Court that the Defendant has a right to conflict free representation during the process which is Due to him.

The United States Supreme Court has clearly held that a Criminal Court Rule 35 Motion is part of the direct criminal process, and that the appointment of counsel during such a process is mandated under the constitutional guarantee of the Sixth Amendment and the Fourteenth Amendment. **Wall V. Kholi, 131 S. Ct. 1278, 179 L.Ed.2d 252, (2011).**

THEREFORE, it is respectfully requested that this Court enter an order directing that conflict counsel be appointed to represent the Defendant during the pendency of the above action.

Raul Edgar Herrera:



Dated:

3/22/17

PA ✓

BAZZOLI LAW, PLLC
Aaron Bazzoli
815 Fillmore St
Caldwell, Idaho 83605
Phone: (208) 402-5827
Fax: (208) 874-4307
Idaho State Bar No. 5512

-
Attorneys for Defendant

FILED
1780 A.M. P.M.

APR 03 2017

CANYON COUNTY CLERK
M. CERROS, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

Case No. CR-2014-26736

STATE OF IDAHO,
Plaintiff,
vs.
RAUL HERRERA
Defendant.

ORDER TO TRANSPORT
DEFENDANT TO HEARING

The above-entitled matter, having come before the Court upon motion by the Defendant, and Defendant's presence is necessary at the Rule 35 Hearing:

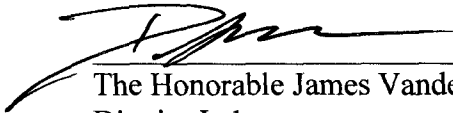
IT IS HEREBY ORDERED that the Canyon County Sheriff's Office shall transport to and from the Idaho Department of Corrections, and that the Idaho Canyon County for transport, the Defendant, Raul Hererra, inmate number 116611, currently housed at ISCI Unit 11 to appear before this Court to be held on April 24, 2017 at 2:00 p.m. in front of the Honorable Judge James Vandervelde.

**ORDER TO TRANSPORT DEFENDANT
FOR HEARING**

Page | 1

The Canyon County Sheriff is further ordered to immediately return said defendant, to the custody of the Idaho Department of Corrections upon completion of said hearing.

DATED this 3 day of April, 2017.



The Honorable James Vandervelde
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of April, 2017, I served a true and correct copy of the foregoing document upon the individual(s) named below in the manner noted:

- By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
- By depositing copies of the same in the United States Mail, postage prepaid first class.
- By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
- By faxing copies of the same to said attorney(s) at the facsimile number:

Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

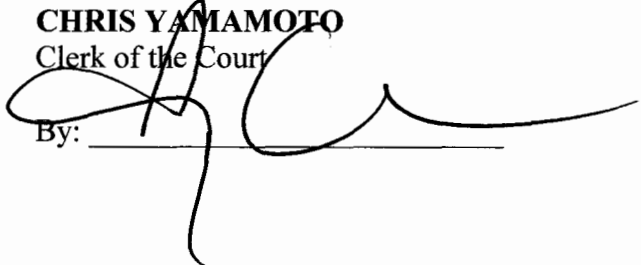
- By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
- By depositing copies of the same in the United States Mail, postage prepaid first class.
- By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
- By faxing copies of the same to said attorney(s) at the facsimile number:

Aaron Bazzoli
BAZZOLI LAW, PLLC
815 Fillmore St.
Caldwell, ID 83605

- By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
- By depositing copies of the same in the United States Mail, postage prepaid first class.
- By hand delivering copies of the same to the office(s) of the individual(s) indicated below.
- By faxing copies of the same to said individual(s) at the facsimile number:

Canyon County Sheriff's Office
1115 Albany Street
Caldwell, Idaho 83605

CHRIS YAMAMOTO
Clerk of the Court

By: 

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DAVIS F. VANDERVELDE** DATE: APRIL 24, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2014-26736-C
)	
vs.	)	TIME: 2:00 P.M.
)	
RAUL EDGAR HERRERA,	)	REPORTED BY: Christine Rhodes
)	
Defendant.	)	2C-CRT 130 (207-211)
_____)	

This having been the time heretofore set for **Defendant's Motion to Correct Sentence pursuant to I.C.R. 35** in the above entitled matter, the State was represented by Mr. Matthew Bever, Deputy Prosecuting Attorney for Canyon County. The defendant was present in court with counsel, Mr. Kenneth Stringfield.

The Court reviewed relevant procedural history and noted Mr. Stringfield was recently appointed in this case.

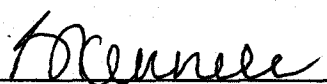
In answer to the Court's inquiry, Mr. Stringfield requested additional time to prepare for this matter.

The Court instructed Mr. Stringfield to file any additional information no later than the 31st day of May 2017.

The State shall respond no later than the 14th day of June 2017.

The Court set this matter for oral argument the 19th day of June 2017 at 10:00 a.m. (Block 45 minutes).

The defendant was remanded to the custody of the Canyon County Sheriff pending transport back to the Idaho Department of Correction.



Deputy Clerk

Kenneth F. Stringfield
PO Box 777
213 S. 10th Ave.
Caldwell, Idaho 83606
Telephone: (208) 459-6879
Facsimile: (208) 442-7915
ISB No.: 3907
kstringfieldlaw@gmail.com

Attorney for Defendant

FILED
A.M. P.M.
MAY 30 2017
CANYON COUNTY CLERK
E BULLON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff,

vs.

RAUL E. HERRERA,
Defendant.

CASE NO: CR2014-26736

**DEFENDANT'S
MEMORANDUM IN SUPPORT
OF RULE 35 MOTION TO
CORRECT SENTENCE**

COMES NOW Kenneth Stringfield, counsel for the Defendant, Raul E. Herrera, and does hereby submit this memorandum supporting Defendant's February 23, 2017 *pro se* Motion to Correct Sentence ("pro se motion"), filed pursuant to Idaho Criminal Rule 35. Mr. Herrera asks that the Court correct his sentence for second degree kidnapping, as the Court imposed an illegal sentence, one greater than the statutory limits.

BACKGROUND

Neither of the other two Rule 35 illegal sentence claims Mr. Herrera raised in his motion are argued in this memorandum. Those claims are: (1) that his sentence violated double jeopardy principles by imposing multiple punishments for the same crime; and (2) that the determinate portion of Mr. Herrera's sentence for first degree murder conviction exceeded what I.C. § 18-4004 authorized. The first claim, based on the principles of included offenses, merger and felony murder, fails because the jury found

Mr. Herrera guilty of, and the Court sentenced him for, premeditated murder, I.C. § 18-4003(a), not felony murder, I.C. § 18-4003(d). *See, Judgment and Commitment*, pp. 1-2, Jan. 13, 2016, and *State v. McKinney*, 153 Idaho 837 (2013) (No double jeopardy violation where defendant was convicted of premeditated and felony (robbery) murder in the alternative, because premeditated murder and robbery have different elements.). The second claim appears to rely upon a misreading of I.C. § 18-4004 and *Booth v. State*, 151 Idaho 612 (2011). The assertion muddies the statute's language establishing the floor, "minimum period of confinement of not less than 10 years," with a statutory instruction for a court to impose a definite sentence. In order for the assertion to succeed, the statute should read something like, "a determinate period of confinement neither more, nor less, than 10 years" or "a fixed term of confinement of 10 years."

Mr. Herrera was convicted after jury trial for the crime of second-degree kidnapping, in violation of Idaho Code §§ 18-4501, 18-4503 and 18-204. (*Judgment and Commitment*, pp. 1-2, Jan. 13, 2016). For the kidnapping, Mr. Herrera was sentenced to twenty (20) years determinate and an indeterminate period not to exceed life, for a total unified term of life. *Id.* at 2.

LAW

The court may correct a sentence that is illegal from the face of the record at any time. I.C.R. 35. An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law. *State v. Alsanea*, 138 Idaho 733, 745 (Ct. App. 2003). Kidnapping in the second degree is punishable by imprisonment in the state prison not less than one (1) nor more than twenty-five (25) years. I.C. § 18-4504(2). Idaho Code provides that: "The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court

shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law.” I.C. § 19-2513.

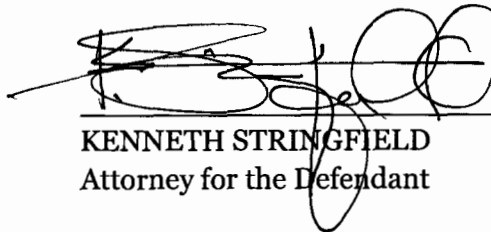
ANALYSIS

An illegal sentence is one that, from the face of the record, imposes a penalty that is simply not authorized by law. *State v. Clements*, 148 Idaho 82, 86 (2009). The law authorizes a maximum of twenty-five years incarceration for second-degree kidnapping. I.C. § 18-4504. The Court sentenced Mr. Herrera to a fixed term of twenty years; therefore, it could only impose an indeterminate term of five years or less. When the Court sentenced Mr. Herrera to indeterminate life, it exceeded its authority and the sentence in excess of authority was illegal.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Defendant’s Rule 35 motion to correct its sentence.

DATED: May ²⁹ 2017.


KENNETH STRINGFIELD
Attorney for the Defendant

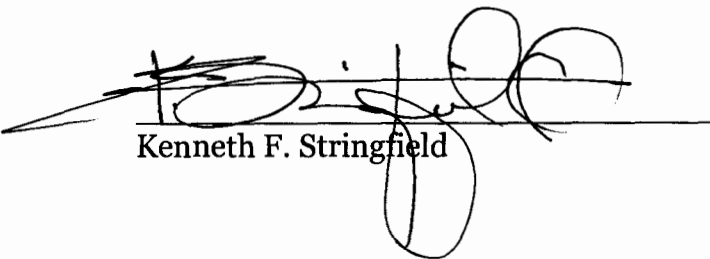
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Prosecutor

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket
in clerk's office

DATED: May ²⁰~~29~~, 2017.



Kenneth F. Stringfield

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DAVIS F. VANDERVELDE** DATE: JUNE 19, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2014-26736-C
)	
vs.	)	TIME: 9:45 A.M.
)	
RAUL HERRERA,	)	REPORTED BY: Christine Rhodes
)	
Defendant.	)	2C-CRT 130 (944-947)
)	

This having been the time heretofore set for **Defendant's Motion to Reconsider Sentence pursuant to I.C.R. 35** in the above entitled matter, the State was represented by Mr. Matthew Bever, Deputy Prosecuting Attorney for Canyon County. The defendant was not personally present in court, but was represented by counsel, Mr. Kenneth Stringfield.

Mr. Bever indicated the State had no objection to correcting the sentence on the Kidnapping charge.

The Court noted if the motion was granted, it would set the matter out for sentencing and order an updated Presentence Investigation Report.

The Court continued this matter until the 30th day of June 2017 at 11:00 a.m.

The Court instructed Mr. Stringfield to prepare the transport order.

Deputy Clerk

FILED
7:44 AM JUN 22 2017

JUN 22 2017

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF IDAHO
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
CANYON COUNTY CLERK
S. MEHIEL, DEPUTY

STATE OF IDAHO,
Plaintiff,

vs.

RAUL E. HERRERA,
Defendant.

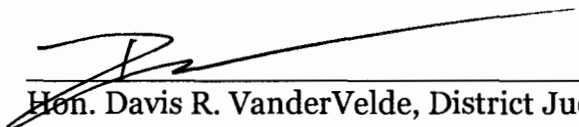
CASE NO: CR2014-26736

ORDER TO TRANSPORT

This Court having read the Defendant's Motion for Transport and good cause appearing therefore;

IT IS HEREBY ORDERED, that RAUL E. HERRERA be transported by the Canyon County Sheriff from the Idaho State Correctional Institution Unit 11, Boise, Idaho, on or before June 30, 2017 at the hour of 11:00 a.m. to appear at a hearing before the Honorable Honorable Davis R. VanderVelde at the Canyon County Courthouse in Caldwell, Idaho.

DATED this 21 day of June, 2017.



Hon. Davis R. VanderVelde, District Judge

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Sheriff

- U.S. Mail
- FAX
- Hand Delivery
- Basket in clerk's office

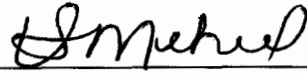
Canyon County Prosecutor

- U.S. Mail
- FAX
- Hand Delivery
- Attorney's basket in clerk's office

Kenneth F. Stringfield
PO Box 777
Caldwell, Idaho 83606

- U.S. Mail
- FAX
- Hand Delivery
- Attorney's basket in clerk's office

DATED this 22 day of June, 2017.



Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **DAVIS F. VANDERVELDE** DATE: June 30, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR2014-26736*C
)	
vs.	)	TIME: 11:00 A.M.
)	
RAUL EDGAR HERRERA,	)	REPORTED BY:
	)	Christine Rhodes
Defendant.)	
<hr/>		2CCRT130 (1147-1207)

This having been the time heretofore set for **motion Rule 35** in the above entitled matter, the State was represented by Mr. Christopher Topmiller, Deputy Prosecuting Attorney for Canyon County; and the defendant was personally present, represented by counsel, Mr. Kenneth Springfield.

The Court called the case.

Mr. Springfield advised the Court the defendant wished to address the Court.

The defendant requested the Court continue this matter and presented argument in support of the motion. Additionally, the defendant indicated he was unable to reach his attorney until yesterday at the prison.

Mr. Springfield advised the Court in his brief he noted he would not argue the language of Idaho Code 18-4004; however he did discuss with the defendant the memorandum that he would submit to the Court. Additionally, Mr. Springfield advised the Court he did not see an issue with the double jeopardy and he had a supplemental memorandum.

Mr. Topmiller inquired of the Court as if Mr. Stringfield was a conflict attorney with the Public Defender's officer or private counsel.

The Court noted Mr. Stringfield was a conflict attorney.

Mr. Topmiller advised the Court based on previous cases without a legal conflict it would be up to Ms. Howard.

In answer to the Court's inquiry, the defendant indicated he wanted to continue with Mr. Stringfield and he wanted additional time to discuss this matter with Mr. Stringfield.

The Court examined the defendant and determined he understood he had the right for the appointment of counsel; he did not have the right for someone be appointed that would agree with everything that he believed.

In answer to the Court's inquiry, Mr. Stringfield advised the Court he felt additional time would be appropriate.

The Court noted the defendant needed time to prepare with his attorney.

Mr. Stringfield advised the Court he had the supplemental memorandum; however he needed to discuss it with the defendant.

Mr. Topmiller advised the Court the State had no objection in a continuance. Additionally, Mr. Topmiller advised the Court the State would concede on the kidnapping charge.

The Court noted the only issue was if whether there should be a resentencing or if it could be amended.

In answer to the Court's inquiry, Mr. Stringfield advised the Court he would need three (3) weeks to get the briefing filed.

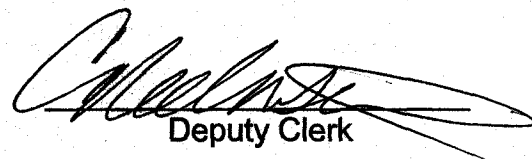
Mr. Topmiller advised the Court the State would not need much time to review the briefs.

The Court noted that Mr. Stringfield's breifs would need to be submitted by July 21, 2017 and the State would have until July 28, 2017 to respond.

The Court continued **the Rule 35 motion until August 8, 2017 at 10:00 a.m. before Judge VanderVelde.** The Court noted it would block one (1) hour for the hearing.

The Court instructed Mr. Stringfield to prepare the transport order.

The defendant was remanded into the custody of the Canyon County Sheriff pending transport to the Idaho Department of Correction.



Deputy Clerk

JUL 11 2017

CANYON COUNTY CLERK
M. NYE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff,

vs.

RAUL E. HERRERA,
Defendant.

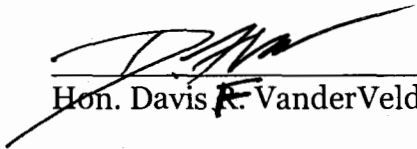
CASE NO: CR2014-26736

ORDER TO TRANSPORT

This Court having read the Defendant's Motion for Transport and good cause appearing therefore;

IT IS HEREBY ORDERED, that RAUL E. HERRERA be transported by the Canyon County Sheriff from the Idaho State Correctional Institution Unit 11, Boise, Idaho, on or before August 8, 2017 at the hour of 10:00 a.m. to appear at a hearing before the Honorable Honorable Davis R. VanderVelde at the Canyon County Courthouse in Caldwell, Idaho.

