

6-27-2014

## State v. Moore Appellant's Brief 2 Dckt. 40525

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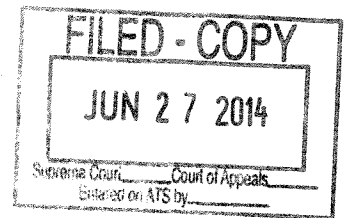
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 40525
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2009-11603
v.	)	
	)	
MICHAEL FRANCIS MOORE,	)	APPELLANT'S BRIEF
	)	IN SUPPORT OF
Defendant-Appellant.	)	PETITION FOR REVIEW
_____	)	

STATEMENT OF THE CASE

Nature of the Case



Michael Francis Moore asks the Idaho Supreme Court to review the opinion of the Idaho Court of Appeals, 2014 Opinion No. 479 (Ct. App. April 25, 2014) (*hereinafter*, Opinion). He submits that the Opinion, which affirmed his Judgment of Conviction, was in conflict with previous decisions of the Idaho Supreme Court and the Court of Appeals because the Court of Appeals decision did not properly consider whether the existing mental health evaluations and reports relied upon by the district court were sufficient to comply with the requirements of I.C. § 19-2522.

## Statement of the Facts & Course of Proceedings

On the morning of June 25, 2009, law enforcement officials responded to a shoplifting report. (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.2.) Mr. Moore was intoxicated and had shoplifted a six pack of Mike's Hard Lemonade<sup>2</sup> from a drugstore. (PSI, p.2.) As Mr. Moore was leaving the store, he struck a loss prevention specialist who tried to detain him. (PSI, p.2.) Mr. Moore was charged by Information with one count of burglary, one count of petit theft, and one count of simple battery.<sup>3</sup> (R., pp.24-25.)

Pursuant to a plea agreement, Mr. Moore pled guilty to the burglary charge and the other charges were dismissed. (12/01/09 Tr., p.2, L.s.2-13; R., pp.39-40, 41-47.) Although the terms of the plea agreement provided that the State agreed to recommend probation, the plea agreement also provided that the State's recommendation would be conditioned upon, *inter alia*, the defendant having no failures to appear. (12/01/09 Tr., p.3, Ls.8-12; R., pp.42-47.) The district court ordered a PSI and a substance abuse evaluation prior to sentencing. (12/01/09 Tr., p.14, L.8 – p.15, L.1.)

Mr. Moore failed to appear at sentencing and the district court issued an arrest warrant. (R., pp.48-50.) Mr. Moore was arrested on the warrant. (R., p.50.) The sentencing hearing was continued several times to allow Mr. Moore sufficient time to

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file containing the PSI, and all included attachments. These documents will hereinafter be described as the "PSI" for ease of reference.

<sup>2</sup> Mike's Hard Lemonade is an alcoholic beverage.

<sup>3</sup> Mr. Moore was initially charged with a single count of robbery (R., pp.6-7), but the robbery charge was subsequently amended to burglary and two new crimes were added—petit theft and misdemeanor battery. (R., pp.17-18.)

read the PSI.<sup>4</sup> (3/30/10 Tr., p.3, Ls.6-10.) During one such hearing on March 23, 2010, Mr. Moore's counsel advised the district court that, at the time of the incident, Mr. Moore was experiencing symptoms of his mental illness and, based on a recent conversation with him at the jail, she believed that his mental health issues likely played a "very big role" in the incident. (3/23/10 Tr., p.10, Ls.4-9.) Defense counsel asked the court to order a mental health evaluation. (3/23/10 Tr., p.10, Ls.13-16.) The district court reviewed Mr. Moore's mental health history contained in the records attached to the PSI and noted that:

Well, a pure evaluation – I have the benefit of the report from Intermountain hospital of February 28<sup>th</sup> of '05, the discharge, which lays out the diagnosis on Axis I with schizoaffective disorder with alcohol and polysubstance abuse, along with some other things.

And then we have a psychiatric evaluation that was done by Saint Alphonsus on – I love the way they hid the dates of these things. Well, again, this is in August of '08. There is a – it doesn't read the same, necessarily, as a court-ordered evaluation, but I think it tells me what I'm going to find out from a court-ordered evaluation, that the defendant does have a history of schizophrenic-type mental illness.

