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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,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Raul Herrera appealed, maintaining that, mindful of the language of I.C. § 18-8004, as it has been interpreted the Court of Appeals, the district court erred by denying the part of his I.C.R. 35(a) motion (“Rule 35 motion”) in which he asserted his murder sentence was unlawful. The State does not raise any arguments regarding the merits of his challenge to the district court’s decision to deny the part of his motion on the murder sentence.

Rather, the State contends that, because Mr. Herrera waited to file his notice of appeal until after the district court entered an amended judgment of conviction to finally resolve another outstanding issue raised in the Rule 35 motion, his appeal was untimely as to the denied part

regarding his claim about the murder sentence. The State's argument is contrary to the Idaho Supreme Court's explanations about how I.A.R. 14(a) works, as well as its long-standing policy against piecemeal appeals.

Because, given the Idaho Supreme Court's interpretation of I.A.R. 14(a), Mr. Herrera's notice of appeal was timely as to the district court's final resolution of all the issues raised in his Rule 35 motion, this Court should consider the merits of his argument on appeal.

Statement of the Facts and Course of Proceedings

The statement of facts and course of proceedings were previously articulated in Mr. Herrera's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

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

A. The Time For Mr. Herrera To Appeal The District Court's Resolution Of His Rule 35 Motion Did Not Begin Until The District Court Actually Resolved All The Issues Raised In That Motion

Mr. Herrera acknowledges that he did not file his notice of appeal within forty-two days of the order partially granting and partially denying his motion. However, that does not mean his appeal was untimely because that order did not fully resolve all the issues raised in his motion. That order did not actually grant the relief required by the district court's conclusion that the kidnapping sentence was unlawful. A new sentencing hearing and amended judgment of conviction were needed to actually correct the unlawful kidnapping sentence.

As the Idaho Supreme Court has made clear, I.A.R. 14(a)'s "forty-two day period to file a notice of appeal begins to run once an order is entered that *resolves all issues, grants all relief* to which the prevailing party is entitled other than attorney fees and costs, and brings an end to the lawsuit." *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.*, 148 Idaho 588, 591 (2010) (specifically resolving the confusion which existed in regard to when I.A.R. 14(a)'s clock started running) (emphasis added). In other words, "[a]ppellate review . . . ought properly to await final determination of the entire case if the parties then feel an appeal is appropriate." *Long v. Goodyear Tire & Rubber Co.*, 100 Idaho 183, 184 n.1 (1979) (quoting *Pichon v. L.J. Broekemeier, Inc.*, 99 Idaho 598, 602 (1978)) (ellipsis from *Long*). The policy behind that conclusion is to avoid "piecemeal appeals," which are disfavored except in those "infrequent case[s] in which the interests of justice [would be] served by an immediate appeal." *Bishop v. Capital Financial Services*, 109 Idaho 866, 868 (1985).

The problems with proceeding on appeal when not all the issues raised to the district court have been resolved exist in the Rule 35(a) context as well as the civil context. *See, e.g., State v. Villavicencio*, 159 Idaho 430, 433 (Ct. App. 2015) (explaining that not allowing the district court to rule on a Rule 35(a) motion before ruling on other aspects of the sentence would result in the district court trying to act "based upon a hypothetical judgment—a judgment with seven-year probation terms that *might* exist after the illegal sentences were cured") (emphasis from original). Therefore, the Supreme Court's explanation about when I.A.R. 14(a)'s clock begins to run is applicable to the Rule 35(a) context.

The facts of Mr. Herrera's case actually demonstrate why that explanation applies to Rule 35(a) motions. The district court's resolution of the two issues raised in Mr. Herrera's motion was expressly intertwined since Mr. Herrera conditioned his stipulation to a particular remedy

for the unlawful kidnapping sentence on his ability to appeal the district court's decision on the murder sentence.¹ (Tr., p.39, L.17 - p.40, L.18.) As a result, the propriety of the district court's resolution regarding the kidnapping sentence is dependent on the propriety of the resolution regarding the murder sentence. (See App. Br., p.4.) That means artificially severing those two issues and reviewing them under separate notices of appeal would not serve the interests of justice because those piecemeal appeals could result in inconsistent conclusions in regard to the propriety of the resolution of the kidnapping sentence issue.

The State's argument is inconsistent with the Idaho Supreme Court's interpretation of I.A.R. 14(a). For example, it contends that, because I.A.R. 11(c) identifies orders denying a post-judgment motions (such as a Rule 35(a) motions) as appealable as a matter of right, a separate notice of appeal needed to be filed within forty-two days of such an order. (Resp. Br., pp.3-5.) However, I.A.R. 11(c) does not specifically address orders *partially* granting post-judgment motions, nor does it speak to *when* such appeals of right need to be initiated. See *generally* I.A.R. 11(c). Therefore, the State's attempt to use I.A.R. 11(c) to dictate when the notice of appeal must be filed is inappropriate. Compare *Harrison v. Certain Underwrites at Lloyd's, London*, 149 Idaho 201, 204 (2010) (explaining that, while I.A.R. 17 allowed for an appeal of right from an order confirming an arbiter's award of damages, because I.A.R. 17 did not alter the time to file appeals under I.A.R. 14(a), the appeal was not timely as to the initial order imposing the award because the notice of appeal was not within the time frame set forth in I.A.R. 14(a)); *State v. Fuller*, 104 Idaho 891, 891 (Ct. App. 1983) (reaching the same conclusion in the context of a Judgment of Conviction and subsequent Rule 35 motion requesting leniency).

¹ Because Mr. Herrera's stipulation to the kidnapping sentence was specifically conditioned on his ability to appeal the decision to deny his claim in regard to the murder sentence, if the State is correct and the notice of appeal was, in fact, not timely on that issue, Mr. Herrera reserves the right to challenge his attorney's actions in that regard in post-conviction.

Rather, the question of when the notice of appeal must be filed is governed by I.A.R. 14(a). As explained *supra*, the Idaho Supreme Court has interpreted that rule to mean that the time to appeal an order partially granting and partially denying a Rule 35(a) motion does not begin to run until all the issues raised in the motion are fully resolved, meaning all the relief to which the defendant is entitled under the partial grant of his motion is actually effected. *See Goodman Oil*, 148 Idaho at 591. Since the amended judgment resolved the last outstanding issue raised in Mr. Herrera's Rule 35 motion by granting the relief needed to correct the illegal kidnapping sentence, that was the point when the district court's resolution of Mr. Herrera's Rule 35(a) motion became final. Therefore, Mr. Herrera's notice of appeal, filed within forty-two days of the final resolution of his Rule 35 motion, was timely to challenge the propriety of the decisions involved in resolving that motion. As such, this Court should consider the merits of Mr. Herrera's argument on appeal.

B. The District Court Erred By Denying Mr. Herrera's Rule 35 Motion

The State does not actually offer any arguments in regard to the merits of Mr. Herrera's argument on appeal. (*See generally* Resp. Br., pp.1-6.) As such, no further reply is necessary in that regard. Rather, Mr. Herrera simply refers the Court back to pages 3-4 of his Appellant's Brief.

CONCLUSION

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

DATED this 30th day of April, 2018.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of April, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DAVIS F VANDERVELDE
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH F STRINGFIELD
ATTORNEY AT LAW
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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas