

**SUMMARY STATEMENT**  
*State v. Christopher William Kerber*  
Docket No. 52000

Christopher William Kerber appealed from the district court's judgment of conviction and sentence for possession of a controlled substance. Pursuant to a plea agreement, Kerber pled guilty to possession of a controlled substance (methamphetamine), Idaho Code § 37-2732(c)(1). At the sentencing hearing, the district court imposed a unified sentence of seven years with two years determinate. The district court also stated that it was ordering completion of 100 hours of community service. The written judgment of conviction contained the term of incarceration as imposed at the sentencing hearing; however, the judgment did not contain any reference to community service hours.

On appeal, Kerber claimed the district court abused its discretion by ordering him to complete 100 hours of community service because in doing so the district court exceeded its statutory authority under I.C. § 37-2738(5). The State agreed. Kerber also argued the district court abused its discretion by imposing an excessive sentence and denying his Idaho Criminal Rule 35 motion for leniency.

The Court of Appeals noted I.C. § 37-2738(5) provides that any offender who is convicted of a drug offense set forth in I.C. § 37-2732 (a), (b), (c), or (e) shall, "when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work." The Court held that under the statute's plain language, the community service requirement is activated only when a convicted drug offender is granted probation. Because Kerber was not granted probation, the district court exceeded its authority in ordering the completion of 100 hours of community service. The Court acknowledged that when there is a difference between the oral pronouncement of the sentence and the written judgment, the oral pronouncement of sentence controls. *State v. Shackelford*, 174 Idaho 31, 33, 551 P.3d 31, 33 (2024). However, the Court held although the oral pronouncement of sentence contained an illegal term, because that illegality was not memorialized in the operative judgment, the error was corrected and remand was unnecessary. The Court further held the district court did not abuse its discretion in imposing the term of incarceration or in denying Kerber's I.C.R. 35(b) motion for leniency.

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