So I'm not inclined to continue this for mental health – I mean, the records go back – I was just trying to remember how far back they went. And they go back clear to 2002. I'm looking at one in January of '04 where he presents at the emergency department with histories of hearing voices and definitely psychotic state. So, Counsel, I'm not inclined to [order a mental health evaluation].

(3/23/10 Tr., p.11, L.8 – p.12, L.3.)

At the sentencing hearing the State asked to be released from its obligations under the plea agreement, as Mr. Moore had failed to appear for his sentencing

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<sup>4</sup> Mr. Moore advised the court that he does not read very well and needed additional time to review the PSI. (PSI, p.56.)

hearing.<sup>5</sup> (3/30/10 Tr., p.3, Ls.3-18.) The defense did not object, but asked that Mr. Moore be placed on probation with mental health and substance abuse treatment. (R., pp.59-60; 3/30/10 Tr., p.7, L.24 – p.8, L.15.)

The district court imposed upon Mr. Moore a sentence of five years, with one year fixed. (3/30/10 Tr., p.12, Ls.2-3; R., pp.61-63, 72-74.) Thereafter, Mr. Moore filed a timely I.C.R. 35 Motion for Reduction of Sentence. (R., pp.70-71.) Although Mr. Moore provided new information for the district court to consider in support of his I.C.R. 35 motion for leniency, the district court denied Mr. Moore's motion. (R, pp.86-88.)

After a post-conviction action, the district court re-entered the Judgment of Conviction on November 19, 2012, thereby restoring Mr. Moore's right to appeal. (R., pp.90-91.) On November 29, 2012, Mr. Moore filed a notice of appeal timely from the re-entered Judgment of Conviction. (R., pp.92-94.)

On appeal, Mr. Moore asserted that the district court erred in failing to order a mental health evaluation of Mr. Moore prior to sentencing. Mr. Moore also contends that the district court abused its discretion in failing to reduce his sentence in light of Mr. Moore's mental health issues and other mitigating factors, as well as the additional information submitted in conjunction with his Idaho Criminal Rule 35 motion.

The Idaho Court of Appeals affirmed the decision of the district court. (Opinion, p.1.) Judge Melanson's lead opinion<sup>6</sup> found that the issue of whether an evaluation

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<sup>5</sup> Mr. Moore was homeless and "living on the streets" for more than a month before he failed to appear for his sentencing hearing. (PSI, p.13.)

<sup>6</sup> The lead opinion, authored by Judge Melanson, was not the *majority* opinion. Judge Lansing, who concurred in the result, wrote separately. Judge Gutierrez joined Judge

should have been ordered pursuant to I.C. § 19-2522 was not preserved for appellate review where counsel requested an evaluation under a different statute. (Opinion, p.2.) Judge Melanson opined that Mr. Moore failed to articulate below the specific grounds argued on appeal, and the basis for the specific grounds argued on appeal was not apparent from the context of the argument made below. (Opinion, p.2.) Thus, the lead opinion of the Court concluded that the precise issue argued on appeal was not preserved below, and Mr. Moore was unable to satisfy the first prong of the *Perry* fundamental error standard. (Opinion, pp.2-3.) Judge Lansing's majority opinion concurred in the result, but did not agree with the lead opinion's assessment that the issue raised on appeal was not preserved for review. (Opinion, p.4.) The majority opinion concluded that the district court correctly determined that a new evaluation was not necessary in light of the extensive information on Mr. Moore's mental health that was already before the district court. (Opinion, p.4.)

Mr. Moore timely filed a Petition for Review.

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Lansing's opinion only. Thus, Judge Lansing's concurrence was actually the majority opinion.

## ISSUE

Is the Idaho Court of Appeals' Opinion affirming Mr. Moore's Judgment of Conviction in conflict with previous decisions of the Idaho Supreme Court and the Idaho Court of Appeals in that the decision did not properly consider whether the existing mental health evaluations and reports relied upon by the district court were sufficient to comply with the requirements of I.C. § 19-2522?

