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## State v. Gleese Appellant's Brief Dckt. 44329

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44329
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO. CR 2016-779
v.	)	
	)	
JEREMY MICHAEL GLEESE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jeremy Gleese contends the district court abused its discretion when it imposed and executed his sentence in this case, or alternatively, when it did not reduce that sentence pursuant to his I.C.R. 35 motion (*hereinafter*, Rule 35 motion). In either case, he asserts the district court did not sufficiently consider the mitigating factors in the record. Therefore, this Court should remand this case for a new sentencing determination by the district court, or, alternatively, reduce his sentence as it deems appropriate.

## Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Gleese pled guilty to burglary, and the State agreed to dismiss a persistent violator enhancement. (R., p.37; Tr., Vol.1, p.7, L.22 - p.8, L.12.)<sup>1</sup> Mr. Gleese explained that he had relapsed and begun using drugs again, and, during that time, he had gone into a Sears store to take some tools. (Tr., Vol.1, p.10, L.25 - p.11, L.4.) At the ensuing sentencing hearing, defense counsel noted that, despite prior rehabilitative efforts, Mr. Gleese had been unable to identify the root cause of his issues. (Tr., Vol.2, p.9, L.15 - p.10, L.10.) However, in preparation for this sentencing hearing, Mr. Gleese participated in a mental health evaluation, during which, he was diagnosed with Major Depressive Disorder. (Presentence Investigation Report (*hereinafter*, PSI), p.46.) As a result, "It is highly recommended that client participate in substance abuse treatment, mental health services, and follow the requirements of felony probation. In order to reduce the risk of recidivism, client will have a better outcome if he begins these services as soon as possible to start reducing symptomology and reduce his risk for a relapse." (PSI, p.47.)

Defense counsel added that this new diagnosis gave insight into Mr. Gleese's substance abuse issues as well, as his use of methamphetamine could be properly addressed as an effort to self-medicate his symptoms of depression. (Tr., Vol.2, p.10, Ls.12-15.) Defense counsel also argued that simply executing a sentence would only

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<sup>1</sup> The transcripts in this case are provided in three independently bound and paginated volumes. To avoid confusion, the volume containing the transcript of the change of plea hearing held on March 4, 2016, will be referred to as "Vol.1." The volume containing the transcript of the sentencing hearing held on May 27, 2016, will be referred to as "Vol.2," and the volume containing the transcript of the Rule 35 hearing held on July 1, 2016, will be referred to as "Vol.3."

perpetuate the cycle Mr. Gleese was already in. (Tr., Vol.2, p.10, L.22 - p.11, L.1.) Therefore, defense counsel recommended the district court impose a rehabilitation-focused sentence, either by suspending the sentence for a period of probation, or alternatively, by retaining jurisdiction.<sup>2</sup> (Tr., Vol.2, p.11, Ls.1-10.)

The district court acknowledged Mr. Gleese's mental health issues and expressed a desire to see him rehabilitate. (Tr., Vol.2, p.13, Ls.9-19, p.15, Ls.12-23.) However, it also acknowledged Mr. Gleese criminal history, and pointed out that he had only been on parole a few months before he was back into his same habits.<sup>3</sup> (Tr., Vol.2, p.13, Ls.6-8, 19-25.) As such, the district court imposed and executed a unified sentence of five years, with two years fixed. (Tr., Vol.2, p.16, Ls.12-13; R., pp.49-50.) The district court explained it hoped the sentence would promote Mr. Gleese's rehabilitation by providing a long period of forced sobriety. (Tr., Vol.2, p.16, Ls.15-16.)

Mr. Gleese subsequently filed a timely Rule 35 motion. (R., p.52.) At a hearing on that motion, he explained he had been evaluated for a treatment program in prison, but had not yet begun receiving that treatment. (Tr., Vol.3, p.7, Ls.1-8.) He also explained that, if paroled, he would be able to live with his girlfriend and he had an employment opportunity available to him. (Tr., Vol.3, p.7, L.19 - p.8, L.7.) Therefore, he requested the district court modify his sentence to a unified term of five years, with only one year fixed, so as to provide the opportunity to get treatment in a timelier manner.

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<sup>2</sup> Defense counsel acknowledged that Mr. Gleese had previously participated in two rider programs, but explained neither program had the benefit of Mr. Gleese's mental health diagnosis in crafting a treatment plan. (Tr., Vol.2, p.11, Ls.11-12.)

<sup>3</sup> The Department of Correction's website indicates Mr. Gleese's parole has also been revoked. (See *also* Tr., Vol.2, p.8, Ls.4-6 (the prosecutor anticipating a parole violation would follow the resolution of the instant case).) However, the cases in which Mr. Gleese was on parole are not on appeal here.

