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LORI A. FLEMING Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

۷.

DEE ALAN RHOADES,

Defendant-Appellant.

NOS. 42724, 42727, & 42820

Bonneville Co. Case Nos. CR-2012-16074, CR-2013-974, CR-2014-6756

RESPONDENT'S BRIEF

<u>Issues</u>

1. Has Rhoades failed to establish that the district court abused its discretion by revoking his probation in docket numbers 42724 and 42727 and executing his concurrent unified sentences of seven years, with two and one-half years fixed, imposed upon his guilty pleas to possession of methamphetamine and burglary?

2. Has Rhoades failed to establish that the district court abused its discretion by imposing a unified sentence of 13 years with three years fixed in docket number 42820, upon his guilty plea to possession of methamphetamine and a second offense sentencing enhancement?

3. Has Rhoades failed to establish that the district court abused its discretion by denying his Rule 35 motion in docket number 42820?

Statement Of The Facts And Course Of The Proceedings

In 2013, Rhoades pled guilty to possession of methamphetamine in case number 41057, and to burglary in case number 41058 and the district court imposed concurrent unified sentences of seven years, with two and one-half years fixed. (41057 R., pp.88-93; 41058 R., pp.62-66.¹) Rhoades timely appealed and timely filed a Rule 35 motion for reduction of sentence in both cases. (41057 R., pp.94-95, 103-110; 41058 R., pp.70-71, 75-78, 82-85.) In 2014, the Court of Appeals affirmed Rhoades' sentences. State v. Rhoades, 2014 Unpublished Opinion No. 400, Docket Nos. 41057/41058 (Idaho App. February 28, 2014.)

While Rhoades' appeal was pending, the district court granted Rhoades' Rule 35 motion and placed him in the retained jurisdiction program. (R. Vol. I, pp.26-31.²) After a period of retained jurisdiction, the district court suspended Rhoades' sentences and placed him on probation for three years. (R. Vol. I, pp.32-39, 102-08.)

Just over a month after Rhoades was released on probation, Rhoades' probation officer filed a Report of Violation in both cases alleging Rhoades had violated his probation by possessing and consuming alcohol, incurring a new misdemeanor charge for possession of drug paraphernalia, and incurring a new felony charge for possession of methamphetamine with the intent to manufacture or deliver in docket number 42820.

¹ The Idaho Supreme Court issued an Order taking judicial notice of the record and transcripts in Rhoades' prior consolidated appeals, docket numbers 41057 and 41058, and ordering a limited record for this appeal. (12/16/14 Order Consolidating Appeals and Taking Judicial Notice.)

² Citations to Volume I of the Record are to the Record served May 1, 2015 (R. Vol. 1, p.278) containing pages 1-278.

(R. Vol. I, pp.45-49, 114-18; R. Vol. II, pp.22-23.³) In docket number 42820, the state also filed a persistent violator sentencing enhancement. (R. Vol. II, pp.34-36.) Pursuant to a plea agreement encompassing all three cases, Rhoades admitted to violating his probation as alleged, pled guilty to an amended charge of possession of methamphetamine with a second or subsequent offense enhancement. (R. Vol. I, pp.58-61, 128-31; R. Vol. II, pp.41-44.) In docket numbers 42724 and 42727, the district court revoked Rhoades' probation and ordered his underlying sentences executed without reduction. (R. Vol. I, pp.68-71, 142-45.) In docket number 42820, the district court imposed a unified sentence of 13 years with three years fixed, to run concurrently with Rhoades' sentences in docket numbers 42724 and 42727. (R. Vol. II, pp.54-57, 76-79, 86-89.) Rhoades timely appealed from the orders revoking probation in docket numbers 42724 and 42727. (R. Vol. I, pp.72-76, 155-59.) In docket number 42820, Rhoades timely appealed and timely filed a Rule 35 motion for sentence reduction, which the district court denied. (R. Vol. II, pp.60-61, 90-94.)

I. <u>Rhoades Has Failed To Establish That The District Court Abused Its Sentencing</u> <u>Discretion In Docket Nos. 42724 And 42727</u>

Rhoades asserts the district court abused its discretion when it revoked his probation in docket numbers 42724 and 42727 in light of his employment and in light of his "excellent rehabilitative progress." (Appellant's brief, p.6.) The record supports the district court's decision to revoke Rhoades' probation.

