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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46335-2018
Plaintiff-Respondent,)	
)	CANYON COUNTY
v.)	CR14-18-3847
)	
SHANE LEE DOBBS,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

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

HONORABLE THOMAS W. WHITNEY
District Judge

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

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

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

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

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Mr. Dobbs appeals from his judgment of conviction, challenging his sentence as an abuse of discretion. He argued in his Appellant's Brief that the district court abused its discretion when it fashioned his sentence, in part, based on a desire to "deter[] private vengeance." (Appellant's Br., pp.4-6.) In its Respondent's Brief, the State argues, among other things, that any error on the part of the district court "was clearly harmless" because the sentence would have been the same absent the error. (Respondent's Br., p.8.) Mr. Dobbs submits this Reply Brief primarily to address the State's harmless error argument. Because it is not clear beyond a reasonable doubt that the district court would have imposed the same sentence on Mr. Dobbs absent its stated desire to deter private vengeance, this Court should vacate Mr. Dobbs' sentence and remand this case to the district court for a new sentencing hearing.

Statement of Facts and Course of Proceedings

Mr. Dobbs included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-2.)

ISSUE

Did the district court abuse its discretion at sentencing?

ARGUMENT

The District Court Abused Its Discretion At Sentencing

Mr. Dobbs argued in his Appellant’s Brief that the district court did not act within the boundaries of its discretion when it fashioned his sentence, in part, based on a desire to “deter[] private vengeance.” (Appellant’s Br., pp.4-6.) At Mr. Dobbs’ sentencing hearing, the district court described the punishment sentencing factor as follows:

The next factor is punishment. And punishment in this sense, in the sense of a child sex crime, often can be explained by saying it deters private vengeance. And so the child that you had sex with there may be [a] relative or friend of hers who thinks, well, the sentence imposed was not sufficiently serious, and so I need to take the law into my own hands. So it is—it’s not the primary factor in sentencing, but it’s a legitimate sentencing factor for a court to consider. The sentence must send a message to others in society that there is really no need for anyone to take the law into his or her own hands.

(Tr., p.64, L.17 – p.65, L.3.) The State argues the district court did not abuse its discretion in considering deterrence of private vengeance because the court’s explanation was consistent with the dictionary definition of “punishment” and “vengeance.” (Respondent’s Br., pp.7-8.) The State’s analysis does not go far enough.

Our Supreme Court has previously explained that trial courts are not required to use any specific words in articulating the objectives of criminal punishment. *See State v. Wersland*, 125 Idaho 499, 503 (1994). However, the words used by a trial court must express the proper objectives of criminal punishment. *See id.* Thus, the *Wersland* Court held the trial court did not abuse its discretion when it used the words “vindicating the victim” and “imposing just moral blame” as alternative ways of stating the fourth objective of criminal punishment, which is “punishment or retribution for wrongdoing.” *Id.* Here, by contrast, the words used by the district court (“deter[] private vengeance”) are not an alternative way of stating “punishment or retribution for wrongdoing.” The concepts of punishment and retribution do not encompass the

deterrence of private vengeance. The district court explained to Mr. Dobbs that, in fashioning his sentence for a child sex crime, it could legitimately consider deterring a relative or friend of the victim from taking the law into his own hands if he believed the sentence imposed was not sufficiently serious. This does not fall within the objective of “punishment or retribution for wrongdoing.”

The State also argues that any error on the part of the district court “was clearly harmless” because the sentence would have been the same absent the error. (Respondent’s Br., p.8.) As a general rule, when a discretionary ruling has been tainted by error, this Court will vacate the trial court’s decision and remand the matter for a new, error-free, discretionary determination. *See State v. Medrain*, 143 Idaho 329, 333 (Ct. App. 2006). If, however, this Court is “convinced, beyond a reasonable doubt” that the error did not affect the sentence imposed, then remand is not necessary. *See id.* This Court cannot be convinced, beyond a reasonable doubt, that the district court’s error in describing the objectives of sentencing did not affect the sentence it imposed on Mr. Dobbs.

The sentence the district court imposed (22 years, with 10 years fixed) was greater than the sentence recommended by the prosecutor (20 years, with 8 years fixed) and by counsel for Mr. Dobbs (7 years, with 2 years fixed). (Tr., p.38, L.25 – p.39, L.2, p.47, Ls.10-15; R., pp.51, 53, 56.) The district court expressed particular concern with deterring private vengeance in child sex cases, which this case was. While the district court said deterrence of private vengeance was “not the primary factor,” it did describe it as “a legitimate sentencing factor.” (Tr., p.64, L.17 – p.65, L.3.) The district court never said it would impose the same sentence on Mr. Dobbs absent consideration of, in the district court’s view, the legitimate sentencing factor of deterring private vengeance. On the record presented, remand for a new sentencing hearing is necessary.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Dobbs respectfully requests that this Court vacate his sentence and remand this case to the district court for a new sentencing hearing.

DATED this 29th day of May, 2019.

/s/ Andrea W. Reynolds

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Kylie M. Fournier

KYLIE M. Fournier
Administrative Assistant

AWR/kmf