DATED this 10 day of July, 2017.



Hon. Davis R. VanderVelde, District Judge



CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Sheriff

- U.S. Mail
- FAX
- Hand Delivery
- Basket in clerk's office

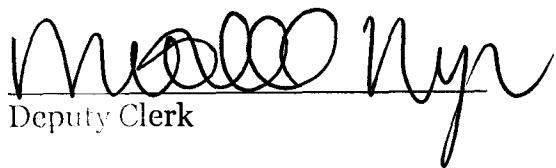
Canyon County Prosecutor

- U.S. Mail
- FAX
- Hand Delivery
- Attorney's basket in clerk's office

Kenneth F. Stringfield
PO Box 777
Caldwell, Idaho 83606

- U.S. Mail
- FAX
- Hand Delivery
- Attorney's basket in clerk's office

DATED this 11 day of July, 2017.


Deputy Clerk

~~CR~~ COURT

F I L E D
A.M. P.M.

Kenneth F. Stringfield
PO Box 777
Caldwell, Idaho 83606
Telephone: (208) 459-6879
ISB No.: 3907
kstringfieldlaw@gmail.com

JUL 21 2017

CANYON COUNTY CLERK
V CASTRO, DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff,

CASE NO: CR2014-26736

vs.

**DEFENDANT'S
SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF RULE 35 MOTION TO
CORRECT SENTENCE**

RAUL E. HERRERA,
Defendant.

RAUL E. HERRERA through his attorney, Kenneth Stringfield, submits this supplemental memorandum to address his attorney's mistake in not arguing that the 35 years fixed portion of the first degree murder sentence was illegal because it exceeded the statutory limits of Idaho Code §18-4004 (§18-4004).

INTRODUCTION

On February 23, 2017, Mr. Herrera filed a pro se Motion to Correct Sentence (Motion) and supporting Brief. He was appointed an attorney, who filed an initial Memorandum (Memo) on May 30, 2017; the state filed a notice of non-filing on June 6, 2017. The Memo briefly discussed §18-4004's statutory limits to the fixed portion of Mr. Herrera's sentence. This supplemental memorandum addresses the argument from *Booth v. State*, 151 Idaho 612 (2011)¹ and then addresses considerations of statutory construction.

¹ Attachment 1.

ISSUE

Whether Idaho Code §18-4004 required the court to impose a period of ten (10) years for the fixed portion of a unified life sentence of where Mr. Herrera was convicted of first degree murder, but not given the death penalty.

LAW

Mr. Herrera was sentenced under Idaho Code §18-4004. The relevant portion reads,

...[E]very person guilty of murder of the first degree shall be punished ... by imprisonment for life, provided that ... [I]f the death penalty is not sought, *the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years....*

Emphasis added. In other words, a defendant convicted of first-degree murder automatically receives an indeterminate life sentence with a fixed term of ten years.

Booth v. State, supra.

The statutory construction rules require courts to apply statutes rationally, based on the plain meaning of all the words of the statute –unless the words or statute as a whole are ambiguous. *State v. Willison*, 159 Idaho 215 (Ct.App.2015) (Williston asked the appellate court to review the trial court’s interpretation of §18-923, Attempted Strangulation), *citing: State v. Burnight*, 132 Idaho 654, 659 (1999); *State v. Escobar*, 134 Idaho 387, 389 (Ct.App.2000). A statute is not clear, is ambiguous, if it can have “more than one (reasonable) meaning.” *State v. Taylor*, 160 Idaho 381 (2016).² If a statute is ambiguous, a court is to examine the reasonableness of the interpretations, the statute’s words, the legislative intent –including the policy behind and history of the statute. *Id.* If possible, a court should not read a statute to render it absurd or a nullity.

² Citing *Doe v. Boy Scouts of America*, 148 Idaho 427, 430 (2009) (*quoting State v. Doe*, 147 Idaho 326, 328 (2009)).

State v. Bradshaw, 155 Idaho 437 (Ct.App.2013); and *State v. Doe*, 140 Idaho 271, 275 (2004).

Additionally, if a criminal statute is ambiguous, the rule of lenity applies and the statute must be construed in favor of the accused. *Bradshaw, Id.*; *State v. Dewey*, 131 Idaho 846, 848 (Ct.App.1998). However, where a review of the legislative history makes the meaning of the statute clear, the rule of lenity will not be applied. *Bradshaw, Id.*; *State v. Jones*, 151 Idaho 943, 947 (Ct.App.2011).

ARGUMENT

Idaho Code §18-4004 unambiguously instructs a court to impose a life sentence that includes a ten (10) year a minimum sentence. Mr. Herrera's pro se brief argued that the statute was clear and required Judge Husky to impose a fixed ten (10) years sentence for the murder conviction. The state will likely argue that §18-4004 is clear and only limits the lower end of a fixed sentence, but allows any fixed sentence up to life. Plainly § 18-4004 limits a judge's discretion regarding the fixed period of time for a first degree, non-capital, murder conviction.

1. The *Booth* Argument.

Since submitting the Memo, Mr. Herrera's attorney has re-considered his conclusion that Mr. Herrera's earlier argument was based on a misreading of *Booth v. State*, and §18-4004. *Booth* states that I.C. §18-4004 is a clear, unambiguous statute and that the penalty for first degree, non-capital murder is, "*an indeterminate life sentence with a fixed term of ten years.*" *State v. Booth, supra* (emphasis added).

Booth challenged his attorney's representation after his conviction and sentence for first degree murder; the exact issue involved *Booth's* lawyer's understanding of the application of statutory aggravating circumstances; however, the Court also addressed a

State's argument that compared the penalties for non-capital first and second degree murder. Justice Jim Jones wrote the *Booth* decision for an unanimous Supreme Court.³ Booth argued that his attorney was ineffective because his attorney's advice was based on a misunderstanding of the potential penalties established by §18-4004. Booth's argument was a matter of first impression in Idaho; but, it had been considered by the United States Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356 (2010) ("when a statute unambiguously sets forth a particular penalty, an attorney has a duty to provide correct advice regarding such penalty"). The Idaho Supreme Court stated that §18-4004, like the statute at issue in *Padilla*, was unambiguous and "the potential penalties in Idaho for first-degree murder in a non-capital case are clear from the statute." *State v. Booth, supra*. The Court analyzed the State's argument that Booth faced the same penalty for first or second degree murder under §18-4004. The Court noted the difference in the potential sentences,

Under I.C. § 18-4004, second-degree murder is "punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life." I.C. § 18-4004. In contrast, following a conviction for first-degree murder, in cases where the death penalty is not sought, the court is required to impose an indeterminate life sentence with a minimum period of confinement of not less than ten years. I.C. § 18-4004.

Justice Jones then restates the point,

³ Justice Jim Jones authored the *Booth* decision and was the Idaho Attorney General from 1983 to 1991. See http://www.naag.org/naag/about_naag/naag-history/past-state-attorneys-general-by-state/idaho-former-attorneys-general.php (opened July 18, 2017). See Attachment 2. Jim Jones and his deputies took part in the 1985-1986 legislative process discussed below responsible for Idaho's unified sentencing scheme and the statutory language at issue in this case.

In other words, a defendant convicted of first-degree murder automatically receives an indeterminate life sentence with a fixed term of ten years, while a defendant convicted of second-degree murder only faces a unified term of not less than ten years.

Emphasis added. The Court's restatement is consistent with the construction that §18-4004 imposes both a floor and ceiling for the fixed time and that the language "not less than ten (10) years" simply amplifies that the time is a "minimum" fixed period.

For the reason that §18-4004 is clear, and establishes a fixed period of ten (10) years for first degree murder, and because Mr. Herrera was sentenced to a fixed term of 35 years, the court should grant his request to be resentenced.

2. The Statutory Construction Argument.

Although Mr. Herrera believes that §18-4004 clearly sets the fixed sentence at ten (10) years, he understands the argument that the statute is unclear whether it simply limits the minimum fixed time or establishes the determinate time that a sentencing court must impose. The state will likely argue that §18-4004 is clear and only limits the lower end of a fixed sentence, but allows any fixed sentence up to life. If the State's position is reasonable (ignoring *Booth*), then §18-4004 has at least two reasonable meanings and therefore is ambiguous. *State v. Taylor, supra*. But even if the statute is ambiguous, the analysis resolves in Mr. Herrera's favor.

First, Mr. Herrera has not asked the court to read the statute in an unreasonable manner. Sentencing courts sometimes use the phrase, "a minimum period of confinement of not less than ten (10) years..." to refer to the determinate portion of a defendant's sentence. Likely, the judges who use the phrase this way are reasonable and are using the phrase in a reasonable manner. Just because there are other ways to say the same thing, as pointed out on page 2 of the Memo (Background paragraph), does

DEFENDANT'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF RULE 35 MOTION TO CORRECT SENTENCE - 5

not mean that it Mr. Herrera's reading of the statute is unreasonable. Further, and simply in respect to reasonableness, Mr. Herrera and Justice Jones' interpretation of §18-4004 are consistent. Assuming for this argument that the State's position is also reasonable, then there is an ambiguity in the statute and it is necessary to look to legislative intent.

Second, the legislative intent should be determined if possible by examining the public policy for the statute and its legislative history. *State v. Taylor, supra*.⁴ In 1972, the legislature set the penalty for first degree murder at death or life in prison. The next year, it removed the life in prison and left the death penalty. In 1986, the legislature changed the penalty back to include life with this language, "...whenever the court shall impose a sentence of life imprisonment the court shall set forth in its judgment and sentence a minimum period of confinement of not less than ten (10) years during which period ... the offender shall not be eligible for parole..." 1986 Session Laws, ch. 232, sec. 2, p.639; HB 524.⁵ The 1986 change was the result of the legislature's response to the disparity of sentences between Idaho's judicial districts and judges. The legislature acknowledged that both judges and the public knew of the disparity and the result was a loss of respect and confidence in the criminal system and unfair treatment to

⁴ There is an argument based on case law that if a criminal statute is ambiguous the rule of lenity applies and requires the court to find in favor of the defendant's interpretation. When it is a criminal statute that is at issue, the court must construe the statute strictly and in favor of the defendant. *State v. Culbreth*, 146 Idaho 322 (Ct.App.2008); *State v. McCoy*, 128 Idaho 362, 365 (1996); *State v. Martinez*, 126 Idaho 801, 803 (Ct.App.1995). *State v. Bradshaw*, 155 Idaho 437 (App. 2013).

⁵ Searching the Idaho Legislature Research and Legislation Division website did not turn up a statement of policy as its searchable session laws and committee reports only goes back to 1994. The legislative sessions that have searchable committee minutes only goes back to 1998.

defendants. In order to solve the problem a Criminal Sentencing Committee was formed. See House Concurrent Resolution No. 20.⁶ Eventually, because of the committee's work, the legislature passed the Unified Sentencing Act (Act)⁷ and the language of §18-4004 that is at issue here.

Portions of the legislative history show the legislative intent behind the Act's change to §18-4004. In July 1985, as Attorney General, Jim Jones addressed the Committee, "Clarification of sentencing statues to make more definite the amount of time that a convicted person must serve." Idaho Legislative Council Committee Minutes, July 25, 1985. This is consistent with the statute setting a determinate ten (10) year sentence. Also consistent is the Legislative Council Staff Memo indicating that RS12057, which did not make it out of committee, created a "new fixed term for murder."⁸ However, the intent to simply establish a sentencing floor but not a ceiling for the determinate portion of is not perfectly clear. The Statement of Purpose for the Act contains the following language,

The change to Section 20-223 requires new language in Section 18-4004 to require persons serving a sentence for first degree murder serve a minimum of 10 years.

Statement of Purpose, RS 12299 C3.⁹ The Statement then addresses the policy,

There are two major policy justifications for this proposal. First, by making the minimum period fixed and not subject to reduction, greater truth in sentencing is achieved. At the time of sentencing everyone knows the minimum period which must be served. Second, greater sentencing flexibility

⁶ Attachment 3.

⁷ HB 524 and Minutes. Attachment 4.

⁸ See Attachment 5

⁹ Attachment 6. RS12299 made it out of committee and eventually became law.

is achieved. The court can tailor the sentence to fit the person convicted by combining minimum and indeterminate periods. The court can impart the specific amount of punishment it feels to be just and till impose an indeterminate period to be used by the commission of Pardons and Parole for rehabilitation and parole purposes.

The broadest reading of this policy is that judges will have unlimited discretion to impose a fixed and indeterminate sentence. But that is not the case. Judges are limited by the penalty the statute provides. The title to the Act regarding §18-4004, states,

Relating to criminal sentencing; providing a short title; amending section 18-40004, Idaho Code, to require a mandatory minimum sentence of ten years be served if a sentence for life imprisonment is imposed...


This title reflects the intent to fix the mandatory minimum sentence at ten (10) years. Had the either the title or the statute said something along the lines of "with a mandatory minimum sentence of *at least* ten years," then it would be clear that the legislature intended the determinate period of the sentence to be ten years or greater. It appears that the policy and history behind HB 524 regarding the language at issue before the court are not perfectly clear policy.

Third, because the legislative intent is not clear or does not help determine the meaning of the statute, the court must apply the rule of lenity in favor of the defendant. *Bradshaw, supra.*; *State v. Dewey*, 131 Idaho 846, 848 (Ct.App.1998). Because (1) there is an ambiguity and (2) the policy language does not clarify the language at issue, the lenity rule of statutory construction requires that the court favor Mr. Herrera's interpretation of §18-4004.

CONCLUSION

Although the state's construction of the statute appears reasonable, when either *Booth*, or the rules of statutory construction are considered, Mr. Herrera's construction that the statute sets the fixed portion of a sentence at ten years is more reasonable. For these reasons, the Court should grant Defendant's Rule 35 motion to correct Mr. Herrera's sentence. Mr. Herrera should be resentenced for first degree murder to a fixed ten (10) years followed by indeterminate life.

DATED: July 21, 2017.


KENNETH STRINGFIELD
Attorney for the Defendant

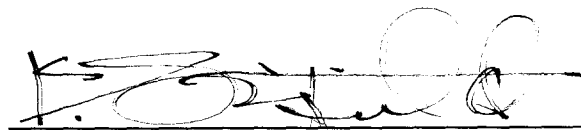
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Prosecutor

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket
in clerk's office

DATED: July 21, 2017.


Kenneth F. Stringfield

Trevor James BOOTH, Petitioner-Respondent,
v.
STATE of Idaho, Respondent-Appellant.

No. 37296.

Supreme Court of Idaho, Boise, June 2011 Term.

July 28, 2011.

257*257 Honorable Lawrence G. Wasden,
Attorney General, Boise, for appellant. Kenneth K.
Jorgensen argued.

Law Offices of Van G. Bishop, Nampa, for
respondent. Van G. Bishop argued.

SUBSTITUTE OPINION

THE COURT'S PRIOR OPINION DATED JUNE 29, 2011 IS HEREBY WITHDRAWN

J. JONES, Justice.

The State of Idaho appeals the district court's order granting Trevor Booth's petition for post-conviction relief on the ground that Booth received ineffective assistance of counsel. We affirm.

I. Factual and Procedural Background

On January 16, 2005, Leonard Kellum died as a result of multiple gunshot wounds that he sustained at his residence. After an investigation, law enforcement suspected that Trevor Booth was responsible for the shooting. Law enforcement based this conclusion on several pieces of evidence obtained during the investigation. First, law enforcement determined that the perpetrator had entered Kellum's residence through the back door and shot him five times using an improvised

silencer made out of a plastic soda bottle. Law enforcement found a single set of footprints leading from the back door of Kellum's residence to the street, where neighbors said a black pickup truck was parked at the time of the shooting. Booth, who owned a black pickup truck, told law enforcement that he had driven to Kellum's residence on the morning Kellum was shot to pick up marijuana that he planned to sell. Booth claimed he parked his pickup truck on the street and approached the front door of the residence where he heard screaming and gunshots. Booth told law enforcement that he left the residence after hearing the shots. However, before Kellum passed away, he was transported to the hospital where he identified Booth as the person who had shot him.

Booth was subsequently charged with first-degree murder, and was represented by Richard Harris. Although the crime of first-degree murder carries a potential penalty of death,^[1] the State declined to file a notice of intent to seek the death penalty, thereby establishing that Booth's case was a non-capital case.^[2] During the time the case was pending, Harris met with Booth periodically to discuss Booth's version of the events leading up to Kellum's death. Although Booth initially maintained that he did not commit the offense, he eventually acknowledged that he killed Kellum, but asserted he did so in order to defend himself and his family. Booth told Harris that he was actively involved in selling controlled substances and Kellum was his supplier. Booth explained that he eventually fell behind in paying Kellum for the drugs he had supplied, and Kellum began making threats of physical violence towards Booth, his

ATTACHMENT 1

1

family, 258*258 and his girlfriend if he did not pay the money owed.

Prior to trial, Gearld Wolff, the prosecutor handling Booth's case, informed Harris that he intended to file a motion requesting that the Court provide a special verdict form to be used by the jury if Booth was convicted of first-degree murder. Specifically, the proposed verdict form would instruct the jury to determine whether certain statutory aggravating circumstances delineated in I.C. § 19-2515(9)^[3] existed, including whether (1) the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity; (2) by the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life; or (3) the defendant, by prior conduct or conduct in the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society. Wolff communicated to Harris his understanding that pursuant to I.C. § 18-4004, the statute dealing with the penalties for first-degree murder, the State could seek an instruction regarding statutory aggravating circumstances even in a non-capital case. I.C. § 18-4004^[4] provides,

Subject to the provisions of sections 19-2515 and 19-2515A, Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. If a jury, or the

court if a jury is waived, finds a statutory aggravating circumstance beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence. If a jury, or the court if a jury is waived, does not find a statutory aggravating circumstance beyond a reasonable doubt or if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.

Wolff interpreted this statute to mean that if the jury were to find any statutory aggravating circumstances in a non-capital case, the court would then be required to impose a fixed life sentence.

After examining the statute, Harris agreed with Wolff's interpretation and believed Booth would be subject to a fixed life sentence if the jury were to find, beyond a reasonable doubt, that a statutory aggravating circumstance existed. Harris and Wolff subsequently met with the district court judge prior to the scheduled pretrial conference to discuss the State's intent to request the special verdict form. During this meeting, the parties discussed Wolff and Harris's mutual understanding of I.C. § 18-4004. The judge informed Wolff and Harris that the court would likely use the special verdict form if it was

ATTACHMENT 1

requested by the State and supported by the evidence.

Thereafter, Harris prepared a memorandum to Booth outlining his understanding of the potential penalties if Booth were to be convicted by a jury of first-degree murder. In the memorandum, Harris set forth the text of I.C. § 18-4004 and explained that,

What this statute means is that upon a conviction for first degree murder, if the jury or judge if [a] jury is waived, finds a statutory aggravating circumstance beyond 259*259 a reasonable doubt[,] the sentence is death. However, if the prosecutor does not seek death, as is the case here, and if a statutory aggravating circumstance is found, then the sentence is a fixed life sentence. That means the person sentenced will spend his life in prison and will die there. At the pre-trial conference on Friday the Judge indicated to the prosecutor and myself that he will submit a verdict form to the jury that will ask the question of the jury: "Did Trevor Booth commit the crime of first degree murder? Yes or No." The verdict form will also contain the same question for second degree murder and for manslaughter. If the jury finds you guilty of first degree murder, the verdict form will contain the further question for the jury: "do you find beyond a reasonable doubt a statutory aggravating circumstance? Yes or No." Since the trial judge intends to submit the question to the jury as part of the verdict form and if the jury finds a statutory aggravating circumstance as part of the verdict, then the sentence to be imposed by the judge, notwithstanding all the evidence there is in

mitigation, [is] a fixed life sentence which means you will spend the rest of your life in prison.

The memorandum goes on to explain what statutory aggravating circumstances the State intended to prove. Harris mentioned that in his experience, "it is not too difficult for a finding to be made that a murder is heinous (a murder by definition is considered heinous) atrocious or cruel or alternatively that by committing the murder, the defendant showed utter disregard for life." Harris also described, in detail, all of the State's evidence against Booth, and explained "based upon the evidence as currently presented, I believe the high probability is that the jury is going to return a verdict of guilty." Finally, Harris advised Booth that his best option was to consider entering into a plea agreement with the State.

The bottom line is this. If you go to jury trial, there is the very strong probability of facing a fixed life sentence. That means spending the rest of your life in prison. If you enter a plea to murder with the prosecutor waiving aggravated circumstances, or not requesting the court consider aggravated circumstances, then you would face a minimum period of incarceration of ten years or whatever greater period the judge[] might impose. I have indicated above I do not think the Judge would impose a term greater tha[n] fifteen years followed by an indeterminate life. Life in that context means thirty years. My recommendation is because of the strong risk of spending the rest of your life in prison, a plea agreement may be your best option.

After giving the memorandum to Booth, Harris met with Booth's family members to explain and discuss the memorandum. Harris discussed with

ATTACHMENT 1

Booth's family the nuances of the statutory aggravating circumstances and the risks associated with taking the case to trial. During this time, Harris continued to negotiate with Wolff regarding a potential plea agreement.

Booth subsequently entered into a Rule 11 plea agreement with the State. Pursuant to the plea agreement, Booth agreed to plead guilty to first-degree murder in exchange for the State's agreement not to pursue statutory aggravating circumstances as part of sentencing. The Rule 11 agreement was filed with the court on June 9, 2005, and Booth entered a plea of guilty on the same day. After holding a sentencing hearing, the district court sentenced Booth to an indeterminate life sentence with thirty years fixed.

After a failed appeal challenging his sentence,^[5] Booth timely filed a petition for post-conviction relief. The court dismissed all of Booth's allegations in support of his petition upon the State's motion for summary dismissal, except for his allegations that (1) Harris used coercive and threatening tactics to get him to plead guilty by assuring him and his family that he would receive a ten year fixed sentence if he pleaded guilty and a fixed life sentence if he took the case to trial; and (2) Harris used the sentencing memorandum to coerce him into pleading guilty and was not adequately prepared to go to trial even though Booth felt he "had nothing to loose [sic] by going to trial."

260*260 After an evidentiary hearing on the matter, the district court concluded that Harris' representation of Booth fell below an objective standard of reasonableness because Harris erroneously advised Booth that he would be subject to a mandatory fixed life sentence if he

went to trial and the State's special verdict form was presented to the jury. According to the district court, I.C. § 18-4004 clearly indicates that if Booth's case had gone to trial, and the jury had found an aggravating circumstance, such a finding would "merely have been advisory in nature and the court would not have been mandated to sentence Booth to a fixed life term, but would actually have been bound only to sentence within the parameters of a life sentence, with any fixed portion above ten years...." The court also determined that there was a reasonable probability that but for Harris' erroneous interpretation of the statute, Booth would not have pleaded guilty and would have proceeded to trial. Therefore, the district court granted Booth's petition for post-conviction relief and ordered his guilty plea to be withdrawn and the case set for jury trial. The State timely appealed to this Court.

II. Issue on Appeal

- I. Whether the district court erred in granting Booth's petition for post-conviction relief on the ground that he received ineffective assistance of counsel.

III. Discussion

A. Standard of Review

When reviewing a district court's decision to grant or deny a petition for post-conviction relief following an evidentiary hearing, this Court will not disturb the district court's factual findings unless they are clearly erroneous. I.R.C.P. 52(a); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct.App.1992). A claim of ineffective assistance of counsel presents a mixed question of law and fact. *Murray*, 121 Idaho at 921, 828 P.2d at 1326; *Strickland v.*

ATTACHMENT 1

Washington, 466 U.S. 668, 698, 104 S.Ct. 2052, 2070, 80 L.Ed.2d 674, 700 (1984). When faced with a mixed question of fact and law, the Court will defer to the district court's factual findings if supported by substantial evidence, but will exercise free review over the application of the relevant law to those facts. *Murray*, 121 Idaho at 921-22, 828 P.2d at 1326-27.

B. Ineffective Assistance of Counsel

"The right to counsel in criminal actions brought by the state of Idaho is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho State Constitution." *McKay v. State*, 148 Idaho 567, 570, 225 P.3d 700, 703 (2010). A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Baxter v. State*, 149 Idaho 859, 862, 243 P.3d 675, 678 (Ct.App.2010). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *McKeeth v. State*, 140 Idaho 847, 850, 103 P.3d 460, 463 (2004); *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693. This Court applies the *Strickland* test when determining whether a defendant has received ineffective assistance of counsel during the plea process. *McKeeth*, 140 Idaho at 850, 103 P.3d at 463. Before deciding whether to plead guilty, a defendant is entitled to "the effective assistance of competent counsel." *Padilla v. Kentucky*, ___ U.S. ___, ___-___, 130 S.Ct. 1473, 1480-81, 176 L.Ed.2d 284, 293 (2010). In this case, we conclude that the district court did not err in determining that Harris' representation of Booth during the plea process

was deficient and that Booth was prejudiced as a result of such deficiency.

1. Deficient Performance

On appeal, the State argues that Booth has not met his burden of demonstrating Harris' performance was deficient because, even though the court ultimately concluded that Harris' interpretation of I.C. § 18-4004 was incorrect, his interpretation was nevertheless objectively reasonable under 261*261 the circumstances. According to the State, the reasonableness of Harris' interpretation is supported by the fact that the prosecutor also believed that the statute would require the court to impose a fixed life sentence in the event that the jury found a statutory aggravating circumstance. The State further argues that the district court also appeared to agree with Harris' interpretation, given that it intended to provide the jury with a special verdict form instructing them to consider whether a statutory aggravating circumstance had been proven. Lastly, the State contends that Harris' memorandum demonstrates that Harris had carefully reviewed the facts of the case, the evidence that would likely be admitted at trial, and the applicable law, before advising Booth that his best option was to enter a plea of guilty and, therefore, Harris' representation of Booth was not deficient.

In order to demonstrate the attorney's performance was deficient, the defendant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Strickland*, 466 U.S. at 688, 104 S.Ct. at 2064-65, 80 L.Ed.2d at 693. In doing so, the defendant must overcome a

ATTACHMENT 1

strong presumption that counsel was competent and diligent in his or her representation of the defendant. *Schoger v. State*, 148 Idaho 622, 624, 226 P.3d 1269, 1271 (2010). Furthermore, "tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law or other shortcomings capable of objective evaluation." *Howard v. State*, 126 Idaho 231, 234, 880 P.2d 261, 264 (Ct.App.1994). "Where a defendant is represented by counsel during the plea process and enters a plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Dunlap v. State*, 141 Idaho 50, 60, 106 P.3d 376, 386 (2004). Specifically a guilty plea is only valid where the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Id.*

Although it appears that this Court has never dealt with the precise issue of whether a defense attorney's erroneous interpretation of a sentencing statute constitutes deficient performance, the United States Supreme Court has recognized that when a statute unambiguously sets forth a particular penalty, an attorney has a duty to provide correct advice regarding such penalty. For example, in *Padilla v. Kentucky*, the Court held that an attorney engaged in deficient performance by failing to advise the defendant that his plea of guilty to drug distribution made him subject to automatic deportation because the consequences of the defendant's guilty plea could easily be determined from reading the removal statute. ___ U.S. at ___

130 S.Ct. at 1483, 176 L.Ed.2d at 295. The Court reasoned that,

In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction.... Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, which addresses not some broad classification of crimes but specifically commands removal for all controlled substances convictions except for the most trivial of marijuana possession offenses. Instead, Padilla's counsel provided him false assurance that his conviction would not result in his removal from this country. This is not a hard case in which to find deficiency: The consequences of Padilla's plea could easily be determined from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect.

Id. (internal citations omitted). Although the Court recognized that an attorney engages in deficient performance by rendering advice that is inconsistent with the clear provisions of a statute, the Court was careful to recognize that the result would not be the same where the law is not as clear.

There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear 262*262 or uncertain. The duty of the private practitioner in such cases is more limited. When the law is not succinct and straightforward..., a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of

ATTACHMENT 1

adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.

Id. Therefore, an attorney engages in deficient performance by rendering advice regarding potential penalties during the plea process that is inconsistent with the plain and unambiguous provisions of a sentencing statute. *See also* 22 C.J.S. Criminal Law § 422 ("The mere inaccuracy of a prediction regarding sentence will not give rise to a claim for ineffective assistance, but a gross mischaracterization of the likely outcome, combined with erroneous advice on the possible effects of going to trial, falls below the required level of competence.")

In this case, the district court did not err in finding that Harris' performance fell below an objective standard of reasonableness due to his erroneous advice regarding the potential penalty Booth would face if convicted at trial. Harris' interpretation of I.C. § 18-4004 is contrary to the plain and unambiguous language of the statute. I.C. § 18-4004 specifically provides that in first-degree murder cases, "if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years." The language of the statute makes it clear that in cases where the State chooses not to seek the death penalty, the court is required to impose an indeterminate life sentence with at least ten years fixed.

It appears that Harris based his interpretation on the first part of I.C. § 18-4004, which provides,

Subject to the provisions of sections 19-2515 and 19-2515A, Idaho Code, every person guilty

of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. If a jury, or the court if a jury is waived, finds a statutory aggravating circumstance beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence.

I.C. § 18-4004. However, Harris' interpretation is contrary to the plain language of this portion of the statute as well. First and foremost, I.C. § 18-4004 specifically references I.C. §§ 19-2515 and 19-2515A, which are both statutes that are only applicable in capital cases. I.C. § 19-2515A prohibits the court from imposing the death penalty against a "mentally retarded person." I.C. § 19-2515A. Furthermore, I.C. § 19-2515 sets forth the procedures for holding a special sentencing proceeding in capital cases^[6] and articulates the instructions to be given to the jury during these proceedings.^[7] Finally, 263*263 I.C. § 19-2515(9) goes on to lay out the various statutory aggravating circumstances that must be proven beyond a reasonable doubt in order to justify the imposition of the death penalty. I.C. § 19-2515(9). The lead-in to subsection 9 states, "[t]he following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt *before a sentence of death can be imposed.*" I.C. § 19-2515(9) (emphasis added).

ATTACHMENT 1

These statutory sections make clear that the provision in I.C. § 18-4004 requiring the jury, or the court if a jury is waived, to impose a fixed life sentence for a first-degree murder conviction in the event that a statutory aggravating circumstance has been proven beyond a reasonable doubt applies only to those cases where the death penalty is sought. Under the statutory scheme, the court is only required to impose a fixed life sentence when (1) the State has filed a notice of intent to seek the death penalty; (2) the State seeks the death penalty; (3) the defendant is convicted of, or pleads guilty to, first-degree murder; (4) a special sentencing proceeding is held during which the jury, or the court if a jury is waived, determines that at least one statutory aggravating circumstance has been proven beyond a reasonable doubt; and (5) after weighing any mitigating evidence against the statutory aggravating circumstances, the jury, or the court if a jury is waived, finds that imposition of the death penalty is unjust. It is clear from the relevant statutes that statutory aggravating circumstances can only be sought in a death penalty case. Because the State did not seek the death penalty in Booth's case, if Booth went to trial and was convicted of first-degree murder, he would have been subject to an indeterminate life sentence with at least ten years fixed, but not a mandatory fixed life sentence, as Harris asserted.^[8]

Given that the information Harris provided when advising Booth to plead guilty to first-degree murder was based on a blatantly erroneous reading of the sentencing statutes, the district court did not err in determining that Harris' performance fell below an objective standard of

reasonableness. Just as in *Padilla*, the potential penalties in Idaho for first-degree murder in a non-capital case are clear from the statute and, therefore, Harris' duty to give correct advice in that regard is equally clear. It cannot be said that Booth's plea was entered voluntarily when Harris' advice was not within the range of competence demanded of attorneys in criminal cases.

Dunlap, 141 Idaho at 60, 106 P.3d at 386.

Moreover, the State's argument that Harris' interpretation of I.C. § 18-4004 was reasonable because the district judge and the prosecutor appeared to share the same interpretation is without merit. Just because other parties shared Harris' erroneous interpretation of the statute does not mean Harris' interpretation was reasonable, given that such an interpretation is contrary to the plain and unambiguous language of the statute. Therefore, we find that Booth met his burden of demonstrating that Harris' performance was deficient.

2. Prejudice

The State argues that Booth has not met his burden of demonstrating he was prejudiced by Harris' allegedly deficient performance because, even if Booth had insisted on going to trial, he would have still been subject to the same penalty as when he pleaded guilty. The State contends that even if Booth went to trial in hopes of obtaining a conviction for second-degree murder rather than first-degree murder, there no is reason to conclude that his sentence would have been any different and, therefore, rejecting the plea agreement and proceeding to trial would not have been rational under the circumstances. Rather, the State asserts 264*264 that Booth's

best option was to plead guilty and request leniency from the court regarding the sentence.

