

8-18-2016

## State v. Urrutia Appellant's Brief Dckt. 43860

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ERIC D. FREDERICKSEN  
Interim State Appellate Public Defender  
I.S.B. #6555

SALLY J. COOLEY  
Deputy State Appellate Public Defender  
I.S.B. #7353  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

|                          |   |                                 |
|--------------------------|---|---------------------------------|
| STATE OF IDAHO,          | ) |                                 |
|                          | ) | NOS. 43860 & 43861              |
| Plaintiff-Respondent,    | ) |                                 |
|                          | ) | CANYON COUNTY NOS. CR 2014-1702 |
| v.                       | ) | & CR 2014-23052                 |
|                          | ) |                                 |
| JESUS ROCHA URRUTIA JR., | ) | APPELLANT'S BRIEF               |
|                          | ) |                                 |
| Defendant-Appellant.     | ) |                                 |
| _____                    | ) |                                 |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Jesus Rocha Urrutia Jr., pled guilty to one count of grand theft, one count of first degree kidnapping, one count of burglary, one count of felony domestic battery, and one count of aggravated assault. He received an aggregate unified sentence of twenty-eight years, with seven years fixed.

On appeal, Mr. Urrutia contends that his sentences represent an abuse of the district court's discretion, as they are excessive given any view of the facts. He further contends that the district court abused its discretion in failing to reduce his sentences in

light of the additional information submitted in conjunction with his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motions.

### Statement of the Facts & Course of Proceedings

Supreme Court Docket No. 43860 (Canyon County district court case number 2014-1702 (*hereinafter*, the theft case)) and Supreme Court Docket No. 43861 (Canyon County district court case number 2014-23052 (*hereinafter*, the kidnapping case)) have been consolidated for appellate purposes. (R., p.236.)

In the theft case, on November 6, 2013, a Nampa City Library patron reported that she had left her wallet at the library, it had been taken, and her credit card was used to purchase \$19.73 of merchandise at the Tobacco Connection. (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> pp.2-3.) Law enforcement investigated the report and watched the library surveillance video which showed Jesus Urrutia and another individual checking books out of the library at the same terminal at which the wallet was left. (PSI, p.3.) Another surveillance video showed Mr. Urrutia and the same male individual at the Tobacco Connection. (PSI, p.3.) Based on these facts, Mr. Urrutia was charged by Information with one count of grand theft. (R., pp.27-28.)

Pursuant to a plea agreement, Mr. Urrutia pled guilty to one count of grand theft. (8/25/14 Tr., p.5, Ls.5-17, p.9, L.25 – p.10, L.7; R., pp.48-52.) In exchange, the State agreed to dismiss another case, Canyon County case number 2014-15202, in which Mr. Urrutia had been charged with theft by unauthorized control. (8/25/14 Tr., p.5, Ls.5-9; R., pp.48-52.) The State also agreed to recommend a rider in exchange for

Mr. Urrutia's guilty plea, and to stipulate to Mr. Urrutia's release pending sentencing. (8/25/14 Tr., p.5, Ls.8-17; R., pp.38, 43.) Mr. Urrutia's sentencing hearing on the theft charge was continued as he had new pending charges: the kidnapping case. (R., pp.53-54, 58-59.)

In the kidnapping case, on October 9, 2014, Mr. Urrutia was at home when he pushed his live-in girlfriend's seventeen year old daughter, A.G., inside her bedroom and then sexually touched her and choked her. (PSI, pp.48-49.) When his girlfriend interfered, he struck her several times and put his hands around her neck. (PSI, p.48.) That same night, Mr. Urrutia's former co-worker, S.C., was sleeping when Mr. Urrutia entered her home uninvited. Holding a pocketknife near her face, he sat on her chest while she was in bed and S.C. believed he was going to rape her. (PSI, p.47.) S.C.'s minor son was also in the bed at the time. (PSI, p.47.)

Based on these facts, Mr. Urrutia was charged by Information with two counts of burglary, one count of battery with intent to commit a serious felony with a deadly weapons enhancement, one count of attempted second degree murder, two counts of sexual battery of a minor, one count of second degree kidnapping, one count of aggravated battery, and one count of injury to children. (R., pp.115-122.) Pursuant to a plea agreement, Mr. Urrutia pled guilty to burglary, first degree kidnapping, aggravated assault, and felony domestic battery as set forth in an Amended Information. (2/24/15 Tr., p.6, L.1 – p.7, L.4, p.15, L.1 – p.24, L.3; R., pp.126-149.) In exchange, the State agreed to dismiss the remaining charges. (2/24/15 Tr., p.6, Ls.13-14.) The agreement

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<sup>1</sup> The designation "PSI" shall include the electronic file containing the PSI for CR14-1702, the PSI for CR14-23052, the Psychosexual Evaluation, Mental Health Evaluation, Substance Abuse Evaluation, and State's Exhibit 1.

as to sentencing recommendations was dependent upon the results of the psychosexual evaluation. (2/24/15 Tr., p.6, L.14 – p.7, L.4.) Mr. Urrutia's theft case and kidnapping case were set together for sentencing. (2/24/15 Tr., p.5, Ls.18-21; 6/1/15 Tr.)

At the sentencing hearing, Mr. Urrutia's counsel asked the district court to sentence Mr. Urrutia to an aggregate unified sentence of eighteen years, with three years fixed. (6/1/15 Tr., p.96, Ls.7-19.) The State asked the district court to sentence Mr. Urrutia to six years, with two years fixed, in the theft case and to order that sentence consecutive to the sentence in the kidnapping case.<sup>2</sup> (6/1/15 Tr., p.80, Ls.20-22, p.81, Ls.6-10.) The State asked the district court to sentence Mr. Urrutia to an aggregate unified sentence of thirty years, with nine years fixed, in the kidnapping case. (6/1/15 Tr., p.81, Ls.13-25.)

On the first degree kidnapping charge, Mr. Urrutia was sentenced to twenty-eight years, with seven years fixed. (6/1/15 Tr., p.105, L.18 – p.106, L.4; R., pp.182-184.) As for the remaining counts, Mr. Urrutia was sentenced to five years, with two years fixed, for the grand theft charge; ten years, with five years fixed, for the burglary charge; five years, with two years fixed, for the aggravated assault charge; and ten years, with five years fixed, for the felony domestic battery charge. (6/1/15 Tr., p.107, L.8 – p.112, L.12; R., pp.71-72, 182-184.) All sentences were ordered to be concurrent. (6/1/15 Tr., p.112, L.15; R., pp.71-72, 182-184.)

Mr. Urrutia filed a timely Rule 35 motion asking the district court to reconsider the sentences. (R., pp.189-190.) Mr. Urrutia filed additional information in support of his

motion to reconsider. (Defendant's Exhibit A from Rule 35 Hearing.) The district court denied Mr. Urrutia's Rule 35 motion after a hearing.<sup>3</sup> (R., pp.206-217.) Mr. Urrutia timely appealed the judgment of conviction and the district court's order denying his Rule 35 motion. (R., pp.218-221, 231-235, 237-246.)

### ISSUES

1. Did the district court abuse its discretion when it imposed an aggregate unified sentence of twenty-eight years, with seven years fixed, upon Mr. Urrutia following his plea of guilty?
2. Did the district court abuse its discretion when it denied Mr. Urrutia's Idaho Criminal Rule 35 Motions?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed An Aggregate Unified Sentence Of Twenty-Eight Years, With Seven Years Fixed, Upon Mr. Urrutia Following His Plea Of Guilty

Mr. Urrutia asserts that, given any view of the facts, his unified sentence of twenty-eight years, with seven years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of

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<sup>2</sup> The psychosexual evaluation found Mr. Urrutia was not amenable to treatment and was a moderate risk to reoffend. (PSI, p.175.)

<sup>3</sup> Contained within the district court's order denying Mr. Urrutia's Rule 35 motion is a statement by the district court that Mr. Urrutia is a "violent sexual predator." (R., p.212.) However, an initial VSP designation is not performed by the district court, it is a finding that can only be made by the Sexual Offender Classification Board. I.C. § 18-8314. Further, designation as a VSP may only be made after a hearing, as the Idaho Supreme Court has held that the inmate's due process rights are implicated. *See Smith v. State*, 146 Idaho 822 (2009) (holding that inmate's designation was not constitutionally sound and reversing and remanding with instructions to vacate the VSP designation).

the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Urrutia does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Urrutia must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id.* 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. *Id.*

In light of the mitigating factors present in this case, Mr. Urrutia’s sentence is excessive considering any view of the facts.

Mr. Urrutia is only 31 years old, but he has long struggled with substance abuse. (PSI, pp.9, 12.) His father became ill when Mr. Urrutia was 19 or 20 years old, and he started sending most of his paychecks to his father to help support the family. (PSI, p.9.) After his father died from kidney failure, Mr. Urrutia began drinking heavily and distancing himself from his family. (PSI, pp.9, 12.) At the time of the theft incident, he was homeless and living at the Lighthouse Shelter. (PSI, pp.9, 42.)

The facts of this case are somewhat similar to those in *Shideler v. State*, 103 Idaho 593 (1982), a case in which the defendant was convicted of robbing a bank using a shotgun, after which, as he was making his getaway, he fired two shotgun blasts in

the direction of a pursuing pickup truck being driven by the husband of one of the bank employees. *Id.* at 594. In *Shideler*, the Court modified the sentence from twenty years to twelve years. *Id.* at 593. The court found it significant that this was Mr. Shideler's first felony and "the defendant has accepted responsibility for his acts, and that his family and employer have shown considerable interest in his future." *Id.* at 595. Like Mr. Shideler, Mr. Urrutia was abusing substances at the time the crime was committed.<sup>4</sup> (PSI, pp.35, 51.) Like Mr. Shideler, Mr. Urrutia expressed regret for what he did, especially the effects his actions had upon his family. (PSI, p.51.)

