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State v. Brown Respondent's Brief Dckt. 43068

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43068
Plaintiff-Respondent,)	
)	Fremont County Case No.
v.)	CR-2014-683
)	
JESSICA JOY BROWN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Brown failed to establish that the district court abused its discretion by declining to further reduce her sentence pursuant to her Rule 35 motion for a reduction of sentence?

Brown Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Brown entered an Alford¹ plea to aiding and abetting attempted murder in the first degree and the district court imposed a unified sentence of 15 years, with 12 ½ years

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

fixed. (R., pp.175-77.) Brown filed a Rule 35 motion for a reduction of sentence, which the district court granted in part, reducing her sentence to a unified sentence of 15 years, with 10 years fixed. (R., pp.187-88, 216-17.) Brown filed a notice of appeal timely from the district court's order granting, in part, her Rule 35 motion. (R., pp.190-92.)

Brown asserts that the district court abused its discretion by declining to further reduce her sentence pursuant to her Rule 35 motion for a reduction of sentence in light of her participation in "positive activities" while in jail, her cooperation with the state, and because she "may have demonstrated an even greater level of acceptance of responsibility and remorse at the Rule 35 hearing." (Appellant's brief, pp.4-9.) Brown has failed to establish an abuse of discretion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant 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." Id.

Brown presented no "new" information in support of her Rule 35 motion. At the sentencing hearing, Brown expressed her acceptance of responsibility and remorse, and also advised that she had cooperated with the state to the best of her ability, had been participating in programs in the jail, and wished to continue in her rehabilitative efforts. (2/24/15 Tr., p.37, Ls.3-5; p.38, L.4 – p.39, L.15.) That Brown continued to

participate in “positive activities” while in jail and reiterated her expressions of remorse and acceptance of responsibility was not “new” information before the district court. At the hearing on Brown’s Rule 35 motion, Brown’s counsel acknowledged that “typically, we have further information, further evidence to present to the Court that was not available at the time of sentencing. That’s not the – the – the situation here.” (6/9/15 Tr., p.34, Ls.8-11.) The district court agreed, noting that “the only real difference between where we are today and where we were when we did sentencing back in February is that you have really improved your attitude a great deal.” (6/9/15 Tr., p.68, L.23 – p.69, L.1.) However, on appeal, Brown argues that the district court’s perception that her attitude had changed was an erroneous finding, claiming that her attitude was the same at the time of sentencing. (Appellant’s brief, pp.7-9.) As such, this, also, was not “new” information in support of Brown’s Rule 35 request for sentence reduction. Because Brown presented no new evidence in support of her Rule 35 motion, she failed to demonstrate in the motion that her sentence was excessive. Having failed to make such a showing, she has failed to establish any basis for reversal of the district court’s order granting, in part, her Rule 35 motion.

Even if this Court addresses the merits of Brown’s claim, Brown has still failed to establish an abuse of discretion. At the hearing on Brown’s Rule 35 motion, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for declining to further reduce Brown’s sentence pursuant to her Rule 35 request for leniency. (6/9/15 Tr., p.62, L.16 – p.72, L.15.) The state submits that Brown 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 A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order granting Brown's Rule 35 motion for a reduction of sentence in part.

DATED this 19th day of November, 2015.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of November, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ _____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 let her go, and she'll end up doing the time.
 2 But if she does well and she proves herself,
 3 what is the harm? What is the harm in giving her the
 4 opportunity to hit the ground running, to program and
 5 hopefully come out with -- with the -- I -- I sure hope the
 6 same attitude that she has today and not the jaded, you know,
 7 "The world owes me a living" kind of -- "I hate this" -- "this
 8 world" attitude that we see from so many who have spent years
 9 and years and decades in the prison system. I would hate to
 10 see that happen with this young lady.

11 And I would bet -- I would bet -- I can't jump
 12 into the minds of the people in this courtroom, but I would
 13 bet that all of us would -- would -- probably should feel the
 14 same way, if we really took a look at the fact that we're not
 15 asking the Court to -- to shorten the sentence, to shorten the
 16 fixed time.