³ Citations to Volume II of the Record are to the Record served March 12, 2015 (R. Vol. II, p.107) containing pages 1-107.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. <u>State v. Roy</u>, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); <u>State v.</u> <u>Drennen</u>, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." <u>Drennen</u>, 122 Idaho at 1022, 842 P.2d at 701.

Contrary to Rhoades' claim on appeal, probation in this case was neither achieving the goal of rehabilitation nor protecting the community. In 2013 and again in 2014, the presentence investigator stated:

Mr. Rhoades has an extensive criminal history, and has spent a significant amount of time in jail and in prison. He has absconded multiple times, and twice was extradited from other states. The defendant has violated his parole and probation, and continues his criminal activity despite having numerous chances to change this behavior.

(2013 PSI, p.22; 2014 PSI, p.25.) Less than four months after topping out a seven-year prison sentence on June 15, 2012, for possession of a controlled substance, Rhoades committed the first of the offenses in these two cases. (2013 PSI, pp.3-4.) While that case was still pending, Rhoades stole items from a motel and incurred the new felony charge of burglary. (2013 PSI, p. 4.) In total, Rhoades accumulated nine new criminal charges between October 2012 and January 2013. (2013 PSI, pp.10, 12-13, 16.) Just over a month after completing a period of retained jurisdiction and being given another opportunity for probation in these cases, Rhoades once again violated the terms of his probation and incurred a new felony charge for possession of methamphetamine in docket number 42820. (R. Vol. I, pp.45-49, 114-18; R. Vol. II, pp.22-23.)

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At the disposition hearing for Rhoades' probation violation, the state addressed Rhoades' continued criminal offending and "horrendous" criminal record, and noted, "He's on probation for two felonies when he commits this third one, all of the felonies occurring within a year of each other." (10/14/14 Tr., p.87, L.13 – p.89, L.8 (Appendix A).) The district court subsequently set forth its reasons for revoking Rhoades' probation and executing his sentences in both cases. (10/14/14 Tr., p.95, L.11 – p.97, L.4 (Appendix B).) The state submits that Rhoades has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

II. <u>Rhoades Has Failed To Establish That The District Court Abused Its Sentencing</u> <u>Discretion In Docket No. 42820</u>

Rhoades next asserts his sentence in docket number 42820 is excessive in light of his family support, his purported remorse and his acceptance of responsibility. The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. <u>State v. Oliver</u>, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing <u>State v. Strand</u>, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); <u>State v. Huffman</u>, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. <u>Oliver</u>, 144 Idaho at 726, 170 P.3d at 391 (citing <u>State v. Trevino</u>, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. <u>State v. Baker</u>, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

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To demonstrate a clear abuse of discretion, the appellant must show that the sentence is excessive under any reasonable view of the facts. <u>Baker</u>, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. <u>Id.</u> The protection of society is, and must always be, the ultimate goal of any sentence. <u>State v. Moore</u>, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account "the nature of the offense, the character of the offender, and the protection of the public interest." <u>State v. Hopper</u>, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); <u>see also</u> I.C. §19-2521.

The maximum prison sentence for burglary, a second or subsequent offense, is 14 years. I.C. §§ 37-2732(c)(1) and 37-2739. The district court imposed a unified sentence of 13 years with three years fixed, to run concurrently with Rhoades' sentences in docket numbers 42724 and 42727, which falls well within the statutory guidelines. (R. Vol. II, pp.54-57, 76-79, 86-89.) In recommending Rhoades be incarcerated, the presentence investigator stated:

The defendant appears to have minimal awareness into his level of addiction and criminal thinking. He stated he is ready to be clean and live a crime-free life, but does not seem to possess the necessary skills or coping strategies to be able to do so on his own.

