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## State v. Parker Appellant's Brief Dckt. 42930

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42930 & 42931
Plaintiff-Respondent,	)	
	)	KOOTENAI CO. NO. CR 2013-20461
v.	)	& 2013-22021
	)	
MICHAEL KARL PARKER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Michael Karl Parker appeals from his judgments of conviction for two counts of burglary. Mr. Parker pleaded guilty and the district court imposed concurrent unified sentences of five years, with two years fixed, and the court retained jurisdiction. The district court subsequently relinquished jurisdiction and Mr. Parker filed an Idaho Criminal Rule (*hereinafter*, Rule) 35 motion for reduction of sentence, which was denied. Mr. Parker appeals, and he asserts that the district court abused its discretion by relinquishing jurisdiction and by denying his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

On September 10, 2013, Detective Kirk Kelso was contacted regard the theft of a semi-automatic firearm. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The firearm had been pawned in Coeur d'Alene by Mr. Parker. (PSI, p.3.) He had also pawned two televisions. (PSI, p.3.) Two weeks later, Detective Kelso was contacted by the same individual who reported that Mr. Parker, his girlfriend's son, took his iPad tablet. (PSI, p.3.) The tablet was later found at a pawn shop in Spokane. (PSI, p.3.)

In docket number 42930, Mr. Parker was charged with burglary and grand theft by unauthorized control. (R., p.60.) In docket number 42931, he was charged with burglary. (R. p.66.) Mr. Parker pleaded guilty to burglary in both cases and was initially placed in the drug court program. (R., p.69.) However, he subsequently admitted to drug court violations and the district court set the case for sentencing. (R., p.81.)

At sentencing, the court imposed concurrent sentences of five years, with two years determinate, and the court retained jurisdiction. (R., pp.87, 90.) The court subsequently relinquished jurisdiction and executed the sentences. (R. p.112.)

Mr. Parker appealed. (R., pp.115, 122.) He then filed a Rule 35 motion for reduction of sentence, which was denied. (R., pp.135, 143.) Mr. Parker asserts that the district court abused its discretion by imposing by relinquishing jurisdiction and by denying his Rule 35 motion.

## ISSUES

1. Did the district court abuse its discretion when it relinquished jurisdiction?
2. Did the district court abuse its discretion when it denied Mr. Parker's Rule 35 Motion for a Reduction of Sentence?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction

A decision to relinquish jurisdiction is review for an abuse of discretion:

The Legislature has explicitly provided that the decision whether to retain jurisdiction and place the defendant on probation or relinquish jurisdiction to the Department of Corrections is a matter of discretion. I.C. § 19–2601(4). Thus, we review a decision to relinquish jurisdiction for abuse of discretion. A court properly exercises its discretion when it (1) correctly perceives the issue to be one of discretion, (2) acts within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, and (3) reaches its decision by an exercise of reason.

*State v. Latneau*, 154 Idaho 165, 166 (2013) (internal citation omitted). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Jackson*, 130 Idaho 293, 294 (1997).

Mr. Parker acknowledges that he had several formal and informal DOR's while on the rider program. (See *generally* Addendum to the Presentence Investigation Report (*hereinafter*, APSI). However, several individuals testified in his support at the rider review hearing.

Carleton Gove, the chaplain at the jail facility testified that Mr. Parker had made a commitment to better his life by becoming a Christian. (11/26/14 Tr., p.28, Ls.17-25.)

Mr. Parker's "motivation and desire is to move in the right direction in this life, to be a . . . positive person in our community." (11/26/14 Tr., p.28, Ls.17-25.) Chaplain Gove believed that Mr. Parker's attitude had changed for the better and that he had a real desire to make changes in his life. (11/26/14 Tr., p.29, Ls.18-25.)

Michael Kahlbau, also known as Pastor Rick, also testified in support of Mr. Parker. (11/26/14 Tr., p.35, Ls.12-25.) Pastor Rick's family had offered to take Mr. Parker in:

I'll do whatever I can, take responsibility, to make sure this kid walks right. Can I promise you that? No, you know that. But I'll do whatever I can.

He knows if he comes in, he's not coming in as a guest. He's coming in as part of the house; house rules, house responsibility. He knows that, you know, we'll help him. You know he needs to stay on medication, all of those things. I don't want him to be fearful. I know he'll make mistakes, but he knows he's accountable. I'm not going to harbor this kid. I won't. I'll give him a chance. I'm not going to harbor him.

(11/26/14 Tr., p.42, Ls.1-14.)

Mr. Parker's mother also testified at the rider review hearing. She stated,

Michael's difficulty stems from the amount of abuse he took from his stepfather, my ex-husband. Everybody in the family, including myself. He's had everything from a 9-millimeter gun put to his forehead to being thrown out of the house. And I was bringing him in the house, unbeknownst to my ex-husband, for four years so that he would have a place to [stay] and eat because I couldn't see my child out on the street.

(11/26/14 Tr., p.48, L.22 – p.49, L.5.) She described Mr. Parker as a loving kid who was in denial about the abuse that he suffered. (11/26/14 Tr., p.49, Ls.22-25.)

Mr. Parker also addressed the court at the review hearing. He stated that when he went on the rider he was eager to do the programming but found himself lost in communication with his counselor. (11/26/14 Tr., p.51, Ls.3-11.) However, he believed that he had made progress during the rider and learned to acknowledge that "people

are out there trying to help me and I just need to be able to grasp that.” (11/26/14 Tr., p.51, Ls.12-24.) Mr. Parker believed that he had learned “through the chaplains, through the rider program, through the psychologist, through my education” and he took accountability for the mistakes he had made. (11/26/14 Tr., p.52, Ls.1-13.)

Considering the testimony from the chaplains, Mr. Parker’s mother, and Mr. Parker’s acceptance of responsibility that he learned on his rider, Mr. Parker submits that the district court abused its discretion by relinquishing jurisdiction.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Parker’s Rule 35 Motion For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*”

Mr. Parker testified at his Rule 35 hearing. He testified that since he had been incarcerated, he had been in contact with his case manager on a weekly basis to make sure he was doing everything according to the rules. (3/2/15 Tr., p.6, Ls.1-7.) Mr. Parker had “confirmation of stable living and treatment that I will attend regardless

of my entry into society” and was planning on living with Pastor Rick. (3/2/15 Tr., p.6, Ls.8-13.) Mr. Parker informed the district court,

I'm only 23 years old and I have a lot of life ahead of me and I believe since I've been down this year and a half I've learned more and gained more responsibility and held more accountability through the realization that, you know, the little mistakes, no matter what it is, the little bit of leeway I give myself can get me in the utmost trouble and just to really consider.

(3/2/15 Tr., p.8, Ls.4-11.)

Considering that Mr. Parker had been meeting with his caseworker, was following the rules, had a stable living environment arranged, and understood that he needed to be more responsible and accountable, Mr. Parker submits that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence.

#### CONCLUSION

Mr. Parker respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new rider review hearing. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 17<sup>th</sup> day of November, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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LANSING L HAYNES  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JMC/eas