## ARGUMENT

### The Idaho Court Of Appeals' Opinion Affirming Mr. Moore's Judgment Of Conviction Is In Conflict With Applicable Decisions Of the Idaho Supreme Court And The Idaho Court Of Appeals In That The Decision Did Not Properly Consider Whether The Existing Mental Health Evaluations And Reports Relied Upon By The District Court Were Sufficient To Comply With The Requirements Of I.C. § 19-2522

#### A. Introduction

The majority opinion of the Court of Appeals erroneously determined that the district court was not required to order a new evaluation pursuant to I.C. § 19-2522, in contravention of Idaho statute and established case law. Both the plain language of I.C. § 19-2522 and Idaho case law make clear that once the record reflected that Mr. Moore had a substantial history of serious mental illness such that his mental condition would be a significant factor at sentencing, the district court was mandated to order a psychological evaluation unless an evaluation under I.C. § 19-2524 had been ordered and the resulting report satisfied the requirements of I.C. §19-2522(3). Instead, the district court relied on prior evaluations and reports prepared anywhere from 2-27 years prior to Mr. Moore's sentencing; however, these reports and evaluations fell far short of the requirements mandated by I.C. § 19- 2522.<sup>7</sup>

#### B. The Objection By Trial Counsel Properly Preserved Mr. Moore's Issue On Appeal

The Opinion of the Court of Appeals is somewhat confusing, as the judge in the minority, Judge Melanson, authored the lead opinion. (Opinion, pp.1-4.) Judge Melanson's opinion found the issue of whether the district court erred in failing to order

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<sup>7</sup> At the time of Mr. Moore's sentencing, the statute did provide for an exception—where an evaluation under I.C. § 19-2524 has been ordered and the resulting report satisfies the requirements of I.C. §19-2522(3). I.C. § 19-2522(6). Such is not the case here, as the report ordered pursuant to I.C. § 19-2524 analyzed only Mr. Moore's substance abuse. (PSI, pp.22-31.)



an evaluation under I.C. § 19-2522 was not preserved and, thus, his opinion did not consider whether the district court erred in refusing to order a psychological evaluation. (Opinion, pp.1-3.) The majority of the Court correctly held that the issue had been preserved below, but found that the previous years' reports and evaluations were sufficient. (Opinion, p.4.)

In *State v. Sheahan*, 139 Idaho 267 (2003), the Idaho Supreme Court held, “[f]or an objection to be preserved for appellate review, either the specific ground for the objection must be clearly stated . . . or the basis of the objection must be apparent from the context.” *Id.* at 277. As the majority of the Court correctly determined, the issue of whether the district court erred in denying Mr. Moore’s motion for further evaluation of his mental health was properly preserved. Defense counsel, after advising that her client was experiencing symptoms of his mental illness when he committed the crime, requested a mental health evaluation pursuant to I.C. § 19-2524. (3/23/10 Tr., p.10, Ls.13-16.) Although Mr. Moore never requested an I.C. § 19-2522 evaluation by citing to that specific section in the Idaho Code, the ground for the objection was clearly stated—that Mr. Moore was experiencing the symptoms of his mental illness such that it would be a significant factor at sentencing. Thus the basis of the objection was clear from the context within which the objection was made, and the district court had ample opportunity to consider the request for a court-ordered evaluation of Mr. Moore’s mental health.

While “Idaho’s appellate courts will not consider error not preserved for appeal through an objection at trial, *State v. Perry*, 150 Idaho 209 (2010), in this case, trial counsel did object to the district court going forward with sentencing without an

additional, court-ordered evaluation of Mr. Moore's mental illness, and counsel's explanation of the basis for her request served to notify the district court that Mr. Moore's mental illness was serious and would be a significant factor at sentencing. (3/23/10 Tr., p.10, Ls.4-16.) In *Perry*, the Court explained that the fundamental error rule serves to induce the timely raising of claims and objections, which gives the trial court the opportunity to consider and resolve them. *Id.* at 224. In Mr. Moore's case, the error was objected to and therefore the *Perry* fundamental error analysis is inapplicable. Here, counsel asked the district court to order an evaluation after she indicated that Mr. Moore's mental illness "probably played a very big role in this incident." (3/23/10 Tr., p.10, Ls.7-16.) The district court was thus on notice that Mr. Moore's mental illness would be a significant factor at sentencing, and had ample opportunity to consider the request and resolve the issue by ordering an evaluation of Mr. Moore under I.C. § 19-2522.