(2014 PSI, p.25.) Despite having just completed a Rider and programming and being placed on probation in docket numbers 42724 and 42727, Rhoades almost immediately committed his ninth overall felony and third felony in just over a year. (2014 PSI, p.13.) In imposing Rhoades' sentence in this case, the district court determined that there

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needed to be consequences for his ongoing criminal behavior, was concerned for the

protection of society and stated:

And so I have you on probation in two cases and then a new crime while you're on probation. Looking at the prior record and the number of felonies and convictions that have occurred before obviously there's a huge problem both in substance abuse as well as criminal thinking but I just don't see how probation could be an option at this point based upon what's gone on before. Not interested in doing another Rider program. We've been through that. So that's kind of how I look at that. I'd recommend the Therapeutic Community. You should probably have an option of doing that in the prison setting, but I'll leave that up to you.

(10/14/14 Tr., p.96, L.19 – p.97, L.4.) Rhoades has failed to show an abuse of discretion.

III.

Rhoades Has Failed To Show The District Court Abused Its Discretion By Denying His Rule 35 Motion for Sentence Reduction

Rhoades next asserts the district court abused its discretion when it denied his Rule 35 motion in docket number 42820. (Appellant's Brief, pp. 9-11.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. <u>State v. Huffman</u>, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Rhoades must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." <u>Id.</u> Rhoades has failed to satisfy his burden.

Rhoades presented no new information in support of his Rule 35 motion. At the hearing on his Rule 35 motion, Rhoades' counsel merely reiterated the same arguments made at sentencing and requested the district court reduce Rhoades' unified sentence to allow him to become eligible for work release more quickly. (12/08/14 Tr., p.46, L.17

– p.47, L.3.) Because Rhoades presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Even if this Court addresses the merits of Rhoades' claim, he has still failed to establish an abuse of discretion. At the hearing on Rhoades' Rule 35 motion, the district court articulated its reasons for denying Rhoades' motion for sentence reduction. (12/08/14 Tr., p.48, L.23 – p.49, L.14.) The state submits Rhoades has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix C.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Rhoades' probation in docket numbers 42724 and 42727, and to affirm Rhoades' conviction and sentence and the district court's order denying Rhoades' Rule 35 motion in docket number 42820.

DATED this 21st day of September, 2015.

/s/ LORI A. FLEMING Deputy Attorney General

CATHERINE MINYARD Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of September, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/