17 If she does well, she gets out. And she's on
 18 probation or parole, and she'll -- she'll have all of those --
 19 all of those requirements as -- as well. And if she doesn't
 20 do well, she goes right back to the prison.

21 Why not give her an opportunity? I -- I don't
 22 see a valid argument against it. Obviously, there -- there
 23 are arguments against it, but I believe that this argument is
 24 sound.

25 And the only other thing that I would add is

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1 that Jessica has made formal requests to be moved from the
 2 facility she's in. And she has sent me the copy of -- of the
 3 letter that she wrote to IDOC and their response.

4 And they indicated to her that the only re --
 5 that -- that requests -- they use a lot of different factors,
 6 but convenience is not one of them.

7 And I think she may have a good argument to
 8 make -- and I believe I will probably also write a letter --
 9 that this isn't just about convenience. This is about
 10 receiving benefits in the form of -- of programming and -- and
 11 classes, whatever there are -- are available that aren't being
 12 provided in the -- in the small facility she's in now.

13 So I submit on that. Thank you for your time,
 14 your Honor. I appreciate it.

15 THE COURT: Thank you.

16 Well, this has been and continues to be a
 17 difficult case. It's a case where, if lives, if not
 18 completely destroyed, were certainly tragically affected in an
 19 enduring way.

20 And but for, frankly, pure luck or divine
 21 intervention, however you want to look at it, this wasn't a
 22 murder case. If it had been, the consequences that we've been
 23 talking about today would have been so much more serious.

24 The Court's very mindful, and I appreciate the
 25 advocacy of Ms. Brown's attorney. I certainly at the time of

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1 sentencing expressed this desire, and I express it again, that
 2 I want the Defendant to get the best treatment possible so
 3 that, when she comes out of prison, that she's a whole and
 4 healthy person that's ready to be an effective mother.

5 And she has a lot of life ahead of her. During
 6 that life, I'd like her -- to see her be a contributing member
 7 to this community or whatever community she chooses to live
 8 in. And I -- I really mean that.

9 One of the problems, though, is, once the Court
 10 sentences someone to prison and I essentially relinquish my
 11 jurisdiction of the case, I have no jurisdiction over the
 12 decisions that the Idaho Department of Corrections make and
 13 the decisions that they make about when someone qualifies for
 14 treatment or where they are placed to receive that treatment
 15 or when they qualify for parole.

16 Those are decisions that are made in the
 17 executive branch of government by the Idaho Department of
 18 Corrections or the Idaho parole board or any of those
 19 entities.

20 And I can certainly make recommendations, and
 21 I'll again recommend that this Defendant receive the -- the
 22 best possible care and treatment and that she get it as soon
 23 as possible.

24 Realistically, I understand that they just
 25 don't have the resources to provide that to every defendant,

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1 and so they have to wait until they approach their parole
 2 date.

3 Now, there are federal cases that discuss this
 4 issue. Those federal court decisions say that they need to
 5 receive the treatment in enough time before they appear before
 6 the parole board so that they can actually make their best
 7 possible case for themselves.

8 But I think most of us would like to see her in
 9 treatment today rather than eight or nine years from now. But
 10 the reality is I just have no control over that.

11 First, let me note that I am very pleased with
 12 what I think in over the last few months has been some
 13 significant growth in this Defendant. I think she has shown a
 14 much more appropriate level of contrition today than she did
 15 when she appeared before me for sentencing in February.

16 I think she has shown a much higher level of
 17 introspection. I think her comments about the remarks that
 18 the victim made and the Court made at the time of her
 19 sentencing and how she looks back on those and now knows that
 20 those statements were correct are statements that she may not
 21 have been capable of making three or four months ago.

22 And so I have seen a lot of appropriate growth,
 23 and I've seen signs of growing accountability as well, all at
 24 a much more appropriate level than was displayed at the time
 25 of sentencing.

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1 I remember you made a comment at your
2 sentencing that -- you said something to the effect that you
3 were -- I think this is a quote -- quote, victimized by your
4 poor choices. And I guess that was one way of looking at
5 things.

6 But as I told you at the time, I found great
7 irony in your words because, in the long run, it was your
8 choices that victimized other people and almost led to the
9 death of a person.

