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# State v. Henson Appellant's Brief Dckt. 43871

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43871
	)	
v.	)	ADA COUNTY NO. CR 2014-8384
	)	
KIMBERLY DAWN HENSON,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Kimberly Dawn Henson was sentenced to a unified term of fifteen years, with three years fixed, for trafficking in methamphetamine. She appeals from the district court's order denying her motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reconsideration of sentence, contending the district court abused its discretion in denying the motion.

Statement of Facts and Course of Proceedings

Ms. Henson was charged by Information with trafficking in methamphetamine. (R., pp.74-75.) She suffered from a stroke shortly after her arrest, and was deemed

incompetent due to an inability to assist in her defense. (Presentence Investigation Report (“PSI”), pp.204-18, 227.) After her competency was restored, she entered into an agreement with the State pursuant to which she agreed to plead guilty and to admit to violating probation in another case, CR 2009-16859. (R., pp.79, 80-87, 88; Tr. p.4, Ls.11-19.) The district court revoked Ms. Henson’s probation in CR 2009-16859 and executed her unified sentence of ten years, with three year fixed. (Tr., p.15, Ls.6-13.) In the instant case, the district court sentenced Ms. Henson to a unified term of fifteen years, with three years fixed, to be served concurrently. (R., pp.89, 91.) The judgment was entered on July 25, 2015. (R., pp.90-94.)

On August 5, 2015, Ms. Henson filed a Rule 35 motion for reconsideration of sentence, requesting that the district court reduce the indeterminate portion of her sentence. (R., pp.99-112.) The district court denied Ms. Henson’s Rule 35 motion on December 9, 2015. (R., pp.113-15.) Ms. Henson filed a timely notice of appeal on January 6, 2016, which she subsequently amended. (R., pp.116-18, 121-24.)

### ISSUE

Did the district court abuse its discretion when it denied Ms. Henson’s Rule 35 motion?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Ms. Henson’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 when it denied Ms. Henson’s Rule 35 motion and refused to reduce the indeterminate portion of her sentence in light of the additional information she submitted to the district court.<sup>1</sup> The district court was aware at the time of sentencing that Ms. Henson suffered a stroke approximately two days after she was arrested for the instant offense and has a heart condition with an estimated five-year survival rate. (Tr., p.9, Ls.9-10, p.10, Ls.10-13; PSI, pp.115, 120.) The district court was not aware, however, how much the stroke had affected Ms. Henson and fundamentally changed her character.

Ms. Henson submitted four letters to the district court in support of her Rule 35 motion. (R., p.102.) In the first letter, Ms. Henson said, “I believe my life being so short from my stroke has really opened my heart and my thinking.” (R., p.104.) One of Ms. Henson’s daughters told the district court that she thought her mother had lost her independence after the stroke and couldn’t “reme[mber] some of the stuff we did together.” (R., p.109.) A friend of Ms. Henson’s informed the district court that, following her stroke, Ms. Henson could not carry on a conversation and forgets names and words. (R., p.111.) Another friend informed the district court that Ms. Henson “truly

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<sup>1</sup> Ms. Henson did not seek a reduction in the fixed portion of her sentence because it was the mandatory minimum. (Tr., p.13, Ls.15-20).

doesn't remember her crimes" and needs medical treatment. (R., p.112.)

The district court should have reduced the indeterminate portion of Ms. Henson's sentence in light of the additional information she submitted, which called into question the need for punishment, the possibility of rehabilitation, and the risk to society. After her stroke, Ms. Henson could not even recall the circumstances of her offense, which makes a lengthy term of incarceration seem particularly unwarranted. And due to her significant health problems, Ms. Henson cannot hope to be rehabilitated in any real way, and will likely live in a skilled nursing facility if she is alive at the time of her release. (PSI, p.167.) In her current state, Ms. Henson presents little risk to society as she will most likely not be able to use or possess, let alone traffick in, illegal drugs. The district court abused its discretion when it denied Ms. Henson's Rule 35 motion.

#### CONCLUSION

Ms. Henson respectfully requests that this Court vacate the district court's order denying her Rule 35 motion and remand this case to the district court with instructions to reduce the indeterminate portion of her sentence.

DATED this 9<sup>th</sup> day of May, 2016.

/s/ \_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9<sup>th</sup> day of May, 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:

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/s/ \_\_\_\_\_  
MAGALI CEJA  
Administrative Assistant

AWR/mc