LORI A. FLEMING Deputy Attorney General

APPENDIX A

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at prison and that it does take hold. And maybe the fact that possibly getting me into that. I was to work my way out is my 1 1 2 he's getting older will be a factor in having him learn that he 2 understanding. When I got back from my Rider, Your Honor, I had 3 3 spoken with my counselor, Ms. Rae Mackle (phonetic spelling). In can either spend the rest of his life in prison or he can behave 4 the Rider program she explained to me that where I had not been 4 when he gets out of prison. And that's why we have the lengthy 5 parole time is, after he does his determinate time, if he makes 5 court-ordered into the program, that she could not transition me 6 parole, then that will be an incentive for him to stay out of 6 straight back to Wood Court. I'd have to come back to the jail 7 7 and then transition from there. I didn't inquire about It. As prison as opposed to going to prison for the rest of his life if 8 8 he commits another felony. Thank you, Your Honor. we've talked about it, Your Honor -- and in the court minutes 9 9 even at that time, the transcripts, Your Honor, we talked about THE COURT: Thank you. 10 10 MR. BEVILACQUA: Oh. Restitution is in the amount the possibilities of me coming back and doing the Wood Pilot 11 of \$421.59 per a motion that's been filed. And if I may submit 11 Program; and that's what I was really hoping for, Your Honor. 12 12 the order. I am 51 years old, Your Honor, and I am beginning 13 13 THE COURT: Mr. Crane, your position on the motion to understand things a lot better than what I used to. And I'm 14 14 not here to -- I didn't bring a speech, Your Honor. I didn't for restitution? 15 15 rehearse this. What I'm bringing to the Court today is, throwing MR. CRANE: No objection to that, Your Honor. 16 THE COURT: All right. Mr. Rhoades, you have the 16 me back in prison's not helping me. I believe on what my son had 17 17 said. That's why I tried for nine months, Your Honor, to get right to make a statement. Is there anything you would like to 18 18 say? into the Wood Pllot Program is, I -- when I left the jall, I left 19 19 with nothing. I didn't even have clothes on my back, sir. I had THE DEFENDANT: I would, Your Honor. In 2013 --20 20 it was November, Your Honor -- you gave me an opportunity to do a nothing. And even at that, I at least got a full-time job. I borrowed some clothes. I was walking to and from work. I was 21 Rider, an Nontraditional Rider, and I done the New Directions 21 22 22 program in Cottonwood. I've learned a lot from that, Your Honor. reporting to my PO. 23 23 I done a good Rider, and I'm proud of it. Your Honor, these are things I've never done in 24 24 the past. When I made a mistake -- and whether it was a mistake When I got back here, in my Rule 35 hearing In 25 25 November we discussed at length about the Wood Pilot project and or just my own will, when I used or something, I just took off. 89 90 1 1 I absconded. I never -- I never held myself accountable. I was me. If you build a foundation on sand, Your Honor, and 2 2 never responsible. And that's not where I am at today, Your 3 3 Honor. The first drinking episode was in the evening. It was the beach comes up and the water comes up, it'll wash it away. I 4 4 one of the Idaho Falls police officers that I know that had need some kind of structure. I need a job. I need to start 5 chased me before, Your Honor, in resisting arrest when I was on 5 paying on my fines. These are things that when you got out 6 6 the bridge over Science Center Drive, Your Honor. I wasn't the there -- I didn't have a driver's license because I owe a \$245 7 7 reinstatement fee that I don't want to sound like I'm complaining same person. He even explained that to me. We sat and we 8 to people, but the State was supposed to take it off my record. 8 talked. We called my parole officer, my probation officer, we 9 9 I had to get dentures. I now have new teeth. It's not like I sat up an appointment, and I reported, Your Honor. Even knowing 10 full well that Gordon had the opportunity to throw me in jail, I 10 was out there just screwing my money away and not taking care of 11 still reported, Your Honor. Running from this problem is not 11 responsibilities, Your Honor. I was trying and I'd like to 12 12 getting me anywhere. It's not. continue trying. But I need some structure. I need to build a 13 13 foundation. Rex Thornley says I was offered Wood Court after 14 14 my Rider. My understanding was, when I talked to my old I can't get into Wood Pilot. I can't get into 15 Drug Court. I've spoke with some treatment facilities in Lava 15 attorney, was that you would have to court-order that. And I 16 16 Hot Springs called Motion in -- Therapy in Motion. They were said, "Well, didn't anybody say anything to Judge Tingey that supposed to send a letter to my probation officer. I don't know 17 I've completed my Rider and, you know, I'd like to do Wood 17 18 18 as that's what I need more than just structure, to be able to Pilot?" Well, I was released from jail. I filled out an 19 19 application for Wood Pilot. There was people at The Ark with me save some money, get caught up on my fines, get my driver's 20 that went -- that were released and then went -- we went to our 20 license back, take care of some of the wreckage In my past that 21 21 I've created. orientation, and they were taken to Wood Pilot because they were 22 22 And I understand this looks bad, coming here with court-ordered. My only question is, you know, why didn't anybody 23 23 another felony. But at the same time, Your Honor, it's follow through with their end? I can only do so much from progression. I mean, it's positive progression for me because 24 24 Cottonwood, Your Honor. And I really feel like I've been in that 25 25 the things I've done in the past I'm not doing anymore. I'm program and gotten around some people, got some structure under 92 91

APPENDIX B

1	trying to report. I'm trying to do the right thing. I made a	1	Christian Chapel. I was going to Pure Word and Broken Chains.
2	bad decision, and that bad decision is what a lot of people make.	2	It's progress for me, Judge. And I don't you know, I don't
[3	I relapsed, Your Honor. In treatment, you know, In the first	3	want my past to run my future.
4	60 30 to 60, 90 days most people do relapse. My thing is, I	4	And if you look back over my record, even from
5	got another charge. It was just a dirty UA, which I'll bring to	5	there, I know I screwed up and I made a felony, I got another
6	your attention, Your Honor, I tested with my probation officer	6	felony charge. But, Your Honor, I wasn't out running into
7	and I was clean. I reported and told him that I drank. And	7	people's vehicles. I wasn't intoxicated. I wasn't out there
8	Gordon and I were going to try to work things out. I believe we	8	creating chaos. I wasn't making the Idaho Falls Police
9	could have. I made the mistake. It's not Gordon's fault. I got	9	Department chase me around. I wasn't jeopardizing people's
10	around the wrong people. We were going to step up my UA's. We	10	lives. I was asleep. I'd worked 14 hours that day. I made a
11	were Gordon and I were working at this, Your Honor; and I	11	bad decision because I hadn't been with a female for almost 18
12	believe he'll he will even testify to that today.	12	months. It was my bad choice.
13	I don't want to continue this, Judge. I don't. 1	13	But I really, Judge Tingey, I want to get this
14	have a sincere desire today to do something different with my	14	straightened out. If I didn't, I could have just ran off. I
15	life. The desire is there. I surrender. It's like it's no	15	have plenty of places to run away to. But wherever I go, there I
16	longer the police, Judge, that are arresting me. It's like the	16	am. I want to start my life over. I have grandchildren. My
17	man upstairs is saying, "Hey, you ain't getting it." So I don't	17	children are here today. This has to stop, and that's why I want
18	even get a chance to screw around much anymore. And I've got an	18	to see stop it. It's up to me. I've got to make those choices.
19	officer standing there. And it's a good thing for me, Judge.	19	But if given the opportunity to build a foundation, I think I
20	Like I said, I really I don't have anyplace to	20	can you can bet the house on that. I think I'll be okay.
21	go. I can't go to Wood Pilot, which is something I really wanted	21	That's all I have, Your Honor. Thank you.
22	to go to to build some friends that aren't drinking and using.	22	THE COURT: All right. Well, I appreciate the
23	That's all I have here, Judge, is old friends that drink and use;	23	comments. Mr. Bevilacqua.
24	and I need some new ones, some that don't use. And the ones that	24	MR. BEVILACQUA: Your Honor, I may have
25	are are in recovery. I was working with Mike Dodge at the	25	inadvertently mischaracterized the prior burglary charge, the
	93		94
1		1	we that concurrent with the contentions in the 2012 and 2012
1	2013 PV case. It was the bridge incident I was referring to that	1	run that concurrent with the sentencings in the 2012 and 2013
2	Mr. Rhoades talked about that was a note in the file that I	2	case. You'll receive credit for time served. There'll be a fine
2 3	Mr. Rhoades talked about that was a note in the file that I thought was part of that burglary, but apparently it's not. So	2 3	case. You'll receive credit for time served. There'll be a fine of \$750 on this. Restitution is ordered in the amount of
2 3 4	Mr. Rhoades talked about that was a note in the file that I thought was part of that burglary, but apparently it's not. So in any event, the burglary is not as horrendous as I thought it	2 3 4	case. You'll receive credit for time served. There'll be a fine of \$750 on this. Restitution is ordered in the amount of \$421.59, court costs and Victims' Relief Fund at the standard
2 3 4 5	Mr. Rhoades talked about that was a note in the file that I thought was part of that burglary, but apparently it's not. So in any event, the burglary is not as horrendous as I thought it might have been. It was simply a burglary of a hotel room or	2 3 4 5	case. You'll receive credit for time served. There'll be a fine of \$750 on this. Restitution is ordered in the amount of \$421.59, court costs and Victims' Relief Fund at the standard amount, reimbursement
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program. We've been through that. So that's kind of how I look 1 2 at that. I'd recommend the Therapeutic Community. You should 3 probably have an option of doing that in the prison setting, but 4 I'll leave that up to you. 5 Any questions on that, Mr. Crane? 6 MR. CRANE: I don't have any questions, Your 7 Honor. 8 THE COURT: Mr. Bevilacqua? 9 MR. BEVILACQUA: No, Your Honor. 10 THE COURT: All right. This is -- sentencing -- I 11 should indicate also, on 2012 and 2003 (sic), based on the 12 admissions to the probation violations, the Court did find 13 willful violations of probation. Probation is revoked on those 14 two cases as well. 15 So these are all decisions you can appeal, 16 Mr. Rhoades. If you want to appeal, you should do that within 42 17 days. You have the right to an attorney on appeal. If you 18 cannot afford an attorney, one would be appointed for you. 19 MR. BEVILACQUA: Your Honor, may I be excused? 20 THE COURT: Yes. Thank you. 21 (Proceedings concluded) 22 23 24 25 97