In order to demonstrate prejudice, the defendant must show "a reasonable probability that the outcome of trial would be different but for counsel's deficient performance." *McKay*, 148 Idaho at 570, 225 P.3d at 703. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698). When a defendant alleges some deficiency in counsel's advice regarding a guilty plea, the defendant must demonstrate that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Ridgley v. State*, 148 Idaho 671, 676, 227 P.3d 925, 930 (2010) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985)).

In this case, the district court did not err in determining that, but for Harris' erroneous advice regarding the possibility of a fixed life sentence, Booth would have elected to proceed to trial. It is clear from Harris' memorandum that he advised Booth to plead guilty because he believed that there was a strong likelihood Booth would be convicted of first-degree murder and would be subject to a fixed life sentence in the event that the jury also found a statutory aggravating circumstance.

The bottom line is this. If you go to jury trial, there is the very strong probability of facing a fixed life sentence. That means spending the rest of your life in prison. If you enter a plea to murder with the prosecutor waiving aggravated circumstances, or not requesting the court consider aggravated circumstances, then you

would face a minimum period of incarceration of ten years or whatever greater period the judge[] might impose.... My recommendation is *because of the strong risk of spending the rest of your life in prison, a plea agreement may be your best option.*

Moreover, the Rule 11 plea agreement was based entirely on Harris and Wolff's erroneous interpretation of the statute. Booth pleaded guilty to first-degree murder in exchange for the State's agreement not to seek "an aggravated circumstance as that term is referenced in Idaho Code 18-4004." The Rule 11 agreement also required the court to refrain from making a "finding of an aggravated circumstance as that term is used in Idaho Code 18-4004 for the purposes of sentencing." Harris was unable to reach an agreement with the State on what the recommended sentence would be at sentencing and, therefore, the plea agreement provided that "the sentence to be imposed is reserved to the sound discretion of the Court." Thus, the sole benefit that Booth received under the plea agreement was the State's agreement not to seek aggravating circumstances — something Booth was never subject to in the first place.

Lastly, Booth filed an affidavit in support of his petition for post-conviction relief, wherein he stated that,

I pled guilty to First Degree Murder only after my attorney Richard Harris threatened me with a Fixed Life Sentence if I insisted on going to trial. Mr. Harris told me that the judge had told him that he would give the jury a special verdict form asking for an aggravating fact and Mr. Harris told me as well as my family that the jury would find an aggravating factor and that the

ATTACHMENT 1

Court would then be bound to sentence me to a fixed life sentence.

...

I wanted to go to trial and to prove that I did not intentionally shoot the victim. I never wanted to plead guilty to the charge. I only plead [sic] guilty because Mr. Harris told me I would get a Fixed Life Sentence and that the Judge would be bound to give it to me and if I plead [sic] guilty I would only get 10 years.

When asked at the evidentiary hearing what had convinced him to plead guilty, Booth responded, "[t]he fact that my attorney, the person who represented me, Richard Harris, repeatedly told me that if I did take this to trial, there is a huge chance that I would do life in prison.... I would die in prison." Based on this evidence, the district court did not err in determining that but for Harris' 265*265 error, Booth would not have pleaded guilty and would have insisted on going to trial.

The State's arguments on appeal fail for several reasons. First, the State misstates the law when arguing that "even if Booth would have insisted on going to trial in the hopes of obtaining a conviction on second-degree murder rather than first-degree murder, Booth would have faced the same potential penalty he believed he was subject to when he pled guilty to first-degree murder, *i.e.*, up to life with a minimum of ten years fixed." Contrary to the State's assertion, the potential penalty for first-degree murder differs significantly from the potential penalty for second-degree murder. Under I.C. § 18-4004, second-degree murder is "punishable by imprisonment not less than ten (10) years and the imprisonment may

extend to life." I.C. § 18-4004. In contrast, following a conviction for first-degree murder, in cases where the death penalty is not sought, the court is required to impose an indeterminate life sentence with a minimum period of confinement of not less than ten years. I.C. § 18-4004. **In other words, a defendant convicted of first-degree murder automatically receives an indeterminate life sentence with a fixed term of ten years**, while a defendant convicted of second-degree murder only faces a unified term of not less than ten years. Therefore, the State erroneously argues that Booth would have faced the same potential penalty if he were convicted of second-degree murder after trial.

More importantly, the State's arguments demonstrate a fundamental misunderstanding of the law as it relates to the prejudice prong of the *Strickland* test. The State's arguments focus on the fact that Booth has not demonstrated that the outcome of his case, specifically, his sentence, would have been any different if he went to trial. However, in this context, the relevant inquiry is whether, but for Harris' errors, Booth would not have pleaded guilty and would have insisted on going to trial. *Ridgley*, 148 Idaho at 676, 227 P.3d at 930. As this Court has previously noted, the focus is "on the defendant's state of mind when choosing to plead guilty," and there is no requirement that the Court speculate as to the potential sentence for a lesser charged offense should the jury convict on that basis at retrial. *McKeeth*, 140 Idaho at 853, 103 P.3d at 466. Thus, the State's arguments fail because they do not address Booth's state of mind when pleading guilty or how his state of mind was affected by Harris' erroneous advice.^[9] As

ATTACHMENT 1

mentioned above, the evidence demonstrates that Booth would not have pleaded guilty and would have insisted on going to trial if were not for Harris' advice regarding the potential of a fixed life sentence.

IV. Conclusion

The district court did not err in concluding that Booth met his burden of demonstrating Harris' performance was deficient and that he was prejudiced as a result. Therefore, we affirm the district court's decision to grant Booth's petition for post-conviction relief.

266*266 Chief Justice EISMANN, and Justices BURDICK, W. JONES and HORTON concur.

[1] According to I.C. § 19-2515(1),

Except as provided in section 19-2515A, Idaho Code, a person convicted of murder in the first degree shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

All statutory citations in this opinion will refer to those in effect at the time that Booth's criminal case was pending.

[2] Pursuant to I.C. § 19-2515(3)(a), a defendant convicted of a crime that is punishable by death cannot be sentenced to death unless the State files a notice of intent to seek the death penalty.

[3] I.C. § 19-2515(9) sets forth the list of statutory aggravating circumstances, one of which must be found to exist beyond a reasonable doubt, before a sentence of death can be imposed.

[4] I.C. §§ 18-4004 and 19-2515 were amended in 2003 to reflect the requirement established by the

United States Supreme Court in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), that a jury, rather than a judge, find the necessary statutory aggravating circumstances in a death penalty case. See 2003 Idaho Sess. Laws ch. 19, Res. 12510 Statement of Purpose.

[5] Booth appealed his sentence to the Court of Appeals, where his sentence was affirmed.

[6] I.C. § 19-2515(5) provides,

If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense.... The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

[7] According to I.C. § 19-2515(7),

The jury shall be informed as follows:

- (a) If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.
- (b) If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the imposition of the death penalty unjust or the

ATTACHMENT 1

11

jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without the possibility of parole; and

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.

[8] On appeal, the State does not argue that Harris' interpretation of the statutes was correct. The State offered such an argument before the district court in support of its Motion to Reconsider. However, the same argument has not been advanced on appeal.

[9] The State also appears to argue that Booth was not prejudiced because his best option was to plead guilty and request leniency from the court based on the victim's mutual involvement in the drug community, his own drug addiction at the time of the murder, and his assertion that he acted out of fear for the safety of himself and his family. Although the State may be correct that Booth likely benefited by taking responsibility and pleading guilty to the crime, such a factor is not relevant in determining whether Booth has met his burden of demonstrating prejudice. As the United States Supreme Court has noted,

The nature of relief secured by a successful collateral challenge to a guilty plea — an opportunity to withdraw the plea and proceed to trial — imposes its own significant limiting

principle. Those who collaterally attack their guilty pleas lose the benefit of the bargain obtained as a result of the plea. Thus, a different calculus informs whether it is wise to challenge a guilty plea in a habeas proceeding because ultimately, the challenge may result in a *less favorable* outcome for the defendant, whereas a collateral challenge to conviction obtained after a jury trial has no similar downside potential.

Padilla, ___ U.S. at ___-___, 130 S.Ct. at 1485-86, 176 L.Ed.2d at 298 (emphasis in original).

Therefore, the fact that Booth may have benefited by pleading guilty instead of going to trial is not relevant to whether he was prejudiced by Harris' deficient performance.

ATTACHMENT 1



National Association of Attorneys General

Idaho Former Attorneys General

NAAG » About » NAAG History » Past Attorneys General by State » Idaho Former Attorneys General

Lawrence Wasden	2003
Alan G. Lance	1995 - 2003
Larry EchoHawk	1991 - 1995
Jim Jones	1983 - 1991
David H. Leroy	1979 - 1983
Wayne Kidwell	1975 - 1979
Anthony W. Park	1971 - 1975
Robert M. Robson	1969 - 1971
Allan Shepard	1963 - 1969
Frank L. Benson	1959 - 1963
Graydon W. Smith	1955 - 1959
Robert E. Smylie	1947 - 1955
Robert Ailshie	1947
Frank Langley	1945 - 1947
Bert H. Miller	1941 - 1945
Fred J. Babcock	1931 - 1933

ATTACHMENT 2

IN THE HOUSE OF REPRESENTATIVES

HOUSE CONCURRENT RESOLUTION NO. 20

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

A CONCURRENT RESOLUTION

1
 2 STATING LEGISLATIVE CONCERNS AND FINDINGS AND DIRECTING THE LEGISLATIVE COUN-
 3 CIL TO UNDERTAKE AND COMPLETE A STUDY OF THE IDAHO CRIMINAL SENTENCING
 4 SYSTEM AND THE ADVISABILITY OF IMPLEMENTING A PRESUMPTIVE SENTENCING
 5 SYSTEM.

6 Be It Resolved by the Legislature of the State of Idaho:

7 WHEREAS, under Idaho's current sentencing laws the disparity of sentences
 8 given among judicial districts and among individual judges for the conviction
 9 of the same or a similar crime is perceived to be a problem by many Idaho
 10 judges and reduces the respect and confidence of the public in the criminal
 11 system, and results in unfair treatment of, and bitterness in, the person con-
 12 victed; and

13 WHEREAS, under Idaho's current sentencing and parole laws, the sentences
 14 which are being handed down by the courts are seldom served to their full
 15 extent, creating a truth-in-sentencing problem and therefore reducing the
 16 respect and confidence of the public in the Idaho criminal system and reducing
 17 the deterrent effect of Idaho's criminal sanctions; and

18 WHEREAS, Idaho's criminal and sentencing laws were enacted at different
 19 times and therefore reflect different sentencing philosophies, which have
 20 resulted in a somewhat uncoordinated interaction among the sentencing, correc-
 21 tion and parole systems, and in sentencing statutes which are sometimes incons-
 22 sistent, confusing and pose difficult problems of construction to the courts;
 23 and

24 WHEREAS, nine other states have undertaken a review of their criminal jus-
 25 tice systems and found many problems which are the same as or similar to
 26 Idaho's current problems, and have responded to these problems by enacting
 27 presumptive sentencing systems; and

28 WHEREAS, President Ronald Reagan has expressed his support for legislation
 29 adopting a presumptive sentencing system be enacted on the federal level; and

30 WHEREAS, a comprehensive review and reform, possibly through the imple-
 31 mentation of a presumptive sentencing system, of Idaho's laws concerning crim-
 32 inal sentencing, corrections and pardons and paroles, could result in a
 33 greater philosophical coherency, remove inconsistencies, reduce sentencing
 34 disparity, increase truth-in-sentencing, and therefore result in greater citi-
 35 zen confidence and respect for Idaho's criminal justice system, greater deter-
 36 rence to would-be criminals and justice for persons convicted.

37 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session
 38 of the Forty-eighth Idaho Legislature, the House of Representatives and the
 39 Senate concurring therein, that the Idaho Legislative Council is directed to
 40 establish a committee to undertake and complete a study of all matters relat-
 41 ing to the criminal justice system of the State of Idaho and to evaluate and
 42 determine the advantages and disadvantages of the implementation of a presump-
 43 tive sentencing system in the State of Idaho and to present to the Second

ATTACHMENT 3

1 Regular Session of the Forty-eighth Idaho Legislature the Committee's final
2 report, together with recommended legislation, if any. The Legislative Council
3 is hereby authorized to create and appoint a Criminal Sentencing Alternatives
4 Committee to be composed of not less than 10, and not more than 20, members
5 from the Idaho House of Representatives and the Idaho Senate. The Chairman of
6 the House Judiciary, Rules and Administration Committee and the Senate
7 Judiciary and Rules Committee shall serve as Co-Chairmen of the Criminal Sen-
8 tencing Alternatives Committee.

9 BE IT FURTHER RESOLVED that all costs incurred by the Criminal Sentencing
10 Alternatives Committee shall be paid from the Legislative Account.

LEGISLATURE OF THE STATE OF IDAHO
Forty-eighth Legislature Second Regular Session - 1986

IN THE _____

CONCURRENT RESOLUTION NO. _____

BY _____

1 A CONCURRENT RESOLUTION
2 STATING LEGISLATIVE FINDINGS AND DIRECTING THE LEGISLATIVE COUNCIL TO UNDER-
3 TAKE AND COMPLETE A STUDY OF THE IDAHO CRIMINAL AND CRIMINAL PROCEDURE
4 STATUTES AND TO RECOMMEND COMPREHENSIVE REFORMS OR A COMPLETE RECODIFICA-
5 TION IF REQUIRED.

6 Be It Resolved by the Legislature of the State of Idaho:

7 WHEREAS, a special committee on criminal sentencing met in the fall of
8 1984 and, by adopting HCR 20, the Legislature directed the Legislative Council
9 to create an interim study committee on criminal sentencing during the 1985
10 interim; and

11 WHEREAS, the Legislative Council Criminal Sentencing Committee met seven
12 times and undertook a detailed analysis of Idaho's criminal sentencing system,
13 receiving testimony from judges, prosecutors, criminal defense attorneys,
14 officials from the Board of Correction and the Commission on Pardons and
15 Parole, the Office of the Attorney General and others experienced in the
16 field; and

17 WHEREAS, the recommendations made by the Legislative Council Criminal Sen-
18 tencing Committee would go far toward achieving truth in sentencing, removing
19 sentencing disparities from the Idaho Code, and help to coordinate the efforts
20 of the various entities involved in the criminal sentencing system including
21 judges, the Commission on Pardons and Parole and the Board of Correction; and

22 WHEREAS, although the Legislative Council Committee on Criminal Sentencing
23 made substantial progress in resolving some of the most pressing problems, it
24 was also determined that inconsistencies, discrepancies and conflicts were
25 still present in the criminal and criminal procedure statutes which could be
26 resolved through continuing study and that it would be beneficial to the
27 people of the State of Idaho for a joint committee of the Legislature to con-
28 tinue in order to undertake a comprehensive study and revision of Idaho's
29 criminal and criminal procedure statutes to achieve philosophical coherency,
30 consistency and clarity in those statutes.

31 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular
32 Session of the Forty-eighth Idaho Legislature, the House of Representatives
33 and the Senate concurring therein, that the Legislative Council is directed to
34 establish a committee to undertake and complete a study of all matters relat-
35 ing to criminal and criminal procedure statutes of the State of Idaho and to
36 undertake a comprehensive revision or, if required, a complete recodification
37 of the criminal and criminal procedure statutes of the State of Idaho, and to
38 present to the First Regular Session of the Forty-ninth Idaho Legislature the
39 Committee's report together with recommended legislation, if any. The Legis-
40 lative Council is directed to appoint a committee comprised of six members of
41 the House of Representatives and four members of the Senate. The Chairman of
42 the House Judiciary, Rules and Administration Committee and the Senate
43 Judiciary and Rules Committee shall serve as cochairmen of the Committee.

1 BE IT FURTHER RESOLVED that the Legislative Council is authorized to
2 appoint a criminal code revision advisory committee to assist and advise the
3 Legislative Council in preparing the foregoing studies and proposed laws and
4 procedures. Such committee shall consist of one representative each from the
5 judiciary, county prosecutors, criminal defense counsel and the Office of the
6 Attorney General.

7 BE IT FURTHER RESOLVED that all costs incurred by the Committee and the
8 Advisory Committee shall be paid from the Legislative Account.

49-2514. CHANGE OF RULES AND REGULATIONS. Whenever any federal rule or regulation is cited in this chapter and is amended, modified, repealed or recodified, its successor rule or regulation shall govern and be operative.

