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### State v. Herrera Appellant's Brief Dckt. 45547

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45547
	)	
v.	)	CANYON COUNTY NO. CR 2014-26736
	)	
RAUL EDGER HERRERA,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Raul Herrera contends the district court erred in denying his I.C.R. 35(a) motion (“Rule 35 motion”), in which he alleged his sentence on his murder conviction was unlawful. Mindful of the language of I.C. § 18-4004, as it has been interpreted by the Court of Appeals, he maintains his that sentence is unlawful according to language from a prior Idaho Supreme Court case. As such, this Court should reverse the order denying his Rule 35 motion and remand this case for further proceedings.

## Statement of the Facts and Course of Proceedings

Following a jury trial, Mr. Herrera was convicted of various charges, including murder and kidnapping. On those two charges, the district court respectively imposed unified sentences of life, with thirty-five years fixed, and life, with twenty years fixed. (Supp. R., p.399.)<sup>1</sup> Subsequently, Mr. Herrera filed a motion alleging both those sentences were illegal. (R., pp.68-70.)

As to the sentence on the kidnapping charge, he argued that the sentence imposed on the kidnapping charge exceeded the twenty-five-year maximum term authorized by statute. (R., p.63.) The State conceded that the sentence for kidnapping was illegal. (R., p.81.) As such, the district court granted Mr. Herrera's Rule 35 motion in regard to the kidnapping charge and determined a new sentencing hearing was required. (R., pp.153-54.) Mr. Herrera and the prosecutor agreed to stipulate to the district court imposing a unified term of twenty years, all fixed, on the kidnapping charge, but only if the district court concluded his sentence on the murder charge was lawful. (Tr., p.40, Ls.10-18) Mr. Herrera specifically explained that the stipulation would not hold if the sentence on his murder charge was determined to be unlawful. (Tr., p.39, L. 17 - p.40, L.1.)

As to the sentence on the murder charge, Mr. Herrera argued that the thirty-five-year fixed term on the murder sentence was unlawful in light of the Idaho Supreme Court's decision in *State v. Booth*, 151 Idaho 612, 622 (2011). He argued that, in *Booth*, the Court had concluded I.C. § 18-4004 only authorized the district court to impose a unified sentence of life with a fixed term of ten years. (R., pp.107-09.) The State agreed the language of I.C. § 18-4004 was

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<sup>1</sup> The Idaho Supreme Court ordered the record in this appeal be augmented with the record prepared in Mr. Herrera's prior appeal, Docket Number 43975. References to the record from the prior appeal in this brief will be identified as "Supp. R."

unambiguous, but argued it simply set a mandatory minimum term for the fixed sentence, but that the district court had discretion to impose a longer fixed sentence if it determined it was appropriate to do so. (Tr., p.33, Ls.8-24) The district court concluded that the language Mr. Herrera cited in *Booth* was *dicta*, noting that, in other parts of the opinion, *Booth* described the authorized sentence as “at least 10 years fixed.” (R., p.153.) As such, it read *Booth* harmoniously with the Court of Appeals’ subsequent decision in *State v. Griffith*, 157 Idaho 409 (Ct. App. 2014), which the district court determined was controlling on this question. (R., pp.152-53.) Therefore, it denied Mr. Herrera’s Rule 35 motion in regard to the sentence on the murder charge.

As a result of that decision, both parties requested the district court enter an amended judgment of conviction to impose a twenty-year-fixed sentence on the kidnapping charge, per their stipulation. (See Tr., p.43, Ls.11-13, p.46, Ls.3-17.) The district court followed that stipulation. (See R., pp.161-63.) Mr. Herrera filed a notice of appeal timely from the amended judgment of conviction. (R., pp.164-66.)

### ISSUE

Whether the district court erred by denying Mr. Herrera’s Rule 35 motion.

### ARGUMENT

#### The District Court Erred By Denying Mr. Herrera’s Rule 35 Motion

Mr. Herrera contends the district court erred by denying his Rule 35 motion in regard to his allegation that the sentence for his murder conviction was unlawful. Mindful of the language of I.C. § 18-4004, as it has been interpreted in *Griffith*, 157 Idaho at 409-10, Mr. Herrera maintains the thirty-five-year fixed term of his murder sentence is unlawful because, in *Booth*,

the Idaho Supreme Court concluded that statute did not authorize any sentence except a unified sentence of life with ten years fixed: “In other words, a defendant convicted of first-degree murder automatically receives an indeterminate life sentence with a fixed term of ten years.”<sup>2</sup> *Booth*, 151 Idaho at 622. To that point, Mr. Herrera acknowledges, as the district court pointed out (R., p.153), that the *Booth* Court also explained, “The language of [I.C. § 18-4004] 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.” *Id.* at 619.

If this Court agrees that the fixed term of his murder sentence is greater than what I.C. § 18-4004 authorizes, it should reverse the order denying his Rule 35 motion and remand this case for further proceedings. Those proceedings should include resentencing on the kidnapping charge, since Mr. Hanson’s stipulation to the amended sentence on that charge was premised on the propriety of the district court’s determination that his sentence on the murder charge was lawful. (Tr., p.39, L.17 - p.40, L.18.)

CONCLUSION

Mr. Herrera respectfully requests this Court reverse the order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 9<sup>th</sup> day of March, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

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<sup>2</sup> *Griffith* does not address the *Booth* Opinion. See generally *Griffith*, 157 Idaho 409.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9<sup>th</sup> day of March, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE  
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CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas