

1-20-2016

State v. McGarvin Appellant's Brief Dckt. 43587

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43587
)	
v.)	ADA COUNTY NO. CR 2015-5054
)	
RYAN NICHOLAS MCGARVIN,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Ryan McGarvin appeals from the district court's denial of his motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reduction of sentence. He contends the district court abused its discretion in denying his Rule 35 motion and failing to reduce his unified sentence of seven years, with two years fixed, for possession of a controlled substance.

Statement of Facts and Course of Proceedings

Mr. McGarvin was charged by Information with possession of a controlled substance, operating a motor vehicle while under the influence of drugs and/or

intoxicating substances (second offense within ten years), and possession of drug paraphernalia. (R., pp.22-23.) Mr. McGarvin entered into a plea agreement with the State pursuant to which he pled guilty to the first and second counts in exchange for dismissal of the third count. (R., p.25.) For the felony offense of possession of a controlled substance, the district court sentenced Mr. McGarvin to a unified term of seven years, with two years fixed. (R., p.31.) For the misdemeanor offense of operating a motor vehicle while under the influence of drugs and/or intoxicating substances, the district court sentenced Mr. McGarvin to 365 days in the Ada County jail, to be served concurrently. (R., p.31.) The judgment of conviction was entered on June 29, 2015. (R., pp.30-34.)

On August 21, 2015, Mr. McGarvin filed a pro se Rule 35 motion and a motion for a hearing. (R., pp.37-47.) He requested a reduction in the fixed portion of his sentence for possession of a controlled substance from two years to one year so that he could participate in meaningful substance abuse treatment. (R., p.46.) Alternatively, he requested a reduction in the indeterminate portion of his sentence for possession of a controlled substance from five years to three years. (R., p.46.) The district court denied Mr. McGarvin's Rule 35 motion without a hearing. (R., pp.49-52.) Mr. McGarvin filed a timely notice of appeal on September 18, 2015. (R., pp.53-56.)

ISSUE

Did the district court abuse its discretion in denying Mr. McGarvin's Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion In Denying Mr. McGarvin's Rule 35 Motion

“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 denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* In examining a district court’s denial of a motion for modification, this Court “examine[s] the probable duration of confinement in light of the nature of the crime, the character of the offender and the objectives of sentencing, which are the protection of society, deterrence, rehabilitation and retribution.” *Id.*

The district court abused its discretion in denying Mr. McGarvin’s Rule 35 motion based on the additional information he submitted in support of his motion. Mr. McGarvin pointed out that four professional evaluators had recommended treatment rather than incarceration. (R., pp.38-39.) He argued that sending him “to a negative drug infested prison environment is absolutely counterproductive to his need for treatment.” (R., p.41.) Mr. McGarvin informed the district court that because the fixed portion of his sentence exceeded one year, he could not participate in the Rehabilitation Drug and Alcohol Program and his only option for treatment was a 30-minute program held twice per week that he could participate in one month before his parole eligibility date. (R., p. 44.) Mr. McGarvin also pointed out that he was ordered to a mental health unit even though he had no ongoing mental health concerns. (R., p.43.) He informed

the district court that he had been “a model inmate” and was an inmate worker at the Clearwater County Jail. (R., p.45.)

In its order denying Mr. McGarvin’s Rule 35 motion, the district court dismissed Mr. McGarvin’s arguments without any real consideration. It stated: “The [c]ourt is aware—and was aware at the time of sentencing—of Defendant’s need for treatment, and Defendant’s sincerely expressed desire to stick with treatment.” (R., p.50.) At sentencing, the district court expressly acknowledged Mr. McGarvin’s sincerity, the letters written on his behalf, and “the fact that there is an underlying addiction issue.” (Tr., p.16, Ls.13-16.) The district court also recognized that Mr. McGarvin’s probation officer had recommended a rider. (Tr., p.16, Ls.13-18.) It nonetheless imposed a unified sentence of seven years, with two years fixed. (Tr., p.18, Ls.1-7.) The district court told Mr. McGarvin that it “hope[d] that you turn it around.” (Tr., p.19, L.7.)

The district court abused its discretion in failing to grant Mr. McGarvin’s Rule 35 motion and reduce his sentence. Mr. McGarvin provided the district court with additional information regarding the lack of meaningful treatment available to him because of the length of his sentence. He also provided the district court with additional information regarding his success in prison and his family’s continued need for him. The district court should have reduced Mr. McGarvin’s sentence so that he could obtain the treatment he so clearly needs, and perhaps have a meaningful shot at “turn[ing] it around.” (Tr., p.19, L.17.)

CONCLUSION

Mr. McGarvin respectfully requests that this Court vacate the district court's order denying his Rule 35 motion and remand this case to the district court with instructions to reduce the fixed and/or indeterminate portion of his sentence for possession of a controlled substance.

DATED this 20th day of January, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of January, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RYAN NICHOLAS MCGARVIN
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MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas