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State v. McRoberts Appellant's Brief Dckt. 43974

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43974
)	
v.)	TWIN FALLS COUNTY NO. CR 2009-
)	11109
MITCHELL MCROBERTS,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Mitchell McRoberts appeals from the district court’s order denying his motion for a reduction of sentence (“Rule 35 motion”). Mindful that his Rule 35 motion was not timely filed, he asserts that the district court abused its discretion when it denied his motion.

Statement of Facts and Course of Proceedings

After Mr. McRoberts pled guilty to injury to child in 2010, the court placed him on probation with an underlying sentence of ten years, with three years fixed. (R., pp.63–70, 91–95.) In 2012, the court found that Mr. McRoberts violated his probation, but continued him on probation. (R., pp.156, 159–63.) In 2013, Mr. McRoberts admitted to violating his probation,

the district court retained jurisdiction, sent him on a rider, and later placed him back on probation. (R., pp.207–211, 217–220.) In 2015, Mr. McRoberts again admitted to violating his probation. (R., p.265.) On December 8, 2015, the court revoked his probation and imposed a modified sentence of ten years, with one year fixed. (R., pp.264–67.)

On January 11, 2016, Mr. McRoberts filed a Rule 35 motion explaining that he did not continue participating in treatment because his probation officers would not allow him to move to Boise, where he would have been able to get help from Terry Reilly’s SANE Solutions treatment facility. (R., pp.269-73.) Mr. McRoberts represented that the State did not object to the untimely-filed motion. (R., p.270.) Although he did not specify what relief he sought, he asked for a hearing on the matter. (*Id.*) The district court denied the motion as untimely and on its merits, since the court had already reduced Mr. McRobert’s sentence when it revoked his probation. (R., pp.274–76.) Mr. McRoberts filed a notice of appeal timely from the denial of his Rule 35 motion. (R., pp.278–81.)

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. McRoberts’s Rule 35 Motion

An otherwise lawful sentence may be altered under Rule 35 “if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Even if the sentence was not excessive when pronounced, a defendant can prevail on a Rule 35 motion if the sentence is excessive in view of new or additional information presented with the motion for reduction. *Id.* When a defendant asks for leniency after having his probation revoked, he must file the Rule 35 motion within fourteen days of revocation. I.C.R. 35.

“The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* This Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “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.” *Miller*, 151 Idaho at 834.

Mindful that his Rule 35 motion was not timely filed, Mr. McRoberts contends that, in light of the new information he provided, the district court abused its discretion by denying his motion. Specifically, he filed an affidavit informing the court that he is able to participate in treatment at Terry Reilly’s SANE Solutions office in Boise.¹ (R., p.272.)

CONCLUSION

Mr. McRoberts respectfully requests that this Court vacate the district court’s order denying his Rule 35 motion and remand for further proceedings.

DATED this 13th day of June, 2016.

/s/
MAYA P. WALDRON
Deputy State Appellate Public Defender

¹ The affidavit contains other information, but only the discussion about SANE appears to be information not already provided to the district court.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of June, 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:

MITCHELL MCROBERTS
INMATE #95827
ISCC
PO BOX 70010
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

ALAN J BOEHME
OFFICE OF THE PUBLIC DEFENDER
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

MPW/eas