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State v. Morris Appellant's Reply Brief Dckt. 38678

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38678
)	
v.)	
)	
LARRY EUGENE MORRIS,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

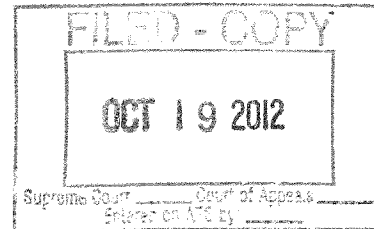
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STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Mr. Morris argued that the district court had jurisdiction to "commute" his sentence and place him on probation pursuant to Idaho Criminal Rule 33(d) and Idaho Code Section 19-2601(4). He also argued that the district court abused its discretion when it denied his Idaho Criminal Rule 35 (*hereinafter*, I.C.R. 35) motion requesting leniency and when it concluded it would have denied his I.C.R. 33(d) motion on the merits. This brief is necessary to reply to the State's argument that a district court does not have the authority to commute a sentence after the sentence has been imposed and executed.

Statement of the Facts and Course of Proceedings

After the State filed its Respondent's Brief, Mr. Morris filed a *pro se* Affidavit of Genuine Issue of Material Fact, which is being withdrawn from this Court's consideration.

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

ISSUES

- 1) Did the district court have jurisdiction to “commute” Mr. Morris’ sentence pursuant to Idaho Criminal Rule 33(d) and Idaho Code Section 19-2601(4)?¹
- 2) Did the district court abuse its discretion when it denied Mr. Morris’s request for probation, made pursuant to Idaho Criminal Rule 35?
- 3) Did the district court abuse its discretion when it denied Mr. Morris’ Idaho Criminal Rule 33(d) motion on its merits?

¹ This is the only issue which will be addressed in this brief.

ARGUMENT

I.

The District Court Had Jurisdiction To “Commute” Mr. Morris’ Sentence Pursuant To Idaho Criminal Rule 33(d) And Idaho Code Section 19-2601(4)

A. Introduction

In his Appellant’s Brief, Mr. Morris argued that, pursuant to, I.C.R. 33(d) and I.C. § 19-2601(4), the district court had jurisdiction for one year to suspend his sentence and place him on probation. At the time, he used the term “commute” as a shorthand way of describing the action he was requesting the district court to perform. In retrospect, “commute” was a poor choice of words, as it has a specific meaning under I.C. § 19-2601(1).² Nevertheless, the substance of his argument remains sound. The first sentence of I.C. § 19-2601(4) provides the district court up to one year after the entry of judgment to suspend the defendant’s sentence and place him on probation. In other words, I.C. § 19-2601(4) extends the district court’s jurisdiction for one year.

B. The District Court Had Jurisdiction To “Commute” Mr. Morris’ Sentence Pursuant To Idaho Criminal Rule 33(d) And Idaho Code Section 19-2601(4)

The State argues that the district court correctly concluded that it did not have jurisdiction to consider Mr. Morris’ Rule 33(d) motion. (Respondent’s Brief, pp.8-10.) In support of this assertion, it relies on *State v. Starry*, 130 Idaho 834 (1997), the facts of which the State asserts are analogous to Mr. Morris’ case. (Respondent’s Brief, p.10.) Contrary to the State’s assertion, *Starry* is distinguishable. In *Starry*, the defendant pleaded guilty to two counts of kidnapping. *Id.* at 835. Eighteen years later, Mr. Starry

² Under I.C. § 19-2601(1), “commutation” entails imposing sentence and placing the defendant in county jail instead of prison.

“filed a *pro se* self-styled ‘petition to commute sentence’ in the district court *citing* I.C. §§ 19-2601 and 19-2523.” *Id.* (original emphasis). The district court denied the motion without a hearing and Mr. Starry appealed. *Id.* The Court of Appeals affirmed the district court’s decision based on its conclusion that the district court had no authority to commute a sentence once it has been imposed and executed, as that authority rests with Idaho’s executive branch. *Id.* The Court also held that the defendant’s motion was, in substance, an untimely I.C.R. 35 motion. *Id.* This case is distinguishable from *Starry* because Mr. Morris filed his I.C.R. 33(d) motion within one year of the judgment of conviction.

This distinction is relevant because Mr. Morris is arguing that I.C. § 19-2601(4) extends the district court’s jurisdiction to suspend a sentence for one year after the issuance of the judgment of conviction. The defendant in *Starry* relied on no rule to extend the district court’s jurisdiction over his case as he filed it eighteen years after the entrance of the judgment of conviction. Since there was no rule to extend the district court’s jurisdiction for eighteen years, the Court of Appeals correctly affirmed the district court. For that reason, *Starry* is inapposite when compared to the facts of this case.

Additionally, the *Starry* opinion is inapposite because it neither addressed the specific language of I.C. § 19-2601(4) nor the argument being advanced by Mr. Morris. The *Starry* opinion did not recite the specific arguments proffered by Mr. Starry, so there is no way of knowing if the *Starry* Court was addressing the specific issues advanced by Mr. Morris. Moreover, it really would not matter because Mr. Starry filed his motion to commute his sentence eighteen years after the entry of judgment, and as stated above,

that late filing would prevent Mr. Starry prevailing under the theory advanced by Mr. Morris.

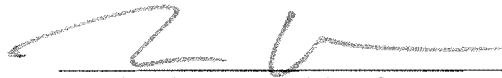
Mr. Morris' reliance on the first sentence of I.C. § 19-2601(4) is in harmony with the other commonly accepted methods utilized to extend a district court's jurisdiction. For example, a district court can retain jurisdiction for a year, and at the end of that year decide whether to suspend a defendant's sentence and place the defendant on probation. In the event probation is ordered at the time of sentencing, or after a period of retained jurisdiction, the district court's jurisdiction can extend for years if the defendant is successful on probation. A district court's power to reduce a sentence pursuant to a timely I.C.R. 35 motion can extend for a period of time longer than a year, in the event there is a justification for the delay. *State v. Fisch*, 142 Idaho 781 (Ct. App. 2006).

In sum, *Starry* is distinguishable because the motion to commute in that case was filed eighteen years after the sentence was imposed and executed, and because Mr. Starry did not rely on either a statute or rule which extended the district court's jurisdiction over his case. Conversely, Mr. Morris filed his I.C.R. 33(d) motion within a year of the entry of judgment and the district court's jurisdiction over this case was extended by I.C. § 19-2601(4). Therefore, the district court had jurisdiction to rule on the merits of Mr. Morris' I.C.R. 33(d) motion to suspend his sentence.

CONCLUSION

Mr. Morris respectfully requests that this Court remand this matter to the district court with instructions to review the merits of Mr. Morris' I.C.R. 33(d) motion. Alternatively, Mr. Morris respectfully requests that this Court remand this case with instructions to place Mr. Morris on probation. Alternatively, Mr. Morris respectfully requests that this Court reduce the fixed portion of his sentence.

DATED this 19th day of October, 2012.



SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of October, 2012, 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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