C. The Opinion Did Not Properly Consider Whether The Existing Mental Health Evaluations And Reports Relied Upon By The District Court Were Sufficient To Comply With The Requirements Of I.C. § 19-2522

The lead opinion of the Court of Appeals failed to reach the merits of Mr. Moore's claim—whether the district court erred by refusing to order a psychological evaluation pursuant to I.C. § 19-2522. (Opinion, pp.1-3.) The concurring opinion—which is actually the majority opinion—did reach the merits of Mr. Moore's claim and held that the district court did not err because Mr. Moore's prior evaluations were sufficient, but did not offer any analysis as to why it found that the old evaluations were sufficient, and it did not specifically address the sufficiency of the old evaluations in light of the requirements contained in I.C. § 19-2522. (Opinion, p.4.) Although the statute at issue

was amended in 2012 to allow a district court to consider other mental health reports, Mr. Moore was sentenced in 2010, prior to the amendment. I.C. § 19-2522(6).

In 2010, the statute provided that only a report prepared pursuant to I.C. § 19-2524 could be used, in certain circumstances, in lieu of a new report:

If a mental health examination of the defendant has previously been conducted pursuant to section 19-2524, Idaho Code, and a report of such examination has been submitted to the court, and if the court determines that such examination and report provide the necessary information required by this section, including all of the information specified in subsection (3) of this section, then the court may consider such examination and report as the examination and report required by this section and need not order an additional examination of the defendant's mental condition.

I.C. § 19-2522(6) (2010). However, the 2012 statutory amendment broadened the type of suitable mental health examinations permitted under the statute:

If a mental health examination of the defendant has previously been conducted, whether pursuant to section 19-2524, Idaho Code, or for any other purpose, and a report of such examination has been submitted to the court, and if the court determines that such examination and report provide the necessary information required in subsection (3) of this section, and the examination is sufficiently recent to reflect the defendant's present mental condition, then the court may consider such prior examination and report as the examination and report required by this section and need not order an additional examination of the defendant's mental condition.

I.C. § 19-2522(6) (emphasis added) (See 2012 Idaho Sess. Laws, ch. 225, § 3, p.611, effective July 1, 2012).<sup>8</sup>

Idaho Code Section 19-2522(6) provides that the district court may forgo ordering a new psychological evaluation where, “a mental health examination of the defendant has previously been conducted pursuant to section 19-2524, Idaho Code” and the report contains “the necessary information required by this section, including all of the

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<sup>8</sup> All further citations to I.C. § 19-2522 will be to the 2010 version.

information specified in subsection (3) of this section.” I.C. § 19-2522(6). The information statutorily required to be contained in the evaluation is not just what mental illness the defendant had been previously diagnosed with, but also:

- (a) A description of the nature of the examination;
- (b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;
- (d) A consideration of whether treatment is available for the defendant's mental condition;
- (e) An analysis of the relative risks and benefits of treatment or nontreatment;
- (f) A consideration of the risk of danger which the defendant may create for the public if at large.

I.C. § 19-2522(3).

The majority Opinion of the Court of Appeals succinctly concluded, “the district court correctly determined that a new psychological evaluation was not needed in view of the extensive information already before the district court concerning Moore’s mental health condition and history.” (Opinion, p.4.) However, the Court failed to offer any analysis of whether the information available to the district court at sentencing complied with the requirements of I.C. § 19-2522(3). Thus, it appears the majority opinion may have improperly relied on the 2012 amended version of the statute, which allows for use of prior reports provided certain conditions are met. Because at the time of Mr. Moore’s sentencing, only an evaluation conducted pursuant to I.C. § 19-2524, provided certain conditions were met, could be used in place of a new psychological evaluation under

I.C. § 19-2522, the Court improperly found that the evaluations and reports before the district court were sufficient. I.C. § 19-2522(6).