49-2515. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 49-2512, Idaho Code, which is enacted by Section 4 of this act shall be in full force and effect on and after this act's passage and approval. The remaining provisions of this act shall be in full force and effect on and after January 1, 1987; provided, however, that the Idaho Transportation Board and Idaho Transportation Department shall be authorized to permit any person renewing or purchasing a vehicle registration on and after July 1, 1986, to acquire a vehicle registration endorsement prior to January 1, 1987, and any receipts therefrom shall be placed in the Hazardous Material/Hazardous Waste Transportation Enforcement Account which is created in section 49-2507, Idaho Code, which is enacted by Section 4, of this act and Section 49-2507, Idaho Code, which is enacted by Section 4 of this act shall be in full force and effect on and after July 1, 1986.

Approved April 3, 1986.

CHAPTER 232
(H.B. No. 524)

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING A SHORT TITLE; AMENDING SECTION 18-4004, IDAHO CODE, TO REQUIRE A MANDATORY MINIMUM SENTENCE OF TEN YEARS BE SERVED IF A SENTENCE FOR LIFE IMPRISONMENT IS IMPOSED AND TO DENY ELIGIBILITY FOR PAROLE OR DISCHARGE OR OTHER REDUCTION OF SENTENCE DURING THE MINIMUM TERM; AMENDING SECTION 19-2513, IDAHO CODE, TO AUTHORIZE A COURT TO IMPOSE A UNIFIED SENTENCE CONTAINING A MINIMUM SENTENCE FOLLOWED, IN THE DISCRETION OF THE COURT, BY AN INDETERMINATE SENTENCE, TO DENY ELIGIBILITY FOR PAROLE OR DISCHARGE OR OTHER REDUCTION OF SENTENCE, EXCEPT FOR MERITORIOUS SERVICE, DURING THE MINIMUM TERM, TO REQUIRE UNIFIED SENTENCES BE CONSISTENT WITH STATUTORY MANDATORY MINIMUM SENTENCES IF APPLICABLE, TO REQUIRE THE COURT TO IMPOSE A MINIMUM TERM PURSUANT TO A SENTENCE ENHANCEMENT STATUTE IF REQUIRED BY STATUTE, IF APPLICABLE, TO REQUIRE ALL MINIMUM TERMS BE SERVED BEFORE INDETERMINATE TERMS COMMENCE AND TO PROVIDE AN EFFECTIVE DATE; REPEALING SECTION 19-2513A, IDAHO CODE; AND AMENDING SECTION 20-223, IDAHO CODE, TO REMOVE MINIMUM ELIGIBILITY

REQU
SION
DOES
INC .

Be It En.

SECT
of 1986.'

SECT
hereby ar

18-41
19-2515,
shall be
whenever
court sh
confinem
confinem
or credit
torious s
punishabl
imprisonn

SECT
hereby an

19-25
imprisonn
punishmen
for-feion
having co
the sent
probation
unless it
such off
indetermi
and--sent
less--than
and--judg
tence--sha
that--the
informati
any--feto
effect--re
such--cri
period of
tence the
nate per
exceed th

ATTACHMENT 4

deral
fied,
overn

REQUIREMENTS FOR PAROLE AND TO ALLOW PAROLE ONLY WHEN THE COMMISSION OF PARDONS AND PAROLE REASONABLY BELIEVES THAT THE PRISONER DOES NOT CONSTITUTE A THREAT TO THE SAFETY OF SOCIETY; AND PROVIDING AN EFFECTIVE DATE.

ereby
r the
e is
t the

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. This act shall be known as the "Unified Sentencing Act of 1986."

SECTION 2. That Section 18-4004, Idaho Code, be, and the same is hereby amended to read as follows:

cy is
h is
ct on
ns of
y l,
Idaho
erson
y l,
nuary
ch is
on 4,
d by
after

18-4004. PUNISHMENT FOR MURDER. Subject to the provisions of 19-2515, Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that whenever the court shall impose a sentence of life imprisonment, the court shall set forth in its judgment and sentence a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.

SECTION 3. That Section 19-2513, Idaho Code, be, and the same is hereby amended to read as follows:

ENDING
I SEN-
NMENT
GE OR
NDING
OSE A
I THE
I DENY
SEN-
UM, TO
ATORY
SE A
FE IF
TERMS
DE AN
MEND-
BILITY

19-2513. ~~INDETERMINATE UNIFIED SENTENCE. The minimum period of imprisonment in the penitentiary heretofore provided by law for the punishment of felonies; and each such minimum period of imprisonment for felonies; hereby is abolished.~~ Whenever any person is convicted of having committed a felony, the court shall, unless it shall commute the sentence, suspend or withhold judgment and sentence or grant probation, as provided by chapter 26 of title 19, Idaho Code, or unless it shall impose the death sentence as provided by law, sentence such offender to the custody of the state board of correction for an indeterminate period of time; but stating and fixing in such judgment and sentence a maximum term which term shall be for a period of not less than two (2) years nor exceeding that provided by law therefore; and judgment and sentence shall be given accordingly; and such sentence shall be known as an indeterminate sentence; provided, however, that the enactment of this act shall not affect the indictment, information, prosecution, trial, verdict, judgment, or punishment of any felonies heretofore committed; but all laws now and hitherto in effect relating thereto are continued in full force and effect as to such crimes heretofore committed. The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law. During a minimum term of confine-

ment, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. The offender may be considered for parole or discharge at any time during the indeterminate period of the sentence.

If the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute. If the offense is subject to an enhanced penalty as provided by statute, or if consecutive sentences are imposed for multiple offenses, the court shall, if required by statute, direct that the enhancement or each consecutive sentence contain a minimum period of confinement; in such event, all minimum terms of confinement shall be served before any indeterminate periods commence to run.

Enactment of this amended section shall not affect the prosecution, adjudication or punishment of any felony committed before the effective date of enactment.

SECTION 4. That Section 19-2513A, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 20-223, Idaho Code, be, and the same is hereby amended to read as follows:

20-223. PAROLE, RULES AND REGULATIONS GOVERNING -- RESTRICTIONS -- PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION. (a) Subject to section 19-2513, Idaho Code, the commission shall have the power to establish rules, regulations, policies or procedures in compliance with chapter 52, title 67, Idaho Code, under which any prisoner, excepting any under sentence of death, may be allowed to go upon parole but to remain while on parole in the legal custody and under the control of the board and subject to be taken back into confinement at the direction of the commission; provided, however, that no person serving a life sentence or serving a term of thirty (30) or more years shall be eligible for release on parole until he has served at least ten (10) years and no person serving a lesser sentence for any of the following crimes: homicide in any degree; treason; rape by force or threat of bodily harm; incest; crime against nature; committing a lewd act upon a child; robbery of any kind; kidnapping; burglary when armed with a dangerous weapon; or with an attempt or assault with intent to commit any of said crimes; or as an habitual offender; shall be eligible for release on parole until said person has served a period of five (5) years or one third (1/3) of the sentence, whichever is the least. The provisions of this section shall affect only those persons who are sentenced on or after the first day of July, 1986, and are not intended to repeat or amend sections 19-2513A, 19-2528 or 19-2528A, Idaho Code.

(b) No person serving a sentence for rape, incest, committing a lewd act upon a child, crime against nature, or with an intent or an assault with intent to commit any of the said crimes or whose history and conduct indicate to the commission that he is a sexually dangerous person, shall be released on parole except upon the examination and evaluation of one or more psychiatrists or psychologists to be se-

lected by the commission, in its evaluation for parole or discharge above enumerated. Evaluation shall be of parole by such person if

(c) Before the commission shall afford the offender shall be ordered by the commission reason. To the safety of the community shall be considered. The commission shall be pleased his employment believes the offender of a law-abiding citizen, which any applicant. (d) In making a prisoner, together with any other person, to section with such an o

SECTION 6. after February 1, 1987, and a the Code which any 1, 1987, w that amendments 19-2520,

Approved April

RELATING TO 27, TITLE 49-2702, IDAHO CODE OFF-HIGHWAY CHANGE THE 49-2703, REQUIREMENTS FOR AN OFF IDAHO CODE

or
i-
at
by
on-
ced
are
by
on-
rms
Om-
se-
the
is
is
IONS
tion
lish
pter
any
to
l of
rec-
ng-a
--be
(10)
wing
--of
upon
h--a
mmit
--for
:(5)
--The
--are
--not
520A;
ng a
or an
story
erous
n and
se-

lected by the commission and such evaluation shall be duly considered by the commission in making its parole determination. The commission may, in its discretion, likewise require a similar examination and evaluation for persons serving sentences for crimes other than those above enumerated. No psychiatrist or psychologist making such evaluation shall be held financially responsible to any person for denial of parole by the commission or for the results of the future acts of such person if he be granted parole.

(c) Before considering the parole of any prisoner, the commission shall afford the prisoner the opportunity to be interviewed. A parole shall be ordered only for the best interests of society when the commission reasonably believes that the prisoner no longer poses a threat to the safety of society, not as a reward of clemency and it shall not be considered to be a reduction of sentence or a pardon. A prisoner shall be placed on parole only when arrangements have been made for his employment or maintenance and care, and when the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen. The commission may also by its rules, regulations, policies or procedures fix the times and conditions under which any application denied may be reconsidered.

(d) In making any parole or commutation decision with respect to a prisoner, the commission shall consider the compliance of the prisoner with any order of restitution which may have been entered according to section 19-5304, Idaho Code. The commission may make compliance with such an order of restitution a condition of parole.

SECTION 6. This act shall be in full force and effect on and after February 1, 1987, and the amendments in this act shall apply only to those persons who shall commit an offense on or after February 1, 1987, and are not intended to repeal or amend those provisions of the Code which apply to persons committing an offense prior to February 1, 1987, which provisions shall continue to apply, and further that amendments in this act are not intended to repeal or amend sections 19-2520, 19-2520A, 19-2520B, 19-2520C or 19-2520D, Idaho Code.

Approved April 3, 1986.

CHAPTER 233
(H.B. No. 542)

AN ACT

RELATING TO REGISTRATION OF OFF-HIGHWAY MOTORBIKES; AMENDING CHAPTER 27, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-2702, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 49-2702, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THAT OFF-HIGHWAY MOTORBIKES MAY BE REGISTERED AT ANY VENDOR AND TO CHANGE THE DATE WHEN REGISTRATION SHALL EXPIRE; AMENDING SECTION 49-2703, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO CHANGE THE REQUIREMENTS FOR THE TRANSFER OF A STICKER OF REGISTRATION ISSUED FOR AN OFF-HIGHWAY VEHICLE; AMENDING SECTIONS 49-2704 AND 49-2705, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 49-2706,

1985
IDAHO LEGISLATIVE COUNCIL
COMMITTEE MINUTES

Original Sentencing

Volume 2

ATTACHMENT 4

Minutes
Senate Judiciary and Rules Committee
Wednesday, March 12, 1986
Page Two

- MOTION Moved by Senator Smyser, second Senator Staker, that S 1264 BE SENT TO THE FOURTEENTH ORDER, WITH THE AMENDMENT CONSIDERED BY THE COMMITTEE.
On a voice vote, the motion passed.
Senators Risch, Dobler, Lannen absent.
- RS 12746C1 Relating to nonmedical indigency and medical indigency - Senator Darrington asked that the committee print RS 12746C1, and said it was for distribution purposes only - he did not intend for the legislation to be considered this session.
- MOTION Moved by Senator Smyser, second by Senator Bray, that RS 12746C1 BE INTRODUCED FOR PRINTING.
On a voice vote, the motion passed.
Senators Risch, Lannen, Dobler absent.
- H 524 Crime - unified sentence
Presented by: Senator Fairchild ✓
- Senator Lannen here.
- MOTION Moved by Senator Darrington, second by Senator Reed, that H 524 BE SENT TO THE FLOOR WITH A DO PASS RECOMMENDATION.
On a voice vote, the motion passed.
Senators Risch, Dobler absent.
Sponsor: Senator Fairchild/Senator Smyser
- H 535 Sentence - maximum extended
Presented by: Senator Fairchild
- MOTION Moved by Senator Smyser, second by Senator Darrington, that H 535 BE SENT TO THE FLOOR WITH A DO PASS RECOMMENDATION.
On a voice vote, the motion passed.
Senators Risch, Dobler absent.
Sponsor: Senator Fairchild/Senator Smyser

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

MEETING MINUTES

TUESDAY, FEBRUARY 25, 1985

GUEST SPEAKER(S):

Pat Kole, Deputy Attorney General - Attorney General's Office

GUESTS:

(See attached roster.)

The meeting was called to order at 1:35 P.M. by Chairman Harris. All members were present with the exception of Rep. Keeton who was absent.

MOTION Moved by Rep. Sorensen and seconded by Rep. Bengson to approve the meeting minutes of February 21, 1986. Motion passed.

H 668 Chairman Harris announced that we would first have H 668 before us today. He addressed the problems with the Commission of Pardons and Parole complying with the Idaho Open Meeting Law and also indicated members have before them copies of S 1211, engrossed copy, for comparison with H 668.

The purpose of H 668 is intended to provide a limited form of protection to members of the Commission of Pardons and Parole. This bill provides that the deliberative proceedings and votes of the Commission, only on matters of parole, would be confidential while all other proceedings would be open to the public. The decision (votes of the Commission) would be recorded and available upon request of the Governor and Chairmen of the Senate and House Judiciary Committees.

Pat Kole addressed the issue of the Commission complying with the Idaho Open Meeting Law and elaborated on the provisions of the law.

Rep. McDermott had questions as to whether there is another section of the Idaho Code which addresses the issue of pardons and commutations.

MOTION Moved by Rep. Sorensen and seconded by Rep. Bayer to send H 668 to the floor with a "Do Pass" recommendation.

Rep. Sorensen said that it was his understanding that this bill would run into problems in the Senate because there is discrepancy as to who should have access to the information on the pardon and parole hearings.

Rep. McDermott had further comments and said she wondered if it was right to have the information kept secret but "going only to selected persons". She said she hoped the language in lines 28-37, Page 1 could be cleaned up.

SUBSTITUTE Moved by Rep. McDermott and seconded by Herndon to hold H 668 in Committee until the next scheduled Committee meeting.

MOTION Rep. Speck commented and said he is against the substitute motion. Further discussion from Reps. Forrey, Bayer, Montgomery, McDermott and Speck.

Rep. Sorensen requested a roll call vote on the substitute motion. Twelve members voting against, two in favor and one absent. Motion failed to carry on the substitute motion.

Motion passed by voice vote on the original motion to send H 668 to the floor with a "Do Pass" recommendation. Rep. McDermott will be recorded as voting "No". Rep. Harris will sponsor.

✓ H 524 The purpose of H 524 is to introduce the Unified Sentencing Act in Idaho. This represents a fundamental change in the criminal sentencing area. Under this bill, a court can impose a purely fixed sentence but cannot impose a purely indeterminate sentence. It allows the court to impose a minimum term consistent with the sentence enhancement sections, if applicable. It also removes all minimum parole requirements in Section 20-223, Idaho Code. ✓

MEETING MINUTES
PAGE -2-
TUESDAY, FEBRUARY 25, 1986

Rep. Montgomery gave introductory testimony to the issue of this proposed bill. He also said the judges are very much in support of this legislation.

Rep. Sorensen asked Rep. Montgomery what impact this would have on the capacity of the penitentiary. Rep. Montgomery responded by saying that this would actually be a better planning tool than what we have now.

Rep. Stoker said he had problems with Page 2, lines 24 through 28.

Further discussion from Reps. Montgomery, Herndon, Fry, Bengson and Sorensen.

MOTION Moved by Rep. Sorensen and seconded by Rep. Speck to send H 524 to the floor with a "Do Pass" recommendation.

Discussion on the motion by Rep. Stoker who said he thinks we should send the bill to General Orders but did not motion to that effect. Further from Reps. Sorensen, Herndon, Montgomery and Forrey. Motion passed with no objections to send H 524 to the floor with a "Do Pass" recommendation. Rep. Montgomery will sponsor.

H 535 This bill amends the enhancement statutes in the Idaho Code, Sections 19-2520, 19-2520A, 19-2520B and 19-2520C to allow the court to impose an extended sentence instead of the present sentence enhancements. By unifying the main sentence and the sentence extension, the Commission of Pardons and Parole is no longer faced with having to commute a sentence enhancement before they can put someone on parole.

Rep. Sorensen addressed the issue of H 535.

MOTION Moved by Rep. Stoker and seconded by Rep. Speck to send H 535 to the floor with a "Do Pass" recommendation.