Further, the Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence based on Nice's lack of prior record and the fact that "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate the criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981).

Much of Mr. Urrutia's criminal conduct has been alcohol-related. (PSI, pp.4-7.) He realizes that his alcohol addiction is a problem area in his life, and he has tried to quit drinking. (PSI, p.12.) Mr. Urrutia characterizes his alcohol use as "a big problem." (PSI, p.177.) He recognizes that he needs to stay clean and sober in order to be a

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<sup>4</sup> Where Mr. Shideler was addicted to prescription medications, Mr. Urrutia is addicted to alcohol and methamphetamine. (PSI, p.51.)



responsible father and family member. (PSI, p.13.) He also wants to obtain treatment for his substance abuse. (PSI, p.12.)

In spite of his alcohol abuse issues, Mr. Urrutia has a good work history. Mr. Urrutia is skilled in the construction trade, and is a welder. (PSI, p.11.) He has worked for several companies as either a welder or a steel fabricator. (PSI, p.11.) He worked as a steel fabricator for the same employer for over eight years. (PSI, p.11.) Mr. Urrutia values his family and his work. (PSI, p.13.) Idaho recognizes that good employment history should be considered a mitigating factor. See *Nice*, 103 Idaho at 91; see also *Shideler*, 103 Idaho at 595.

Further, Mr. Urrutia expressed remorse and accepted responsibility for his actions.<sup>5</sup> (PSI, pp.3-4, 51; 10/10/12 Tr., p.99, Ls.2-8.) Mr. Urrutia wanted the court to know that he was at fault and would accept the consequences of his error. (6/1/15 Tr., p.99, Ls.2-8.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

The issue of reducing a sentence because a defendant expresses remorse has been addressed in several cases. For example, in *Alberts*, the Idaho Court of Appeals noted that some leniency is required when the defendant has expressed “remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Alberts*, 124 Idaho at 209.

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<sup>5</sup> Mr. Urrutia told the district court at sentencing, “I just want to say that I’m not – I’m not blaming my alcohol or my meth use. I’m really sorry for what I did. If the victims were here, I’d tell them that, like my attorney said, I wish I could just -- I wish I could take back what I did. I know that I need to go to prison. I know that I need some help.” (6/1/15 Tr., p.99, Ls.2-8.)

The Idaho Supreme Court has also reduced a defendant's term of imprisonment because the defendant expressed regret for what he had done. *Shideler*, 103 Idaho at 595. In *Shideler*, the Idaho Supreme Court ruled that the prospect of Shideler's recovery from his poor mental and physical health, which included mood swings, violent outbursts, and drug abuse, coupled with his remorse for his actions, was so compelling that it outweighed the gravity of the crimes of armed robbery, assault with a deadly weapon, and possession of a firearm during the commission of a crime. *Id.* at 594-95. Therefore, the Court reduced Shideler's sentence from an indeterminate term not to exceed twenty years to an indeterminate term not to exceed twelve years. *Id.* at 593.

Based upon the above mitigating factors, Mr. Urrutia asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his remorse, good work history, and substance abuse/addiction it would have imposed a less severe sentence.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Urrutia' Rule 35 Motion For A Sentence Reduction In Light Of The New Information Offered In Support Of His Rule 35 Motion

Although Mr. Urrutia contends that his sentence is excessive in light of the information in front of the district court at the time of his June 1, 2015 sentencing hearing (*see* Part I, *supra*), he asserts that the excessiveness of his sentence is even more apparent in light of the new information submitted in conjunction with Mr. Urrutia's Rule 35 motion. Mr. Urrutia asserts that the district court's denial of his motion for a sentence modification represents an abuse of discretion.

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.*”

In support of his motion for a sentence reduction, Mr. Urrutia submitted a letter to the court in which he expressed sincere regret for his actions the night of October 9, 2014, and told the court of his personal growth while incarcerated. (Defendant’s Exhibit A from Rule 35 Hearing.) Mr. Urrutia wrote that he was “extremely sorry” and “[n]o matter how much I wish and pray for that night to go away. Its something I will have to live with for the rest of my life.” (Defendant’s Exhibit A from Rule 35 Hearing.) Mr. Urrutia was enrolled in multiple programs, and he was taking those teachings to heart, realizing he had an addiction problem and issues he needed to work through. (Defendant’s Exhibit A from Rule 35 Hearing.) In light of Mr. Urrutia’s sincere remorse and personal growth, the district court should have reduced his sentence.

Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion in failing to reduce Mr. Urrutia’s sentences in response to his Rule 35 motions.

CONCLUSION

Mr. Urrutia respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his cases be remanded to the district court for a new sentencing hearing.

DATED this 18<sup>th</sup> day of August, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, 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:

JESUS ROCHA URRUTIA JR  
INMATE #113107  
IMSI  
PO BOX  
BOISE ID 83707

BRADLY S FORD  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

RANDY W SMITH  
CANYON COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

SJC/eas