The limited information before the district court at sentencing in this case was not an adequate substitute for an I.C. § 19-2522 evaluation, particularly where Mr. Moore's mental health issues were raised both prior to his guilty plea, several times prior to sentencing, and during sentencing. The August 2008 evaluation performed through Saint Alphonsus did not meet the requirements of I.C. § 19-2522. Although the substance abuse evaluation mentioned Mr. Moore's mental health, it did not inform the court on all of the I.C. § 19-2522 factors, such as consideration of whether treatment is available for a defendant's mental condition, the relative risks and benefits of treatment or nontreatment, and the risk of danger that the defendant presents to the public. (PSI, pp.22-31.) Therefore, there never was a mental health evaluation which complied with the then-existing requirements of I.C. § 19-2522. The Court of Appeals' Opinion is inconsistent with the requirements of the statute as the majority opinion concluded that the district court could rely on the other mental health information concerning Mr. Moore's mental health condition and history, in lieu of ordering a psychological evaluation. The Court thus erroneously affirmed the decision by the district court.

In holding that the district court could rely on the "extensive information" in the PSI regarding Mr. Moore's mental health, the Court impliedly found that Mr. Moore's mental health was a significant factor at sentencing.

While the decision to order a psychological evaluation lies within the sentencing court's discretion, a psychological evaluation is mandatory under some circumstances, such as when "there is reason to believe the mental condition of the defendant will be a

significant factor at sentencing,” whereupon “the court shall appoint at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant.” I.C. § 19-2522(1) (emphasis added); *State v. Durham*, 146 Idaho 364, 366 (Ct. App. 2008).

The legal standards governing the district court’s decision whether to order a psychological evaluation and report are contained in I.C. §19-2522:

(1) If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court shall appoint at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant.

I.C. § 19-2522(1).

The district court has discretion to deny a defendant’s request for a psychological evaluation. *State v. Collins*, 144 Idaho 408, 409 (Ct. App. 2007). However, with any discretionary decision, the district court must act within the bounds of its discretion, consistent with applicable legal principles. *State v. Izaguirre*, 145 Idaho 820, 823 (Ct. App. 2008). The applicable legal standard for reviewing a district court’s decision to deny a psychological evaluation is governed by I.C. § 19-2522(1). *State v. Craner*, 137 Idaho 188, 189 (Ct. App. 2002).

A psychological evaluation is mandatory if “there is reason to believe the mental condition of the defendant would be a significant factor at sentencing.” *State v. Hanson*, 152 Idaho 314, 318 (2012). In *Hanson*, the defendant requested a psychological evaluation prior to sentencing. *Hanson*, 152 Idaho at 318. The district court denied the request, finding, *inter alia*, that a psychological evaluation was not necessary because it did not believe that the additional information provided by a psychological evaluation would be helpful at sentencing. *Id.* The Idaho Supreme Court granted review and

remanded the case so that a psychological evaluation could be ordered. *Id.* at 318, 326. In so doing, the Idaho Supreme Court held that a “defendant’s mental condition is a significant factor at sentencing if the sentencing court is aware of a defendant’s lengthy history of serious mental illness.” *Id.* at 319-320.

The Court found that the record demonstrated that the defendant’s mental condition was a significant factor at sentencing based on: (1) a substantial history of mental illness, including past hospitalizations for mental health issues; (2) Mr. Hanson’s erratic and unusual behaviors while in custody; (3) the comments made by the district court at sentencing regarding its belief that “certain mental factors” existed and that the defendant did need psychological treatment; and (4) at sentencing the district court recommended various treatments and therapies for the defendant during his period of incarceration and noted that he should receive a psychological evaluation. *Id.* at 321. The *Hanson* Court found that the record demonstrated that the defendant’s mental condition was a significant factor at sentencing and reversed the district court’s denial of Hanson’s request for a psychological evaluation pursuant to I.C. § 19-2522 and remanded the case for further proceedings. *Id.* at 319-320. Here, like in *Hanson*, Mr. Moore’s mental health condition was a significant factor at sentencing, and the facts of this case are similar to those in *Hanson*.