10 And I don't hear you using that same kind of
11 language today. And I don't think that's a result of good
12 coaching by your attorney or -- or you reading books about how
13 you should talk to a judge. I don't interpret it that way.

14 I think it's very sincere and honest that you
15 have learned from those things. And I'm going to put some
16 weight on those things.

17 I need you to understand, though, that I can't
18 put too much weight on those things because one of the
19 purposes of sending someone to prison is so that they can
20 learn something.

21 And when I see a witness that's learned
22 something, I shouldn't conclude, well, that means they don't
23 deserve to be in prison. That just means that prison is
24 working.

25 THE DEFENDANT: Ma'am.

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1 THE COURT: And you need to understand that.
2 But, nevertheless, I think your growth should be noted, and
3 the Court is aware of it, and I'm pleased to see it. I think
4 you are on your way to becoming a better human being than the
5 person that committed this crime. I have no doubt about that.

6 THE DEFENDANT: Thank you.

7 THE COURT: Now, the reality of this case is
8 the Defendant is eventually going to return to the public.
9 And I certainly would want her to return as healthy and
10 productive as she can.

11 But at the same time, there's another aspect of
12 sentencing as well that really hasn't been talked about very
13 much here today, and that's an important aspect, and that's
14 the aspect of protection of society and punishment and
15 retribution for wrongdoing.

16 This was a crime that was very heinous. And,
17 again, we're very fortunate it wasn't a murder case rather
18 than just attempted murder. Frankly, a lot of people, I
19 think, could make an argument that 15 years isn't long enough.

20 I gave the co-defendant the maximum sentence I
21 could give him, and I indicated at his sentencing that, if I
22 could have given him a higher sentence, I would have given him
23 a higher sentence, but I only had 15 years to work with.

24 I can't look at your case in the vacuum because
25 you were involved with that same person. And to completely

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1 treat you different I think would be unfair and, in a lot of
2 ways, potentially unconstitutional. Because I think, to a
3 high degree, you were just as involved as he was.

4 Of course, I understand the difference is you
5 didn't pull the trigger; you weren't a former convicted felon;
6 you didn't violate your parole. Those were all very
7 aggravating circumstances in your co-defendant's case.

8 But, nevertheless, you had your own unique set
9 of aggravating factors in your case, which I noted at the
10 sentencing -- that you were the one that showed him where the
11 victim was; you were signaling him; you purchased the
12 ammunition; you aided and abetted him in every sense of the
13 term "aided and abetted."

14 And although I found that there was a
15 difference enough to justify not receiving the same sentence,
16 I didn't think the difference was enough that I should give
17 a -- create a stark difference in the two sentences. I just
18 felt that wouldn't be just and proper.

19 And so this is the type of case that required a
20 punishment. And sometimes at sentencing I'm more focused on
21 rehabilitation than punishment; and other times, I'm more
22 focused on deterrents than punishment; and other times I'm
23 more focused on protection of society than punishment.

24 But this is the type of case where I think the
25 legislature, the public, and the demands of justice all unite

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1 in recognizing that punishment is appropriate and should be
2 focused on.

3 As I mentioned when I was discussing this
4 matter with your attorney, one of the things that I was
5 looking at as I went into that sentencing back in February
6 was some concrete evidence that your alleged cooperation has
7 made a difference in any meaningful way; that because of your
8 cooperation, crimes were solved or people were arrested or the
9 community was made safer in some way because of your
10 cooperation.

11 I was looking for some evidence like that then,
12 and I -- and I -- and I was today too. And I'm a little
13 disappointed. And I'm not faulting your attorney for it. I
14 understand he has things he has to operate under, and -- and I
15 appreciate that.

16 But I was really hoping to hear that today
17 because I think that would have certainly given me a strong
18 reason to consider further leniency for your sentence if -- if
19 it could be proved that your cooperation has actually somehow
20 made the world or the community a safer place. And, again, I
21 don't have any information before me that suggests that that's
22 the case.

23 So, really, the only difference between where
24 we are today and where we were when we did the sentencing back
25 in February is that you have really improved your attitude a

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1 great deal.

2 And I don't think that's inconsequential. I
3 don't think I can -- I should put too much weight on that, but
4 I don't think it would be improper if I put some weight on
5 that.

