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### State v. Alvarez Appellant's Reply Brief Dckt. 48918

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48918-2021
	)	
v.	)	ADA COUNTY NO. CR01-20-5746
	)	
MARIO ALBERTO ALVAREZ,	)	APPELLANT'S REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mario Alberto Alvarez appeals from the district court's Judgment of Conviction and Order of Commitment. Mr. Alvarez was sentenced to a unified sentence of fourteen years, with four years fixed, for grand theft by receiving, possessing, and/or obtaining control over stolen property. He asserts that the district court abused its discretion because in light of the evidence, including the mitigating factors present in his case, the ultimate sentencing conclusion was unreasonable. This Reply Brief is necessary to clarify an important factual discrepancy.

Statement of the Facts and Course of Proceedings

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

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Alvarez, a unified sentence of fourteen years, with four years fixed, following his conviction for grand theft by receiving, possessing, and/or obtaining control over stolen property?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Alvarez, A Unified Sentence Of Fourteen Years, With Four Years Fixed, Following His Conviction For Grand Theft By Receiving, Possessing, And/Or Obtaining Control Over Stolen Property

Mr. Alvarez asserts that the statements that he received the check he deposited into his account from Chancellor Threatt are true, but misleading. (Appellant's Brief, p.2; Respondent's Brief, pp.1-2.) During the trial, Detective Whilden testified that Mr. Alvarez told him he had received the check from a guy named Chance, that he had no reason to believe it was not a good check, and no reason to believe it was stolen. (Tr., p.153, L.18 – p. 154, L.3.) During trial, it was unclear when Mr. Alvarez learned that it was Chance, not the alleged victim, Mr. Vicuna, that gave him the check. (*See generally* Tr.) However, at sentencing, Mr. Alvarez made it clear that when received the check he thought it was Mr. Vicuna providing the check and that he only learned later that it was an individual named Chance:

And when I met this individual, Chance Threatt, he impersonated Steve Vicuna. I was hoping to get my lawnmower business off the ground. I was going to build a deck. It was iffy, you know, the way they were, but he had the -- he had the credentials or the IDs, and, you know, I am thinking the bank will protect me anyways, and, you know, if it is fraud or if it was anything, the bank -- the check bounced. I didn't receive one single penny. I am not making excuses for it. And

I looked at this guy, and I was, like, well, I didn't do the work. I just didn't do the work. But then, when I did find out -- when I did find out that he committed a crime against someone else, the crime is I should have reported it.

(Tr., p.220, Ls.7-22.)

Mr. Alvarez' version of events has been consistent throughout his case. When he first spoke to officers, he also noted that he only learned at a later date that the person who gave him the check was actually Chance Threatt. (PSI, p.346.)

Based upon this clarification and the mitigating information discussed in his Appellant's Brief, incorporated herein by reference, he asserts that the district court abused its discretion by imposing an excessive sentence upon him.

#### CONCLUSION

Mr. Alvarez respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 5<sup>th</sup> day of November, 2021.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of November, 2021, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to be served as follows:

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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

EAA/eas