Like the district court in *Hanson*, the district court in Mr. Moore’s case knew that Mr. Moore was suffering from a serious mental illness which caused him to hear voices and be in a psychotic state. (3/23/10 Tr., p.11, L.25 – p.12, L.2.) The district court

commented that Mr. Moore's mental health records dated back as far as 2002.<sup>9</sup> (3/23/10 Tr., p.11, Ls.24-25.) Mr. Moore had previously undergone six psychiatric hospitalizations for mental illness. (PSI, p.150.) The record is replete with indications that Mr. Moore suffered from severe mental health issues and those issues were affecting him on the date of the incident. Mr. Moore's defense counsel, after speaking to him at the jail while he was reviewing his PSI, revealed that, "at the time of this incident, Mr. Moore was experiencing hallucinations, symptoms of his schizophrenia. . . [a]nd it has come to my attention that his mental health issues probably played a very big role in this incident." (3/23/10 Tr., p.9, L.14 – p.10, L.9.) Notably, when Mr. Moore was seen in 2003, he spoke to his treatment provider about his auditory and visual hallucinations and expressed his concern that, because of his hallucinations, he did not know what was real and what was not real and that he feared that he was going to end up hurting someone. (PSI, p.192.) In 2009, in this case, Mr. Moore backhanded a store clerk who was trying to stop him from shoplifting. (PSI, p.2.)

However, the district court concluded that a court-ordered evaluation was not necessary because it already knew, based upon a past evaluation, that Mr. Moore had a history of schizophrenic-type mental illness. (3/23/10 Tr., p.11, Ls.14-21.) Yet, knowledge of a past diagnosis is not a sufficient substitute for all of the information contained in an I.C. § 19-2522 evaluation. Additionally, like in *Hanson*, the district court commented at sentencing regarding Mr. Moore's mental health problems, "I acknowledge that you have mental health problems. But there are people with mental health problems that don't commit crimes. They get on their medicines and they stay on

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<sup>9</sup> The records actually go back as far as 1983, when Mr. Moore was a juvenile. (PSI, pp.71-79.)



them.” (3/30/10 Tr., p.11, Ls.9-13.) The district court then imposed its sentence of five years, with one year fixed, telling Mr. Moore that the sentence was “in light of your need to get stabilized on your medication and get some structure.” (3/30/10 Tr., p.11, L.25 – p.12, L.5.)

Mr. Moore’s mental health should have been a significant mitigating factor at sentencing, but the district court may have viewed Mr. Moore’s acts attributable to his mental health condition as aggravating facts suggesting that Mr. Moore could not be compliant on probation. At sentencing, the district court commented on the fact that Mr. Moore failed to appear for his sentencing hearing: “And for whatever reason you just decided not to show. It wasn’t like you committed some other big crime or fled the country or something. You were just back on the street drinking and getting in trouble.” (3/30/10 Tr., p.10, Ls.19-23.) Had the district court obtained a mental health evaluation pursuant to I.C. § 19-2522, the court could have referred to the evaluation to assist the court in determining the risk Mr. Moore posed to the community.

In sum, because the district court considered Mr. Moore’s mental health when sentencing him, thus indicating that Mr. Moore’s mental health was a significant factor at sentencing, the district court erred when it denied Mr. Moore’s request and refused to order a mental health evaluation pursuant I.C. § 19-2522. The Court of Appeals erroneously affirmed the decision of the district court by disregarding the statutory requirements for an evaluation pursuant to I.C. § 19-2522. Mr. Moore asks this Court to grant review of all of the issues on appeal.<sup>10</sup>

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<sup>10</sup> The issue of whether the district court abused its discretion in denying Mr. Moore’s I.C.R. 35 motion was not briefed herein, as it was fully briefed in Appellant’s Brief.

CONCLUSION

Mr. Moore respectfully requests that his Petition for Review be granted and that this Court vacate the judgment of conviction, and remand this matter to the district court for a mental health evaluation and a new sentencing hearing.

DATED this 27<sup>th</sup> day of June, 2014.

  
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SALLY J. COOLEY  
Deputy State Appellate Public Defender

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(Appellant's Brief, pp.13-17.) Mr. Moore's arguments regarding this issue are hereby incorporated by reference.

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 27<sup>th</sup> day of June, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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SICI  
PO BOX 8509  
BOISE ID 83707

RICHARD D GREENWOOD  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KIMBERLY SIMMONS  
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SJC/eas