Motion passed with no objections. Rep. Sorensen will sponsor.

H 547 This amends the enhancement statutes in the Idaho Code, Sections 19-2520, 19-2520A, 19-2520B and 19-2520C to require the enhancement term created by these sections be served and completed before the main underlying sentence can commence. The amendments also require the enhancement sentence run consecutively to any other sentence.

MOTION Moved by Rep. Bengson and seconded by Rep. Loveland to hold H 547 in Committee indefinitely.

Motion passed with no objections.

H 494 This bill would alter the current method of awarding good time in prison facilities. This bill would cause the award of good time to be based on a meritorious process rather than be given "automatically" when arriving at the prison.

Rep. Speck introduced this bill. He said he prefers H 494 because S 1241 is not much different than what we have today.

MOTION Moved by Rep. Herndon and seconded by Rep. Forrey to send H 494 to the floor with a "Do Pass" recommendation.

Rep. Bengson had a question on the holding capacity of the prison. Chairman Harris asked Al Murphy to comment on Rep. Bengson's question.

Rep. Fry had objections to sending this bill to the floor until we have a funding mechanism in place.

Chairman Harris commented on this issue by saying that we should have the legislation in the hands of the Senate. He also said the Governor does not yet support the Head Tax Bill. Action in the House Revenue and Taxation Committee on H 584 is being deferred while we negotiate because the Chief Executive does support additional maximum security.

MEETING MINUTES
PAGE -3-
TUESDAY, FEBRUARY 25, 1986

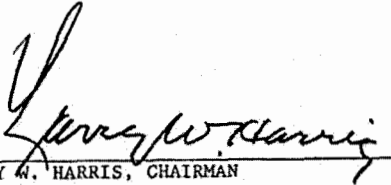
Rep. McDermott said she supports the House bill as opposed to the Senate bill (S 1241) but that she has problems with the funding.

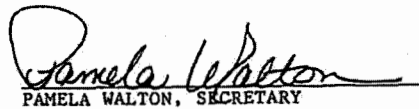
Further discussion from Reps. Loveland, Sorensen, Montgomery, Fry, Speck, Bengson, Herndon, Hay and Bayer

Motion passed by majority to send H 494 to the floor with a "Do Pass" recommendation. Reps. Fry and McDermott will be recorded as voting "No". Rep. Speck will sponsor.

S 1241 Moved by Rep. Stoker and seconded by Rep. Speck to hold S 1241 in Committee. Motion passed.

No further business being before Committee, Chairman Harris adjourned the meeting at 3:00 P.M.


LARRY W. HARRIS, CHAIRMAN


PAMELA WALTON, SECRETARY

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

MEETING GUEST(S) SIGN-IN

<u>DATE</u>	<u>GUEST NAME</u>	<u>FIRM/ORGANIZATION</u>	<u>PHONE #</u>	<u>SUBJECT OF INTER</u>
186	Patrick J. Kole	AG	2400	Reg. of Chairman
	Ron Hedge	Legis. Council		
	Marc Haws	AG	2400	
	VIVIAN KLEIN	ITL A	345-1890	various
	Lynn Thomas	AG	2400	
	AL MURPHY	D.O.C.	2301	ALL BILLS
	Christie Farney	-		-
	It is Farney	-		-
	Hal Vore	Dept of corrections	-	-
	Paul Bowlin	D.O.C.	-	-

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

MEETING MINUTES

FRIDAY, JANUARY 31, 1986

Guest Speakers:

Judge Edward Lodge - Third Judicial District Court
Kit Furey - Administrative Office of the Courts

Guests:

Barbara J. Miller - Idaho State Bar
Pat Barrell - Dept. of H & W, Support Enforcement Bureau
Bonnie Kinghorn - Intern, House Democrats
Ray Stark - Legislative Budget Office

The meeting was called to order at 1:50 P.M. by Chairman Harris. Reps. Loveland, Bayer and Speck were excused and all other Committee members were in attendance.

Chairman Harris announced that Committee would first address RS 12220 C2 as Judge Lodge is here and wishes to testify in favor of the legislation.

RS 12220C2 Kit Furey introduced Judge Lodge to the Committee after speaking briefly about RS 12220 C2.

Judge Lodge said in some instances, such as in Owyhee County, there is no place to sequester a jury and it is necessary for the jurors to be taken by bus to Nampa. He feels that judges should be given the opportunity to let the jurors go home as they think is appropriate on a case-by-case basis. He also indicated he does not feel the decision should be one by stipulation of counsel, but rather the responsibility of the Court.

MOTION Moved by Rep. Montgomery to return RS 12220 C2 to sponsor and have the Committee re-consider RS 12220 C1.

Rep. McDermott spoke against the motion and said Committee should go ahead and introduce RS 12220 C2 and get it on the road.

Further discussion on the issue from Reps. Montgomery and Fry.

SUBSTITUTE MOTION Moved by Rep. Fry to introduce RS 12220 C2 for printing with the change to strike, beginning with line 12, "and upon stipulation", line 13 in its entirety and line 14 through "in the presence of the jury".

Further comments from Reps. Sorensen, McDermott, Stoker, Fry and Forrey.

Rep. Sorensen urged Committee's defeat of the substitute motion.

Rep. Fry said he would amend his substitute motion to also include the substitution of the word "felony" for "offense" in line 11.

Division called on the substitute motion. Six in favor, five opposed. Motion carried to introduce RS 12220 C2 for printing with changes as recommended.

RS 12299C3 Rep. Montgomery spoke to the issue of Rs 12299 C3.

Reps. Stoker, McDermott and Sorensen asked general questions of Rep. Montgomery. Rep. Sorensen stated this RS would provide more truth in sentencing and would also be a better tool for prison officials in determining prison growth.

MOTION Moved by Rep. Bengson and seconded by Rep. Fry to introduce RS 12299 C3 for printing.

Further comments by Reps. Bengson, Herndon, Fry, Stoker, Montgomery and Forrey.

Motion passed unanimously to introduce RS 12299 C3 for printing.

MEETING MINUTES
Page -2-
JANUARY 31, 1986

Rep. Montgomery suggested, at this time, that we have an informal meeting for those Committee members who have not been directly involved with the sentencing reform proposals by the Interim Sentencing Committee to help them better understand the proposals.

Rep. Herndon suggested having Carl Bianchi come before the Committee to make a presentation such as the one he made before the Interim Sentencing Committee.

Chairman Harris said this was a good idea and we would lean toward an early morning meeting some time within the next ten days.

RS 12355 Chairman Harris indicated that RS 12355 had been withdrawn as the issues it addressed had been taken care of through other channels. At this point, Chairman Harris turned the chair over to Rep. Montgomery.

RS 12356 Rep. Bengson spoke about what this RS would accomplish. Chairman Harris also said the Child Support Enforcement Commission held hearings this past year and the disputes were not so much over support payments as they were over visitation rights.

Rep. McDermott had a concern in that under this proposed legislation, a visitation plan would be required in every divorce action involving minor children while not all cases require that necessity.

MOTION Moved by Rep. Stoker and seconded by Rep. McDermott that, with the addition of "at the request of the Court" in place of, "provided, however, that" on line 4, Page 2, that RS 12356 be introduced for printing.

Rep. Stoker further discussed his reasons for the change.

Motion passed with no objections to introduce RS 12356 for printing with changes as proposed.

RS 12389 Rep. Stoker addressed Committee on the issue of this RS. There were further comments and questions from Reps. Bengson, Fry and Herndon.

MOTION Moved by Rep. McDermott and seconded by Chairman Harris to introduce RS 12389 for printing. Motion passed with no objections.

RS 12390 Rep. Stoker gave introductory testimony on the issue of RS 12390. Rep. McDermott commented and said this was unnecessary legislation.

MOTION Moved by Rep. Herndon and seconded by Rep. Bengson to return RS 12390 to sponsor.

SUBSTITUTE MOTION Moved by Rep. Forrey and seconded by Chairman Harris to introduce RS 12390 for printing.

Further Committee discussion by Rep. Herndon, Chairman Harris and Rep. Fry.

A division was called on the substitute motion by Rep. Montgomery. Motion failed to carry.

Motion carried on the original motion to return RS 12390 to sponsor.

RS 12391 Rep. Stoker stated this RS would effectively be a substitute for RS 12390.

MOTION Moved by Rep. Stoker and seconded by Chairman Harris to introduce RS 12391 for printing.

Motion passed unanimously.

January 8, 1986

TO: SENATOR FAIRCHILD AND REPRESENTATIVE HARRIS

FROM: LEGISLATIVE COUNCIL STAFF - HODGE

SUBJECT: PROPOSED COMMITTEE ASSIGNMENT OF LEGISLATION

This memo contains suggested committee assignments for legislation proposed by the Legislative Council Interim Study Committee on Criminal Sentencing or by the Co-Chairmen. Criteria used for assignment is as follows: proposed legislation involving pardons and parole was assigned to the Senate and proposed legislation involving sentencing and miscellaneous code changes was assigned to the House.

SUGGESTED ASSIGNMENT:

SENATE

RS11688C3 Commission of Pardons and Parole appointed by Governor.
RS11722C2 Good time revision.
RS11976 Joint Resolution repealing Section 7, Article 4.
RS12022C1 Creates permanent Commission on Pardons and Parole.
RS12023 Creates one third parole formula.
RS12072 Joint Resolution "as provided by law", Section 7, Article 4.
RS12073 Joint Resolution removes "commutation", Section 7, Article 4.
RS12074 Creates one third-two thirds formula.

HOUSE

RS11743 Changes perjury law.
RS11750C1 Creates mixed sentence - combines all sentence alternatives.
RS11760 Creates mixed sentence - adds one new section.
RS11883C1 Continuing resolution for criminal sentencing.
RS11987C1 Enhancement amendments - "prior to".
RS11988 Enhancement amendments - "extended sentences".
RS12056 Creates general fine provision.
RS12057 Creates new fixed term for murder.
RS12058 Removes inconsistency in statutes regarding probation.

Coordination between the House and Senate may be required on some of the

ATTACHMENT 5

above RSs because of incompatibility. For example, without amendment, the parole formula RSs in the Senate are probably incompatible with the mixed sentence proposals in the House.

In addition, several RSs within each package are mutually exclusive. In the Senate the 3 proposed joint resolutions (RS11976, 12072 and 12073) are mutually exclusive as are the proposed parole formula RSs (RS12023 and 12074), and RS11688C3 making the Commission of Pardons and Parole gubernatorial appointees and RS12022C1 creating a permanent commission. In the House packet, the mixed sentence proposals (RS11750C1 and 11760) are mutually exclusive as are the proposed changes to the enhancement sections (RS11987C1 and 11988).

LEGISLATURE OF THE STATE OF IDAHO
Forty-eighth Legislature Second Regular Session - 1986

IN THE _____

_____ BILL NO. _____

BY _____

1 AN ACT
2 RELATING TO PUNISHMENT FOR MURDER; AMENDING SECTION 18-4004, IDAHO CODE, TO
3 PROVIDE THAT A COURT MAY IMPOSE A FIXED TERM SENTENCE OF NOT LESS THAN
4 TWENTY YEARS FOR FIRST DEGREE MURDER.

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 18-4004, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 18-4004. PUNISHMENT FOR MURDER. Subject to the provisions of 19-2515,
9 Idaho Code, every person guilty of murder of the first degree shall be pun-
10 ished by death or by imprisonment for life or by imprisonment for a fixed term
11 of not less than twenty (20) years. Every person guilty of murder of the
12 second degree is punishable by imprisonment not less than ten (10) years and
13 the imprisonment may extend to life.

ATTACHMENT 6

STATEMENT OF PURPOSE

RS 12299 C3

RS 12299 C3 introduces the Unified Sentencing Act in Idaho. This represents a fundamental change in the criminal sentencing area. Currently, judges can impose an indeterminate sentence or fixed sentence. The two cannot currently be combined. Under the unified sentence, the judge imposes a minimum sentence term which must be served and cannot be reduced by commutation, parole or good time but can be reduced for meritorious service plus, at the court's discretion, an indeterminate sentence to begin at the completion of the minimum term. Under this proposal, a court can impose a purely fixed sentence but cannot impose a purely indeterminate sentence. But in no case can the aggregate of the two sentence terms exceed the statutory sentencing limit. The proposal contains language to allow the court to impose a minimum term consistent with the sentence enhancement sections, if applicable. The proposal removes all minimum parole requirements in Section 20-223, Idaho Code. This is intended to render Section 20-223 consistent with the policy being implemented by unified sentencing, namely placing the discretion of setting minimum sentences into the hands of the judge. The change to Section 20-223 requires new language in Section 18-4004 to require persons serving a sentence for first degree murder serve minimum of 10 years. ✓

There are two major policy justifications for this proposal. First, by making the minimum period fixed and not subject to reduction, greater truth in sentencing is achieved. At the time of sentencing everyone knows the minimum period which must be served. Second,

STATEMENT OF PURPOSE/FISCAL NOTE

W 524

STATEMENT OF PURPOSE

RS 12299 C3

(page 2)

greater sentencing flexibility is achieved. The court can tailor the sentence to fit the person convicted by combining minimum and indeterminate periods. The court can impart the specific amount of punishment it feels to be just and still impose an indeterminate period to be used by the Commission of Pardons and Parole for rehabilitation and parole purposes.

The Unified Sentencing Act has an effective date of February 1, 1987. This is to allow judges, prosecutors and the public time to assimilate the change and the Legislature an additional opportunity to correct any problems which may develop.

FISCAL IMPACT

Because the effective date of this RS is set at February 1, 1987, there will be little or no fiscal impact in the next fiscal year. However, as the unified sentence comes into use, there may be an impact on the prison population which could have a fiscal impact on the State of Idaho perhaps in the 1988 or 1989 fiscal year. However, this is totally dependent upon the length and type of sentences handed down by judges. The Unified Sentencing Act does not require longer sentences, it merely changes the type of sentence to be given by Idaho judges. Therefore, without reliable data as to whether the length of sentences would change under the unified sentencing system, any statement of fiscal impact at this time would be pure speculation.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DAVIS F. VANDERVELDE** DATE: AUGUST 08, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2014-26736-C
)	
vs.	)	TIME: 10:00 A.M.
)	
RAUL EDGAR HERRERA,	)	REPORTED BY: Christine Rhodes
)	
Defendant.	)	2C-CRT 130 (1005-1027)
_____)	

This having been the time heretofore set for **Defendant's Motion to Reconsider Sentence pursuant to I.C.R. 35** in the above entitled matter, the State was represented by Mr. Christopher Boyd, Deputy Prosecuting Attorney for Canyon County. The defendant was present in court with counsel, Mr. Kenneth Stringfield.

The Court noted the motion set to be heard this date.

Mr. Stringfield presented argument in support of the motion.

The Court inquired of Mr. Stringfield.

The Court noted there were two (2) additional claims contained in the motion.

The Court further noted the State offered to stipulate to amend the Kidnapping charge to a fixed term only, and remove the indeterminate portion; therefore it would no longer be an illegal sentence.

Mr. Stringfield stated the defendant would prefer to be re-sentenced on the charge.

Mr. Boyd presented argument in opposition of the motion.

The Court cited case law for the record.

Mr. Boyd requested additional time to review the case law cited by the Court.

Mr. Stringfield stated the defendant would stipulate to keeping the fixed portion on the Kidnapping charge, and removing the indeterminate portion.

Mr. Boyd indicated the State would stipulate to the same, provided the Court found the sentence on the charge of Murder in the First Degree, would remain as previously ordered.

Mr. Boyd additionally stated if the Court granted the defense's motion to amend the fixed portion on the charge of Murder in the First Degree, to ten (10) years fixed, then the defendant should be completely re-sentenced.

Mr. Stringfield made additional statements for the record.

The Court took the matter **under advisement** and stated a written decision would be forthcoming.

The defendant was remanded back to the custody of the Idaho Department of Correction.

Deputy Clerk

F I L E D
A.M. 2:00 P.M.

AUG 16 2017

**CANYON COUNTY CLERK
S MEHIEL, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

_____)	
STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR 2014-26736*C
)	
vs-)	
	)	ORDER RE: DEFENDANT'S MOTION
	)	FOR RECONSIDERATION PURSUANT
RAUL E. HERRERA,	)	TO ICR 35
)	
Defendant.)	
_____)	

This matter came on for hearing on August 9, 2017, on the Defendant's motion for relief pursuant to Idaho Criminal Rule 35. Mr. Kenneth Stringfield appeared on behalf of the defendant; Mr. Christopher Boyd appeared on behalf of the State of Idaho.

Procedural History

On July 21, 2015, a jury found the defendant guilty of First Degree Murder with malice aforethought as well as Felony Murder with respect to Robbery, Burglary, and Second Degree Kidnapping. The jury also found the defendant guilty of Robbery, Burglary, Second Degree Kidnapping, and Aggravated Battery.

The Court subsequently entered judgment and sentenced the defendant as follows: for the crime of First Degree Murder, to indeterminate life, with 35 years fixed; for the crime of Robbery, to indeterminate life, with 30 years fixed; for the crime of Burglary, to 10 years fixed;

ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION PURSUANT TO ICR 35- 1

ORIGINAL

for the crime of Second Degree Kidnapping, to indeterminate life, with 20 years fixed; and for the crime of Aggravated Battery, to 15 years fixed. The defendant filed a motion for leniency pursuant to Idaho Criminal Rule 35. That motion was denied. On appeal, the Idaho Court of Appeals affirmed the sentences, noting that while there was potentially an issue with the sentence on the Second Degree Kidnapping conviction; the issue may not be raised on appeal without the district court having first had an opportunity to consider the legality of the sentence imposed. See *State v. Herrera*, Idaho Court of Appeals Unpublished Opinion, Docket No. 43975 (January 17, 2017).

On February 23, 2017, the Defendant filed a *pro se* motion for relief pursuant to Idaho Criminal Rule 35 (Rule 35) and a memorandum in support thereof. He argues that his sentence is illegal on the grounds that (1) the sentences imposed violates double jeopardy; (2) the sentence for Second Degree Kidnapping exceeds the statutory maximum; and (3) that the fixed portion of the sentence imposed for First Degree Murder is illegal. Counsel was subsequently appointed and on May 30, 2017, filed a memorandum in support of the Rule 35 motion. Counsel's motion provided that Defendant's *pro se* claims (1) and (3) were without merit, but that claim (2) is illegal. Specifically, I.C. §18-4504 provides that the maximum period of incarceration for Second Degree Kidnapping is twenty-five years. Therefore, because the Court imposed twenty years fixed for Second Degree Kidnapping, it could legally impose no more than five years of indeterminate time.

The State filed an objection on the ground that the motion has no basis in law or fact, with the exception of the indeterminate portion of the sentence imposed for Second Degree Kidnapping. The State also asserts that there is no need for a new sentencing hearing if the indeterminate portion of the sentence for the crime of Kidnapping is simply eliminated. The State stipulated to such in a Notice of Non-Filing filed June 6, 2017 and requested no further hearings.

On July 21, 2017, the defendant filed a supplemental memorandum in support of his motion. Therein defense counsel argues that his assertion in his prior brief that the argument that the fixed portion of the sentence imposed for First Degree Murder was illegal was without merit is in error. The supplemental brief presents argument in support of the position that the fixed portion imposed for the crime of Murder is, in fact, illegal. The State did not file a response. The parties appeared through counsel and presented oral argument on August 8, 2017. During the hearing the parties agreed that in the event the Court ruled against the defendant on the issue of the legality of fixed portion of the Murder charge, the Court could resentence the Defendant to twenty years fixed, with no indeterminate time, for the Kidnapping. After considering the presentations of both parties, the Court grants the motion in part and denies the motion in part.

Standard

In his motion, Mr. Herrera asserts that his sentences are illegal. The term "illegal sentence" under Rule 35 is narrowly interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing. *Id* at

86, 1147 (2009). As the allegations here involve questions that can be resolved from the face of the record, they are properly before the Court.

Analysis

The Defendant first asserts that he was punished twice for the same offense because the indictment charges him with both First Degree Murder and felony Murder in the alternative and because the jury found him guilty of both First Degree Murder and felony Murder. Double jeopardy provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” *U.S. Const. Amend. V*. In this case, the defendant was charged with, and found guilty of both First Degree Murder with malice aforethought and felony Murder. These are not two different crimes, but rather alternative means of committing one crime: First Degree Murder. See I.C. §18-4003(a) and (d). The Judgment accurately reflects that he was convicted of and sentenced on only one count of Murder in the First Degree. Because the Defendant was convicted of, and sentenced on, only one count of Murder arising out of the facts of this case, the double jeopardy clause of the Constitution is not implicated. Rule 35 relief is therefore denied on this ground.

Defendant next claims that that the thirty-five year fixed portion of his sentence for First Degree Murder is illegal because the maximum fixed portion allowable under the statute is ten years. This issue is squarely addressed in *State v. Griffith*, 157 Idaho 409, 409, 336 P.3d 816, 816 (Ct. App. 2014). In that case, Griffith was sentenced to a unified life term of incarceration with twenty-two years fixed. Griffith filed a Rule 35 motion, arguing that the twenty-two-year fixed term of his sentence was illegal because I.C. §§18-4004 and 19-2513 require that the sentencing court impose a ten-year fixed term. In response, the Court stated:

[Section] 18-4004 sets the outer limits of a permissible sentence for First Degree Murder, Section 18-107 gave the court authority to impose a sentence anywhere within those limits, and Section 19-2513 conferred discretion to determine what portion of the sentence in excess of the mandatory ten-year fixed term would be determinate. Consistent with that discretion, the district court may impose any fixed term of ten years or more, up to and including a fixed life sentence for First Degree Murder.

Griffith argues that Idaho Code § 19-2513 limits the discretion of the sentencing court when a crime carries a mandatory fixed term. He relies upon the portion of I.C. § 19-2513 that states: “If the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute.” Griffith argues that we should interpret this language to mean that the court may impose any indeterminate sentence otherwise authorized, but the fixed portion of the sentence may not exceed the minimum sentence stated in Section 18-4004. Because I.C. § 18-4004 authorizes “a minimum period of confinement of not less than ten (10) years,” Griffith contends that his fixed term may not be more than ten years.

Griffith's argument distorts the meaning of the statute. In substance, he contends that the ten-year *minimum* fixed sentence authorized by the statute is instead a ten-year *maximum* fixed term. The statute actually authorizes for First Degree Murder a unified sentence of life with a fixed term of any duration between ten years and life. Section 19-2513 authorizes the court, in its discretion, to distribute that sentence between a determinate (fixed) term and an indeterminate term within those parameters. Therefore, Griffith's sentence for First Degree Murder is consistent with I.C. § 18-4004, as required by I.C. § 19-2513.


Id. at 410, 817.

Defendant makes the identical argument in the case at hand. In support of his position, he cites to *Booth v. State*, 151 Idaho 612, 262 P.3d 255 (2011), which he asserts holds that “the penalty for First Degree, non-capital Murder is, ‘an indeterminate life sentence with a fixed term of ten years.’” *Defendant’s Supplemental Memorandum in Support of Rule 35 Motion to Correct Sentence*, p. 3. (emphasis in brief.) Contrary to Defendant’s argument, however, the *Booth* court, in addressing the issue of ineffective assistance of counsel in a post-conviction action, held that the district court did not err in finding counsel’s performance fell below an objective standard of reasonableness when he advised Booth that if he went to trial and was convicted of First Degree Murder, he would have been subjected to a mandatory life sentence. *Booth v. State*, *supra*. The Court went on to explain in *dicta* that the clear and unambiguous language of I.C. §18-4004 provides that for a non-death penalty First Degree Murder conviction, the court is required to impose an indeterminate life sentence with *at least* ten years fixed. *Id.* at 619, 262 (emphasis added). This is consistent with the holding in *Griffith*, *supra*, and is contrary to Defendant’s position. The mandatory ten year fixed sentence required by .C. §18-4004 is the minimum possible sentence, not a required fixed term. The Court was therefore entitled, in its discretion, to impose any sentence between ten years and life. As it did so, the sentence is not illegal and relief is therefore denied on this ground.

Finally, the Defendant asserts that his sentence for Second Degree Kidnapping is in excess of the statutory maximum. Idaho Code §18-4504 provides that the maximum period of incarceration for Second Degree Kidnapping is twenty-five years. Here, Mr. Herrera was sentenced to indeterminate life with a determinate period of twenty years. The sentence of indeterminate life is in excess of the penalty provided by law, it is an illegal sentence and Mr. Herrera is entitled to relief. The parties have stipulated to eliminate the indeterminate portion of Defendant’s sentence under the circumstances of the above rulings without further hearing. While the stipulation to the remedy is appropriate, a hearing is required to achieve such a resolution because where the sentence imposed for Second Degree Kidnapping is illegal, the judgment entered is void as to that crime. As such, Mr. Herrera must be resentenced pursuant to the stipulation and must be present for that resentencing. *State v. Money*, 109 Idaho 757, 710 P.2d 667 (Ct. App. 1985); *State v. Edghill*, 155 Idaho 846, 317 P.3d 743 (Ct. App. 2014). As Mr.

Herrera must be present for that resentencing, a hearing is required; See also I.C. §19-2503; See also I.C.R. 43(a). A hearing for resentencing pursuant to stipulation will therefore be set by the Court as soon as practicable.

DATED: 8-14-17



Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

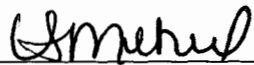
I HEREBY CERTIFY that a copy of the foregoing Order was mailed and/or hand delivered to the following persons this 16 day of August, 2017.

Kenneth F. Stringfield
ATTORNEY AT LAW
PO Box 777
Caldwell, ID 83606

Bryan F. Taylor
CANYON COUNTY PROSECUTOR'S OFFICE
1115 Albany St
Caldwell, ID 83605

Idaho Department of Correction
CENTRAL RECORD
1299 N. Orchard St., Ste. 110
Boise, ID 83706

Chris Yamamoto, Clerk


By Deputy Clerk of the Court

F I L E D
A.M. / ~~10~~ 5 P.M.

AUG 16 2017

**CANYON COUNTY CLERK
S MEHIEL, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

-vs-

RAUL E. HERRERA,

Defendant.

CASE NO. CR 2014-26736*C

**ORDER SETTING CASE FOR
SENTENCING AND ORDER TO
TRANSPORT DEFENDANT**

IT IS HEREBY ORDERED that the above entitled matter is scheduled for sentencing hearing on September 18, 2017 at 11:00 A.M. before the Honorable Davis F. VanderVelde, District Judge, at the Canyon County Courthouse, Caldwell, Idaho.

IT IS FURTHER ORDERED that the Warden at Idaho State Correctional Institution, Boise, Idaho release said Defendant, Raul E. Herrera, IDOC No. 116611, to the custody of the Sheriff of Canyon County, Caldwell, Idaho on or before September 18, 2017, pending a sentencing hearing to be held on that date.

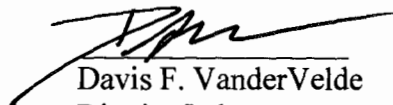
IT IS FURTHER ORDERED that upon completion of said hearing the Sheriff of

**ORDER SETTING CASE FOR SENTENCING AND
ORDER TO TRANSPORT DEFENDANT**

ORIGINAL

Canyon County return the Defendant, Raul E. Herrera, to the custody of the Warden at Idaho State Correctional Institution.

DATED: 8-14-17


Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded by me to the following this 16 day of August, 2017.

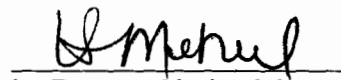
Kenneth F. Stringfield
ATTORNEY AT LAW
PO Box 777
Caldwell, ID 83606

Bryan F. Taylor
CANYON COUNTY PROSECUTOR'S OFFICE
1115 Albany St
Caldwell, ID 83605

Idaho Department of Correction
CENTRAL RECORD
1299 N. Orchard St., Ste. 110
Boise, ID 83706

Canyon County Sheriff's Office
Transports

Chris Yamamoto, Clerk


by Deputy Clerk of the Court

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **DAVIS F. VANDERVELDE** DATE: SEPTEMBER 18, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO. CR-2014-26736-C
)	
vs	)	TIME: 11:00 A.M.
)	
RAUL EDGAR HERRERA,	)	REPORTED BY: Christine Rhodes
)	
Defendant.	)	2C-CRT 130 (1055-1104)
_____)	

This having been the time heretofore set for **re-sentencing on Count IV** in the above entitled matter, the State was represented by Mr. Gearld Wolff, Deputy Prosecuting Attorney for Canyon County, and the defendant was present in court with counsel, Mr. Kenneth Stringfield.

The Court informed the defendant that the felony offense of Kidnapping in the Second Degree, carried a maximum possible penalty of twenty-five (25) years imprisonment and/or a fine in the amount of \$50,000.00; as well as submission of a DNA sample and right thumbprint impression. It carried a minimum penalty of one (1) year incarceration.

The Court noted the parties stipulated to an amended sentence of twenty (20) years fixed.

Mr. Wolff made comments for the record and concurred with the stipulation.

The Court determined all parties had received / reviewed a copy of the Presentence Investigation Report, and attached evaluation. There were no factual corrections to be made.

In answer to the Court's inquiry, neither counsel had testimony / evidence to present in aggravation or mitigation.

Mr. Wolff made statements regarding the defendant and recommended the Court impose twenty (20) years fixed.

Mr. Stringfield made statements on behalf of the defendant and recommended the Court impose a sentence of twenty (20) years fixed.


The defendant made a statement to the Court on his own behalf.

The Court reviewed sentencing criteria for the record and expressed opinions.

There being no legal cause why judgment should not be pronounced, the Court found the defendant guilty of the offense of **Kidnapping in the Second Degree**, upon his plea of guilty and sentenced him as reflected in the Amended Judgment and Commitment.

The Court advised the defendant of his post judgment rights.

The defendant was remanded to the custody of the Canyon County Sheriff pending transport to the Idaho Department of Correction.



Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 09-18-17 AT 11:05 a.m.
CLERK OF THE DISTRICT COURT
BY McEnneer, Deputy

THE STATE OF IDAHO, or

Plaintiff,

-vs-

Raul Edgar Herrera
Defendant.

Case No. CR 2014-26736C

COMMITMENT

Charge: Kidnapping -
Second Degree

IT IS HEREBY ORDERED that the above-named Defendant, having been found guilty as charged, be committed to the custody of the Sheriff of Canyon County, Idaho and that this Order of Commitment shall serve as authority for continued custody.

IT IS FURTHER ORDERED that the above-named Defendant shall serve:

_____ day(s). _____ month(s). _____ year(s).

as previously Ordered on the Judgment dated _____.

credit for _____ day(s) served.

determinate 20. indeterminate Ø. retained jurisdiction.

work search/work-out privileges granted from _____ to _____.

upon written verification. as authorized by the Sheriff of Canyon County.

Sheriff's Work Detail: _____ days in lieu of _____ days jail to be completed by _____.

If the Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff Inmate Labor Detail, then the Sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

Other: Concurrent w/ any other sentence currently in existence

IT IS FURTHER ORDERED that the above-named Defendant shall report to the Canyon County Sheriff on or before immediately.

Dated: 09-18-17

Signed: [Signature]
Judge

Jail Defendant

COMMITMENT * Re-sentence *

OCT 05 2017

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
RAUL EDGAR HERRERA,)
AKA:)
EDGAR CANTU,)
)
SSN: [REDACTED])
D.O.B: [REDACTED])
)
Defendant.)

**AMENDED
JUDGMENT AND COMMITMENT**

CASE # CR-2014-26736-C

On this 18th day of September 2017, personally appeared Gearld Wolff, Deputy Prosecuting Attorney for the County of Canyon, State of Idaho, the defendant Raul Edgar Herrera, and the defendant's attorney Kenneth Stringfield, this being the time heretofore fixed for pronouncing judgment. This Amended Judgment reflects a change only to count IV, correcting what was previously an illegal sentence. All other terms and conditions remain the same and effective as of the original judgment.