APPENDIX C

		Q	
11	RULE 35 HEARING	1	Dee has been in custody for almost the last 22
2	DECEMBER 8, 2014	2	months. There was a 30-day period or so where he was out, but
3	THE COURT: On the record, Case 2014-6756, State	3	he's been in custody for almost two years straight. So he has
4	vs. Dee Rhoades. We're here on a motion under Rule 35. Tanner	4	served a fairly significant period of time here recently.
5	Crowther for the State. Jordan Crane for the Defense.	5	He has about eight months left fixed on his two
6	Your motion, Mr. Crane. Go ahead.	6	probation violation cases. So if the Court were to reduce the
7	MR. CRANE: Thank you, Your Honor. Your Honor,	7	sentence from a three-year fixed to a two-year fixed, he would
8	can I have a brief sidebar with the Court?	8	still be forced to serve some additional time. He would still
9	THE COURT: Yeah. Just a second. We'll go	9	have, by my count, about 17 months left to serve if the Court
10	outside. Let me just check one thing.	10	were to reduce the fixed sentence in this case to two years.
111	(Sidebar conference off the record)	11	If the Court reduced his sentence, the
12	THE COURT: All right. Go ahead, Mr. Crane.	12	indeterminate portion, to a six-year sentence, that still adds a
13	MR. CRANE: Thank you, Your Honor. As the Court	13	ycar and a half to the indeterminate time that he would be
14	Indicated earlier, we're here on Mr. Rhoades' Rule 35 motion.	14	required to serve on his probation violations. So the Court
15	We're requesting leniency, and we would ask the Court to consider	15	would be adding not only the 17 months up front but also a year
16	a reduction in Dee's sentence in this case.	16	and a half to the tail.
17	He was sentenced to a 13-year sentence with three	17	Part of the reason we're asking for this is, Dee
18	fixed and 10 indeterminate, so he's got a fairly lengthy sentence	18	would become eligible more quickly for the work camp in
19	in this case. We'd ask the Court to consider reducing it from	19	St. Anthony. One of the things we tried to hit on in sentencing
20	that sentence to a two-year fixed with a six-year indeterminate.	20	and tried to focus on Is, when Dee was released from his retained
1 ²¹	Dee is currently being held on two other cases in	21	jurisdiction, he was kind of left out in the community with no
22	which his probation was revoked. Those sentences were seven	22	income and no resources; and that kind of in a way contributed to
•23	years each, two and a half fixed and four and a half	23	the probation and the new offense. If Dee were to become
124	indeterminate on those probation violations. So he has to serve	24	eligible for the work camp, then he would be able to become
25	those sentences.	25	employed and work and start to build up some financial resources.
	45		46
1			
4	to date the section to file for interestate compact that he can	1 1	ariminality that they have seen in him, and it's their helief at
1	And then his goal is to file for interstate compact that he can	1	criminality that they have seen in him, and it's their belief at
2	leave the area and hopefully sever all ties and have a chance to	2	least that he's not amenable to that type of treatment at that
2	leave the area and hopefully sever all ties and have a chance to become more successful.	2 3	least that he's not amenable to that type of treatment at that particular level.
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11	was two and a half on both those cases, and then begin a new
2	felony. And I'm thinking, okay, what does it make any sense
3	to do a fixed portion of two or two and a half again? It seems
4	to me if we're committing new felonics, then the fixed portion of
5	any sentence ought to be adjusted upwards, not downwards. So
6	that's kind of my thought process on the fixed portion. I did
78	give a long tall on the determinate portion, thinking that if he
8	qualifies for parole, he needs to be supervised. I mean, his
9	record would bear that out, that he warrants supervision and
10	supervision for a long period of time.
11	I'm not inclined to grant the motion as to the
12	fixed portion. I might consider reducing the indeterminate
13 14	portion. I guess I want to think about that. So I'll take this
14	under advisement. I'll make a decision in the next day or so.
15	Anything else, Mr. Crane?
16 17	MR. CRANE: No. No, Your Honor.
17	(Proceedings concluded)
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