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State v. Loos Appellant's Brief Dckt. 43117

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43117
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2011-1331
v.)	
)	
DEYLEN SCOTT LOOS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Deylen Scott Loos appeals from the district court's Order Denying Motion for Reconsideration Under ICR 35. Mr. Loos was sentenced to a unified term of five years, with two years fixed, for his possession of a controlled substance with the intent to deliver conviction. Mindful that he did not provide any new or additional information in the motion, he asserts that the district court abused its discretion by denying his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On March 31, 2011, an Information was filed charging Mr. Loos with possession of a controlled substance with the intent to deliver. (R. 41536¹, pp.26-27.) Mr. Loos entered a guilty plea the charge. (R. 41536, p.32.) He was sentenced to a unified term of five years, with two years fixed, and placed on probation. (R. 41536, pp.43-46.) Probation was later revoked and Mr. Loos was placed on a period of retained jurisdiction. (R. 41536, pp.76-77.) Following the successful completion of the rider, he was again placed on probation. (R. 41536, pp.81-85.) A little over a year later, Mr. Loos' probation was again revoked and he was again placed on a period of retained jurisdiction. (R. 41536, pp.133-134.) The district court later placed Mr. Loos on probation. (R., pp.15-18.) Unfortunately, Mr. Loos was again found to have violated the terms of his probation and his sentence was revoked. (R., pp.66-67.)

Mr. Loos filed a Motion for Reconsideration of Sentence timely from the district court's order revoking probation. (R., p.61.) He also filed a Brief in Support of Defendant's Motion for Reconsideration of Sentence. (R., pp.63-64.) The district court denied the motion. (R., pp.69-70.) Mr. Loos then filed a Notice of Appeal timely from the district court's Order Denying Motion for Reconsideration Under ICR 35. (R., pp.71-73.)

¹ In May of 2015, the Idaho State Supreme Court entered an Order Augmenting Appeal in which the pending appeal was augmented with the record, transcripts, and exhibits from Mr. Loos' prior appeal in Supreme Court Docket Number 41536. For ease of reference, all documents contained in the prior appeal will be cited with the docket number 41536, and all documents contained in the pending appeal will not contain a docket number in the citation.

ISSUE

Did the district court abuse its discretion when it denied Mr. Loos's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Loos'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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App. 1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* (citing *Lopez*, 106 Idaho at 450). "When 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." *State v. Huffman*, 144 Idaho 201, 203 (2007).

Mindful that he did not supply any new or additional information in support of his Rule 35 motion as required under *Huffman*, Mr. Loos asserts that the district court abused its discretion when it denied his Rule 35 motion. Mr. Loos asserted the following grounds for relief in the brief in support of his motion:

The objective of sentencing against which the reasonableness of a sentence is measured is the protection of society, deterrence of crime, rehabilitation of the offender, and retribution. Achieving these objectives may still be accomplished by reducing the sentence in this case. A reduction in sentence will not hinder the treatment and supervision this court feels is necessary for Mr. Loos.

(R., p.64.)

Additionally, he asserts that the district court failed to give proper weight and consideration to his substance abuse and desire for treatment (PSI 41536, pp.10-12), or to his successful completion of a recent period of retained jurisdiction (APSI, pp.1-10). Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982), see also *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Mr. Loos asserts that, in light of the above mitigating information, the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

Mr. Loos respectfully requests that this Court reduce his sentence as it deems appropriate. 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 30th day of September, 2015.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of September, 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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DEBORAH A BAIL
DISTRICT COURT JUDGE
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas