

## SUMMARY STATEMENT

*State v. McIntosh,*  
Docket No. 41910

The Idaho Supreme Court affirms Michelle McIntosh's judgement of conviction and resulting sentence. At trial McIntosh was found guilty of trafficking in methamphetamine, possession of methamphetamine with intent to deliver, two counts of delivery of methamphetamine, and one count of possession of drug paraphernalia.

On appeal, McIntosh argued that the possession with the intent to deliver is not a lesser included offense of trafficking in methamphetamine by possession. Consequently, McIntosh asserted that the district court improperly delivered a lesser-included jury instruction and that by doing so the district court lost subject matter jurisdiction over the possession with intent to deliver charge. McIntosh also asserted that the district court abused its discretion when it imposed a total unified term of ten years, with four years fixed because the sentence was excessive.

The Idaho Supreme Court held that although intent to deliver is not a lesser included of trafficking, the district court's delivery of an improper lesser-included jury instruction does not remove the district court's subject matter jurisdiction. The Court further held that the district court did not abuse its discretion when it sentenced McIntosh to a unified term of ten years with four years fixed because the sentence was well within the statutorily proscribed sentence.