(Tr., Vol.3, p.7, Ls.9-11, p.8, L.21.) The district court denied that motion, explaining it felt the sentence as imposed was still appropriate and believed Mr. Gleese would be getting treatment “sooner than you think.” (Tr., Vol.3, p.11, Ls.3-11; R., p.73.)

Mr. Gleese filed a notice of appeal timely from the Judgment of Conviction. (R., pp.49, 60.)

### ISSUES

1. Whether the district court abused its discretion when it imposed and executed Mr. Gleese’s sentence.
2. Whether the district court abused its discretion when it denied Mr. Gleese’s Rule 35 motion.

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed And Executed Mr. Gleese’s Sentence

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 the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982). In order to show an abuse of discretion in the district court’s sentencing decision, the defendant must show, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997). The governing criteria, or sentencing objectives, 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.* The protection of society is the primary objective the court should consider. *State v. Charboneau*, 124

Idaho 497, 500 (1993). However, the Idaho Supreme Court has also held that rehabilitation “should usually be the initial consideration in the imposition of the criminal sanction.” *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

In this case, while the district court acknowledged a desire to see Mr. Gleese rehabilitate, it imposed a sentence which did not most effectively serve that goal. As a result, it imposed a sentence which also failed to effectively serve the primary objective of protection of society. The mental health evaluator’s treatment recommendation summarizes the interplay of these two goals, as well as the best means to achieve them, in Mr. Gleese’s case: “It is highly recommended that client participate in substance abuse treatment, mental health services, and follow the requirements of felony probation. In order to reduce the risk of recidivism, client will have a better outcome if he begins these services as soon as possible to start reducing symptomology and reduce his risk for a relapse.” (PSI, p.47.) In addition to explaining why a sentence aimed at getting Mr. Gleese into rehabilitative programs which would provide the opportunity to address the root of Mr. Gleese’s issues should have been imposed in this case, that recommendation also demonstrates why Mr. Gleese’s previous opportunities for rehabilitation had not been successful – they had not taken a mental health diagnosis into account. (See Tr., Vol.2, p.11, Ls.11-12)

Furthermore, defense counsel explained Mr. Gleese’s participation in the mental health evaluation “has really been an eye opening experience for him,” which has made him, according to the mental health evaluator, “very motivated and ready for treatment.” (Tr., Vol.2, p.9, Ls.21-25; PSI, p.45.) Additionally, Mr. Gleese’s parents remain

supportive and were hopeful that, with the information from the mental health evaluation, they could help him address the root of his issues. (Tr., Vol.2, p.9, Ls.14-18.) Mr. Gleese's amenability to treatment, with the more complete understanding of his situation and continuing familial support, corroborates the prudence of the mental health evaluator's recommendation: provide him timely access to rehabilitation programs because he is more likely to successfully rehabilitate in that scenario.

Finally, as the mental health evaluator noted (PSI, p.47), providing timely access to rehabilitative programs will not only improve the chances for successful rehabilitation, but also will provide more protection to society in the long term because it would reduce the risk of a relapse. See, e.g., *State v. Nice*, 103 Idaho 89, 91 (1982) (recognizing the timing of rehabilitative programming is an important consideration at sentencing); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008) (same). While the district court's desire to provide rehabilitation through a period of forced sobriety is notable, it does not provide for timely access into rehabilitative programs. As such, it is not the most effective option to address the goals of sentencing vis-à-vis Mr. Gleese's particular needs. That means the district court's decision to execute Mr. Gleese's sentence, rather than suspend it or retain jurisdiction, both of which would allow Mr. Gleese access to the necessary rehabilitative programs as soon as possible, constituted an abuse of its discretion.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Gleese's Rule 35 Motion

A motion to alter an otherwise lawful sentence pursuant to Rule 35 is addressed to the sound discretion of the sentencing court, and is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Huffman*, 144 Idaho 201, 203 (2007). When petitioning for a sentence reduction pursuant to Rule 35, the defendant must show his sentence is excessive in light of new or additional information presented to the sentencing court. *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994).

At the Rule 35 hearing, Mr. Gleese presented new information about the housing and employment opportunities available to him if he were parole-eligible. He also presented additional information about the treatment program he expected he would complete prior to release on parole. *Compare State v. Martinez*, 154 Idaho 940, 949 (Ct. App. 2013) (“The judge may consider . . . any new information concerning the defendant's rehabilitative progress in confinement” pursuant to a Rule 35 motion). The district court's acknowledgement that Mr. Gleese should be getting that treatment “sooner than you think” (Tr., Vol.3, p.11, Ls.3-11) actually demonstrates it had not sufficiently considered the information provided by the mental health evaluator – that Mr. Gleese should get that treatment “as soon as possible” to better prevent a relapse down the line. (PSI, p.47.) The hope that Mr. Gleese might get treatment soon does not, as discussed in Section I, *supra*, provide the soonest possible access to treatment



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21<sup>st</sup> day of November, 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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