6 The Court is mindful of your children, and I
7 know this is going to be a hardship on them as well as on your
8 mother and your family. But those aren't really decisions
9 that were made by this Court. Those are what we call
10 collateral consequences of your choices.

11 And I don't think any grandma really wants to
12 be a mother at that age. They'd rather just be a grandpa.

13 THE DEFENDANT: Yeah.

14 THE COURT: So it comes down to, like it does
15 to all discretionary decisions that judges have to make, I
16 have to do what I think is right.

17 And I am pleased that you have made progress.
18 I am not pleased that you haven't been given access as soon as
19 I would like to certain types of programming. And I don't
20 think what I'm going to do today is going to completely solve
21 that.

22 But I think I can do what I intend to do today
23 and still protect society and focus properly on punishment.
24 And so the Court is going to grant in part the motion as
25 follows:

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1 The Court is going to sentence the Defendant to
2 a 15-year unified sentence, as I did before. However, I am
3 going to make a slight reduction in the fixed portion of the
4 sentence to 10 years, with 5 years indeterminate. So your
5 sentence is, essentially, 10 years fixed and 5 years
6 indeterminate.

7 Now, if you don't do good time -- I mean you
8 don't take advantage of the rehabilitative opportunities that
9 you're going to have -- then this really isn't going to
10 matter. The 12 1/2 years I gave you before is likely going to
11 be 15 years. The 10 years I'm giving you now is likely going
12 to be 15 years.

13 But if you can show that you're worthy of
14 consideration from the department of parole and if they grant
15 it to you, what this means is that your children are going to
16 be a little younger when you get out and that those few years
17 might make a difference in the type of relationship you can
18 build with them and the type of future that they might have.

19 But, again, if you don't take advantage, then
20 this doesn't mean anything. And I know this isn't anywhere
21 near what your attorney wanted. Your attorney wanted me to
22 knock 5 or 10 years off your sentence, and I'm not going to do
23 that.

24 But I think lowering it to 10 years is a
25 appropriate reflection, frankly, of the sentence I probably

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1 would have given you back in February if you had shown the
2 level of contrition and introspection and accountability that
3 you showed today.

4 So in a way, I don't think I'm lowering your
5 sentence. I think I'm giving you the sentence that I
6 originally intended to give you but for the fact that I
7 didn't -- I wasn't very impressed with your attitude back in
8 February. And this is likely the sentence I would have given
9 you if you had showed to the Court then what you've showed
10 today. Okay? That will be the order of the Court.

11 Now, you only get one Rule 35 motion. So this
12 is it. However, you do have a right to appeal the Court's
13 decision. You have 42 days to file an appeal. If you can't
14 afford an attorney, the Court will appoint one to handle the
15 appeal for you.

16 Additionally, you have post-conviction relief
17 rights that extend one year after your time for appeal
18 expires. I know that Mr. Rammell has reviewed those matters
19 with you before. And if you have any questions, he can answer
20 them.

21 I also understand you've been appointed a state
22 appellate public defender to handle your appeal of the
23 underlying case, and certainly that attorney can assist you in
24 those matters as well if you have any questions. Okay?

25 Are there -- are any questions about the

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1 Court's decision in this matter from the State or from the
2 Defense?

3 MR. RAMMELL: No, your Honor.

4 MR. LEWIS: Not from the State, your Honor.

5 THE COURT: Okay. Very well. That will be the
6 order of the Court.

7 Ms. Brown, I think you've shown the Court that
8 you've taken some good steps. You've got a long way to go.
9 But if you keep headed in the direction you're headed, I'm
10 much more optimistic about your future than I was back in
11 February.

12 You've shown me that you are capable of change,
13 and you've shown me that -- that you are learning something in
14 the system. And that's going to be a long process. So don't
15 become impatient with it because you have a lot more to learn.
16 Okay?

17 THE DEFENDANT: Okay.

18 THE COURT: But I do wish you the best of luck.

19 THE DEFENDANT: Thank you.

20 THE COURT: If there's nothing else, we'll be
21 in recess.

22 (Proceedings concluded.)

23

24

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