IT IS ADJUDGED that the defendant has been convicted upon finding of guilty by a jury to the offense of **Murder in the First Degree**, a felony, as charged in **Count I** of the Superseding Indictment, in violation of I.C. §§ 18-4001, 18-4002, 18-4003(a), and 18-204. The defendant has been convicted upon finding of guilty by a jury to the offense of **Robbery**, a felony, as charged in **Count II** of the Superseding Indictment, in violation of I.C. §§ 18-6501, 18-6502, 18-6503, and 18-204. The defendant has been convicted upon finding of guilty by a jury to the offense of **Burglary**, a felony, as charged in **Count III** of the Superseding Indictment, in violation of I.C. §§ 18-1401 and 18-204. The defendant has been convicted upon finding of guilty by a jury to the offense of **Kidnapping Second Degree**, a felony, as charged in **Count IV** of the Superseding Indictment, in violation of I.C. §§ 18-4501, 18-4503, and 18-204. The

Copies sent 10-05-17 *MA*

defendant has been convicted upon finding of guilty by a jury to the offense of **Aggravated Battery**, a felony, as charged in **Count V** of the Superseding Indictment, in violation of I.C. §§ 18-903(a), 18-907(a), and 18-204; all having being committed on or about the 8th day of November 2014; and the Court having asked the defendant whether there was any legal cause to show why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant be sentenced on **count I** to the custody of the Idaho State Board of Correction for a minimum period of confinement of thirty-five (35) years, followed by a subsequent indeterminate period of confinement not to exceed life, for a total unified term of life. The defendant be sentenced on **count II** to the custody of the Idaho State Board of Correction for a minimum period of confinement of thirty (30) years, followed by a subsequent indeterminate period of confinement not to exceed life, for a total unified term of life. The defendant be sentenced on **count III** to the custody of the Idaho State Board of Correction for a minimum period of confinement of ten (10) years, followed by a subsequent indeterminate period of confinement not to exceed zero (0) years, for a total unified term of ten (10) years. The defendant be sentenced on **count IV** to the custody of the Idaho State Board of Correction for a minimum period of confinement of twenty (20) years, followed by a subsequent indeterminate period of confinement not to exceed zero (0) years, for a total unified term of twenty (20) years. The defendant be sentenced on **count V** to the custody of the Idaho State Board of Correction for a minimum period of confinement of fifteen (15) years, followed by a subsequent indeterminate period of confinement not to exceed zero (0) years, for a total unified term of fifteen (15) years. These sentences shall run concurrently with each other.

IT IS ORDERED that the defendant be given credit for four hundred six (406) days of incarceration (as of the 13th day of January 2016) prior to the entry of judgment for this offense (or included offense) pursuant to I.C. § 18-309.

IT IS FURTHER ORDERED that the defendant pay court costs and fees in the total amount of \$245.50 (each count), a fine in the amount of \$5,000.00 (each count) and restitution in the amount of \$3689.75, pursuant to the Restitution Order.

IT IS FURTHER ORDERED defendant pay a \$5,000.00 civil fine (on count I) which shall operate as a civil judgment against the defendant and in favor of each victim, pursuant to I.C. §19-5307.

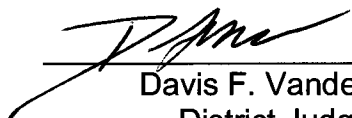
IT IS FURTHER ORDERED that the defendant shall have a permanent no contact order with the victim, Ronald Ghostwolf.

IT IS FURTHER ORDERED that the defendant shall submit a DNA sample and right thumbprint impression to the Idaho State Police or its agent, pursuant to I.C. § 19-5506. Such sample must be provided within 10 calendar days of this order; failure to provide said sample within the 10 day period is a felony offense.

IT IS ADJUDGED that the defendant be committed to the custody of the Sheriff of Canyon County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary or other facility within the State designated by the State Board of Correction.

IT IS FINALLY ORDERED that the clerk deliver a certified copy of this Judgment and Commitment to the Director of the Idaho State Board of Correction or other qualified officer and that the copy serve as the commitment of the defendant.

DATED this 5th day of October 2017.



Davis F. VanderVelde
District Judge

et.

Kenneth F. Stringfield
P.O. Box 777
213 S. 10th Ave.
Caldwell, Idaho 83606
Telephone: (208) 459-6879
Facsimile: (208) 442-7915
ISB No.: 3907
ken@kstringfieldlaw.com

FILED
A.M. 4 P.M.

OCT 25 2017

CANYON COUNTY CLERK
E BULLON, DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff-Respondent,

vs.

RAUL E. HERRERA,
Defendant-Appellant.

Case No. CR2014-26736

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, CANYON COUNTY PROSECUTOR'S OFFICE, 1115 ALBANY ST., CALDWELL, IDAHO, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, Raul E. Herrera, appeals against the above-named respondent(s) to the Idaho Supreme Court from the Amended Judgment of Conviction entered in the above-entitled action on the 5th day of October, 2017, which reflected the trial court's denial of the portion of his Idaho Criminal Rule 35 motion to reduce or correct an illegal sentence regarding County 1 - Murder 1, Honorable Davis VanderVelde, District Judge, presiding.

2. That the Appellant has a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is an appealable order under Rule 11(c) (6,9)

I.A.R.

NOTICE OF APPEAL - 1

3. Appellant wishes to challenge the judgment, including but not limited to, the denial of his request to modify the sentence for Count I based the state and trial court's interpretation of Idaho Code § 18-4004 regarding the mandatory minimum sentence that can be imposed for a person convicted of first degree murder. Appellant may clarify or add additional issues as this appeal progresses.

4. There has been no order entered sealing all or any portion of the record.

5. A standard reporter's transcript is requested of the following.

- a. Motion Hearing, April 24, 2017.
- b. Motion Hearing, June 19, 2017.
- c. Motion Hearing, June 30, 2017.
- d. Motion Hearing, August 8, 2017.
- e. Re-Sentencing Hearing, September 18, 2017.

6. Appellant requests that the clerk's record include all documents normally included under Rule 28, I.A.R. that are related to Mr. Herrera's February 23, 2017, Motion for Correction of Sentence.

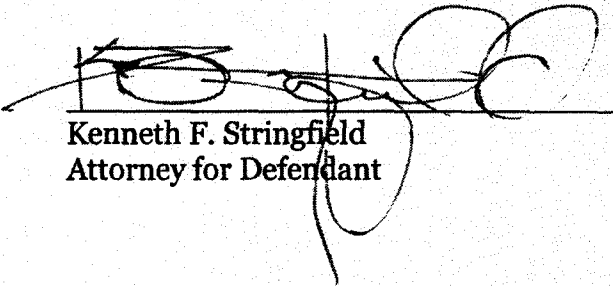
7. I certify that:

- a) No transcript fee is due because no have yet been requested.
- b) Appellant is exempt from paying the fee for preparation of the transcripts and the clerk's record as he is indigent and unable to pay such fee.
- c) As this is an appeal taken in a criminal case, no appellate filing fee is due under Rule 23(a)(8), I.A.R.

NOTICE OF APPEAL - 2

d) A copy of this Notice of Appeal was served as required by Rule 20, I.A.R., upon the court reporter, Christine Rhodes, by placing a copy in her box at the Canyon County Courthouse, upon the Canyon County Prosecuting Attorney by placing such copy in the Prosecutor's basket at the Canyon County courthouse and additional copies were sent by mail to the Idaho Attorney General and the State Appellate Public Defender.

DATED: October 25, 2017.



Kenneth F. Stringfield
Attorney for Defendant

NOTICE OF APPEAL - 3

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Prosecutor
Canyon County Courthouse
1115 Albany St.
Caldwell, Idaho 83605

Hand Delivery to office.

Lawrence Wasden
Idaho Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

U.S. Mail

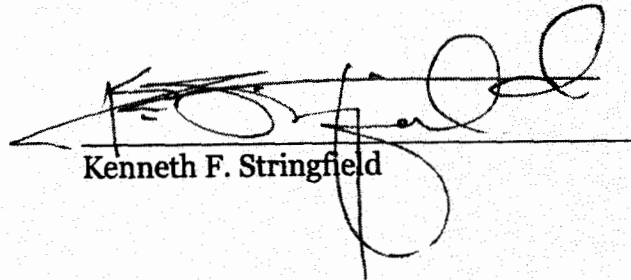
State Appellate Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703

U.S. Mail

Christine Rhodes, Court Reporter
c/o Canyon County Courthouse
1115 Albany St.
Caldwell, Idaho 83605

Hand Delivery to office.

DATED: October 25, 2017.


Kenneth F. Stringfield

NOTICE OF APPEAL - 4

F I L E D
A.M. P.M.
OCT 25 2017
CANYON COUNTY CLERK
E BULLON, DEPUTY

Kenneth F. Stringfield
P.O. Box 777
213 S. 10th Ave.
Caldwell, Idaho 83606
Telephone: (208) 459-6879
Facsimile: (208) 442-7915
ISB No.: 3907
ken@kstringfieldlaw.com
Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff-Respondent,

vs.

RAUL E. HERRERA,
Defendant-Appellant.

Case No. CR2014-26736
MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC
DEFENDER

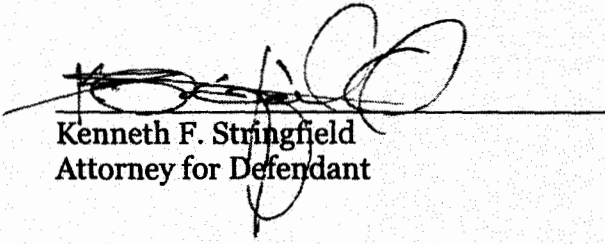
COMES NOW, Raul E. Herrera, by and through his attorney of record, Kenneth F. Stringfield, and hereby moves this Court for its order, pursuant to Idaho Code §19-867 et. seq., appointing the State Appellate Public Defender's Office to represent the Appellant in any and all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record for such purpose. This motion is brought on the grounds and for the reasons that:

1. The Defendant is currently represented by Kenneth F. Stringfield who was appointed as a conflict public defender in proceedings before the district court;
2. The State Appellate Public Defender is authorized by statute to represent the defendant in all felony appellate proceedings; and

//

3. Defendant has expressed a desire to appeal his conviction in this matter.

DATED: October 25, 2017.



Kenneth F. Stringfield
Attorney for Defendant

CERTIFICATE OF SERVICE

I served a true and correct copy of the above and foregoing *Motion for Appointment of State Appellate Public Defender* upon the individual(s) named below in the manner noted:

- By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

Canyon County Prosecutor
Canyon County Courthouse
1115 Albany St.
Caldwell, Idaho 83605

Christine Rhodes, Court Reporter
c/o Canyon County Courthouse
1115 Albany St.
Caldwell, Idaho 83605

- By depositing copies of the same in the United States Mail, postage prepaid, first class,

Lawrence Wasden
Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0010

State Appellate Public Defender
3647 Lake Harbor Lane
Boise, ID 83703



Kenneth F. Stringfield

MOTION FOR APPOINTMENT OF STATE
APPELLATE PUBLIC DEFENDER - 2

CT
Kenneth F. Stringfield
P.O. Box 777
213 S. 10th Ave.
Caldwell, Idaho 83606
Telephone: (208) 459-6879
Facsimile: (208) 442-7915
ISB No.: 3907
ken@kstringfieldlaw.com

Attorney for Defendant


IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff-Respondent,
vs.
RAUL E. HERRERA,
Defendant-Appellant.

Case No. CR2014-26736
ORDER TO APPOINT STATE
APPELLATE PUBLIC DEFENDER

UPON REVIEW of the Defendant's motion and good cause appearing therefore;
IT IS HEREBY ORDERED and THIS DOES ORDER that that the Idaho State
Appellate Public Defender shall appear as counsel of record for Defendant, Raul E. Herrera,
and is substituted for Kenneth F. Stringfield.

DATED this ____ day of October, 2017.



Honorable Davis VanderVelde

Signed: 11/1/2017 11:03 AM

ORDER - 1

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Canyon County Prosecutor
Canyon County Courthouse
1115 Albany St.
Caldwell, Idaho 83605

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket in clerk's office
- Email

Lawrence G. Wasden
Idaho Attorney General
700 W. Jefferson
Boise, Idaho 83720

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket in clerk's office

Kenneth F. Stringfield
PO Box 777
Caldwell, Idaho 83606

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket in clerk's office

State Appellate Public Defender
3647 Lake Harbor Lane
Boise, ID 83703

- U.S. Mail
- Facsimile
- Hand Delivery
- Attorney's basket in clerk's office

Signed: 11/1/2017 02:42 PM

DATED this ____ day of October, 2017.

C. Jimenez

Clerk

ORDER - 2

In the Supreme Court of the State of Idaho

F I L E D
12:11 A.M.

DEC 01 2017

CANYON COUNTY CLERK
K WALDEMER, DEPUTY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 RAUL EDGAR HERRERA,)
)
 Defendant-Appellant.)

ORDER AUGMENTING APPEAL
Supreme Court Docket No. 45547-2017
Canyon County No. CR-2014-26736


WHEREAS, a Clerk's Record, Reporters' Transcripts and Exhibits having been filed with this Court in prior appeal No. 43975, *State v. Herrera*, Canyon County No. CR-2014-26736; therefore,

IT HEREBY IS ORDERED that this Record on Appeal shall be AUGMENTED to include the Clerk's Record, Reporters' Transcripts and Exhibits filed in prior appeal No. 43975, *State v. Herrera*, Canyon County No. CR-2014-26736.

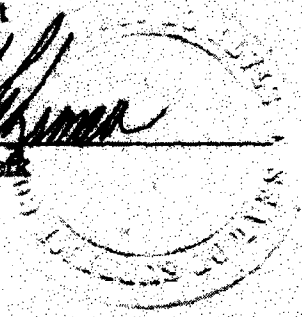
IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in this Notice of Appeal together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 43975. The designated Court Reporter shall prepare and lodge the transcripts requested in the Notice of Appeal and the REPORTER'S TRANSCRIPTS AND CLERK'S RECORD shall be filed with this Court by February 6, 2018.

DATED this 30th day of November, 2017.

For the Supreme Court


Karel A. Lehrman, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter
District Judge Davis F. VanderVelde



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff-)	
Respondent,	)	Case No. CR-14-26736*C
)	
-vs-	)	CERTIFICATE OF EXHIBITS
)	
RAUL EDGAR HERRERA, etal.,)	
)	
Defendant-)	
Appellant.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify the following is being sent as a confidential exhibits:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 3rd day of January, 2018.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *K Waldemes* Deputy

CERTIFICATE OF EXHIBITS

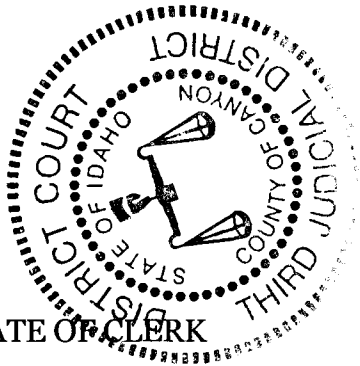


IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
	)	Case No. CR-07-14455 *C
Plaintiff-)	
Respondent,)	
)	
-vs-	)	CERTIFICATE OF CLERK
)	
RAUL EDGAR HERRERA, etal.,)	
)	
Defendant-)	
Appellant.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Limited Record in the above entitled case was compiled and bound under my direction as, and is a true, full correct Supplemental Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, except no documents were included from the previous appeal in Docket No. 43975-2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 3rd day January, 2018.



CERTIFICATE OF CLERK

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *H. Waldemer* Deputy

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff-	)	Supreme Court No. 45547-2017
Respondent,)	
	)	CERTIFICATE OF SERVICE
-vs-)	
)	
RAUL EDGAR HERRERA, etal.,)	
)	
Defendant-)	
Appellant.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State’s Mail, postage prepaid, one copy of the Clerk’s Record and one copy of the Reporter’s Transcript to the attorney of record to each party as follows:

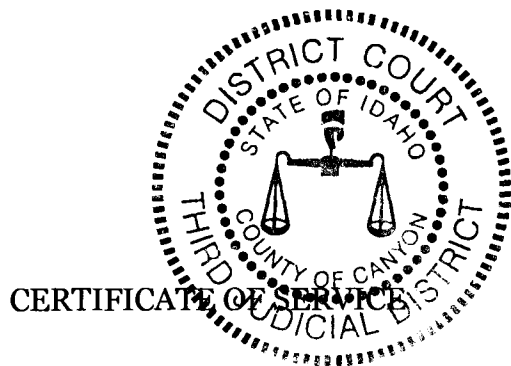
Eric D. Fredericksen, State Appellate Public Defender’s Office,
322 East Front Street, Suite 570, Idaho 83702

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 3rd day of January, 2018.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho
in and for the County of Canyon.

By: *K. Wallamer* Deputy



To: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
Fax: 334-2616

Docket No. 45547

(Res) State of Idaho
vs.
(App) Raul E. Herrera

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on January 2, 2018, I lodged 0 & 2 transcripts of Motion Hearings dated April 24, 2017, June 19, 2017, June 30, 2017, August 8, 2017 and a Re-Sentencing Hearing dated September 18, 2017 of approximately 49 pages in length for the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Christine E. Rhodes
Court Reporter, CSR No. 991

Date: January 2, 2018