

**SUMMARY STATEMENT**  
*State of Idaho v. Said Carrasco*  
Docket No. 51447

Said Carrasco was charged as a juvenile with aggravated driving under the influence (DUI), Idaho Code § 18-8006, and vehicular manslaughter, I.C. § 18-4006(3)(b), resulting from a car accident in which one passenger was killed, and another passenger was seriously injured (Cassia County case). The case was waived into adult court and pursuant to a plea agreement, Carrasco pleaded guilty to vehicular manslaughter and the aggravated DUI charge was dismissed. The district court imposed a unified sentence of eight years, with a minimum term of incarceration of four years, and retained jurisdiction. After completing the period of retained jurisdiction, Carrasco was placed on probation.

Thereafter, Carrasco was charged in Bannock County with lewd conduct with a minor under sixteen and rape (Bannock County case), which resulted in the filing of a motion for probation violation in the Cassia County case (the subject of this appeal). In this case, Carrasco entered into a non-binding plea agreement wherein he agreed to admit to the probation violation and the State agreed to recommend the same sentence as would be entered in the Bannock County case. In the Bannock County case, Carrasco received a unified sentence of ten years, with a minimum period of incarceration of five years, and the district court retained jurisdiction.

After Carrasco admitted to violating the terms of his probation, the district court declined to follow the recommendations in the non-binding plea agreement, revoked Carrasco's probation, and executed the underlying sentence without retaining jurisdiction. Carrasco filed an Idaho Criminal Rule 35 motion, arguing that because the district court executed the underlying sentence he would not be eligible to serve a period of retained jurisdiction and would have to serve the five-year determinate portion of the sentence in his Bannock County case. Carrasco requested the district court also retain jurisdiction and run the sentence concurrently to the Bannock County case instead of executing the underlying sentence. The district court denied the motion. Carrasco appeals.

The Court of Appeals held that the district court did not err in revoking Carrasco's probation, ordering the previously suspended sentence be executed, or in denying Carrasco's Rule 35 motion. The Court further held Carrasco failed to preserve a claim that the prosecutor breached the plea agreement because he did not raise the arguments in the district court. Even if

reviewed on the merits, Carrasco failed to establish the elements of fundamental error because he did not establish the violation of an unwaived constitutional right because a breach of a plea agreement does not retroactively affect the validity of an otherwise valid guilty plea. The Court similarly held that the language of the plea agreement did not apply to the Rule 35 motion and thus, there was no agreement by which the State was bound.

\*\*\*This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public.\*\*\*