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State v. Weaver Appellant's Brief Dckt. 43355

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43355
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2013-15181
v.)	
)	
CYNTHIA ELAINE WEAVER)	APPELLANT'S BRIEF
AKA CYNTHIA ELAINE)	
BERAUN,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Cynthia Elaine Beraun pled guilty to forgery, and the district court sentenced her to seven years, with two years fixed, and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction and imposed the underlying seven-year sentence. Ms. Beraun then moved for reconsideration under Idaho Criminal Rule 35, which the district court denied without a hearing. Ms. Beraun now appeals to this Court, contending that the district court abused its discretion by denying her motion for reconsideration.

Statement of the Facts & Course of Proceedings

On November 29, 2013, the State charged Ms. Beraun with one count of forgery, a felony, in violation of Idaho Code § 18-3601, for attempting to use counterfeit twenty dollars bills at Jackson's Food Store. (R., pp.36–37; Presentence Investigation Report ("PSI"),¹ p.3.) The State later filed Part Two of the Information to add the persistent violator sentencing enhancement under Idaho Code § 19-2514. (R., pp.66–67.) Pursuant to a plea agreement with the State, Ms. Beraun pled guilty to forgery, and the State agreed to dismiss the persistent violator enhancement. (R., p.74; Tr., p.7, L.16–p.9, L.15; p.15, L.1–p.16, L.10, p.19, Ls.10–23.) The State also agreed to recommend probation with an underlying sentence of five years, with two years fixed, "conditional on no new crimes, no failures to appear." (Tr., p.7, Ls.17–24.) The district court accepted Ms. Beraun's guilty plea. (Tr., p.20, Ls.1–10.)

The district court held a sentencing hearing on May 1, 2014. (R., p.78.) Consistent with the plea agreement, the State requested probation with an underlying sentence of five years, with two years fixed. (Tr., p.32, L.22–p.33, L.2.) Ms. Beraun requested five years, with one year fixed, and probation. (Tr., p.44, Ls.8–12.) The district court sentenced Ms. Beraun to seven years, with two years fixed, and retained jurisdiction. (Tr., p.55, Ls.8–23.) The district court entered a Judgment of Conviction and Sentence on May 1, 2014. (R., pp.80–82.)

At the rider review hearing on April 6, 2015, the district court relinquished jurisdiction and imposed the underlying seven-year sentence. (R., p.85; Tr., p.71, L.20–

¹ Citations to the PSI refer to the 163-page electronic document titled "Weaver 43355 psi."

9.72, L.2.) An Order Declining and Relinquishing Jurisdiction, and Commitment was filed on April 7, 2015. (R., pp.87–88.)

On April 6, 2015, Ms. Beraun moved for reconsideration pursuant to Idaho Criminal Rule 35. (R., p.86.) This motion was timely from the district court's order relinquishing jurisdiction, but not from the judgment of conviction. (See R., pp.80–82, 87–88, 86.) Ms. Beraun submitted two addendums in support of her motion. (R., pp.91–100.) On May 8, 2015, the district court issued a memorandum and order denying Ms. Beraun's motion without a hearing. (R., pp.101–02.)

On June 4, 2015, Ms. Beraun filed a timely notice of appeal from the district court's order denying her motion for reconsideration. (R., pp.104–05.)

ISSUE

Did the district court abuse its discretion when it denied Ms. Beraun's motion for reconsideration under Idaho Criminal Rule 35?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Beraun's Motion For Reconsideration Under Idaho Criminal Rule 35

"A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court." *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must "consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence." *Id.* "'Reasonableness' of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed." *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146

Idaho 139, 148 (2008)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “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).

Ms. Beraun submitted two addenda in support of her motion for reconsideration. These addenda contain two letters from Ms. Beraun and a letter of support from a family friend, Diane Hilton. (R., pp.93–94, 97–100.) Ms. Beraun contends this information is new in that it provided further detail to the district court on certain aspects of Ms. Beraun’s life, including her rehabilitation efforts, employment opportunities, and family support. In light of this information, Ms. Beraun submits that the district court should have reduced her sentence after relinquishing jurisdiction.

In Ms. Beraun’s first letter, she outlined her accomplishments since her incarceration in January of 2014. Ms. Beraun had: (1) funded and completed MRT in Ada County while awaiting sentencing; (2) attended Alcoholics Anonymous meetings

and church services; (3) volunteered to iron graduation robes in the library for ten hours and strip wax from the floors for one hour; (4) completed five self-help workbooks; (5) completed the financial, parenting, and anger management courses, relapse prevention group, and pre-release; (6) volunteered for snow removal and to mow lawns; and (7) worked in the laundry and cleaning crew. (R., pp.93–94.) Ms. Beraun also wrote to the district court:

I have learned a great deal about myself, Your Honor: the choices that I have made caused by my mistaken beliefs and the consequences of those affected by my poor choices I firmly believe will not reoccur. I am implementing new beliefs and new thinking daily. I share what I have learned with those around me, encouraging a positive atmosphere, respectful attitudes, and appropriate prosocial communication.

(R., p.94.) This information further demonstrated to the district court Ms. Beraun's focus on recovery and her commitment to changing her behavior.

In her second letter, Ms. Beraun explained that she had the support of her two daughters. (R., p.97.) Ms. Beraun also explained in this second letter that she had an employment offer with a landscape company in Nampa. (R., p.97.)

Finally, Ms. Hilton wrote in her letter to the district court that she was impressed with Ms. Beraun's "work ethic and professional abilities." (R., p.99.) Ms. Hilton had hired Ms. Beraun to repair the deck of her home, and Ms. Beraun continued to work for Ms. Hilton doing various home repairs after the deck repair was complete. (R., p.99.) Ms. Hilton stated that Ms. Beraun completed every task in a timely manner and with high standards. (R., p.99.) Ms. Hilton also stated that she observed how important Ms. Beraun's children were to her. (R., p.99.)

Based on this information, Ms. Beraun submits that the district court abused its discretion by denying her motion for reconsideration under Idaho Criminal Rule 35.

CONCLUSION

Ms. Beraun respectfully requests that the order denying her Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 27th day of October, 2015.

_____/s/
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 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:

CYNTHIA ELAINE WEAVER
INMATE #49055
SICI
PO BOX 8509
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GEORGE D CAREY
DISTRICT COURT JUDGE
E-MAILED BRIEF

TERI JONES
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas