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State v. Caraway Appellant's Brief Dckt. 44373

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44373
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY NO. CR 2013-242
v.	)	
	)	
MICHAEL LANCE CARAWAY,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, thirty-two-year-old Michael Lance Caraway pleaded guilty to felony aggravated battery. The district court imposed a unified sentence of ten years, with three years fixed, suspended the sentence, and placed Mr. Caraway on probation for a period of four years. After Mr. Caraway later admitted to violating his probation, the district court revoked his probation and retained jurisdiction. Mr. Caraway participated in a "rider," and the district court then suspended the sentence and placed him on probation for a new period of three years. Mr. Caraway subsequently admitted to violating his probation, and the district court revoked his probation and retained jurisdiction. The district court shortly thereafter relinquished

jurisdiction. Mr. Caraway filed an Idaho Criminal Rule 35 ("Rule 35") motion requesting the district court reconsider its decision to relinquish jurisdiction. The district court denied the Rule 35 motion. On appeal, Mr. Caraway asserts the district court abused its discretion when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

Officer Thiara of the Twin Falls Police Department responded to a reported fight in progress. (Presentence Report ("PSI"), p.3.) The reporting party stated a male, later identified as Mr. Caraway, was fighting with Thomas Coberly. (PSI, p.3.) Officer Schlund, the first officer at the scene, saw Mr. Caraway on top of Rodney Easter striking him in the face with a closed fist. (PSI, p.3.) Mr. Caraway initially refused orders to put his hands on top of his head or get on the ground, and continued to resist even after Officer Schlund placed him in cuffs. (PSI, p.3.)

Officer Thiara spoke with Mr. Coberly, who reported someone had broken a window to his house. (PSI, p.3.) Mr. Coberly stated that when he opened his door to see what was going on, Mr. Caraway immediately punched him in the face. (PSI, p.3.) As neighbors watched, the two fought in the hallway while Mr. Coberly called for help. (PSI, p.3.) Mr. Coberly reported he gained control of Mr. Caraway, and Mr. Easter identified Mr. Caraway as "Mike." (PSI, p.3.) Mr. Coberly stated Mr. Caraway and Mr. Easter began to fight, with Mr. Caraway striking Mr. Easter several times. (PSI, p.3.)

Mr. Coberly was covered in blood and had a deep gash on his forehead. (PSI, p.3.) Mr. Easter also had been bloodied on his face. (PSI, p.3.) Mr. Coberly was transported to the emergency room, where he received seven stiches, and he

additionally complained of head pain. (PSI, p.3.) He stated he would have to return for medical follow up to have his eye examined, because he had a metal plate in his face which may have also required treatment. (PSI, p.3.)

The State charged Mr. Caraway by Information with one count of aggravated battery, felony, I.C. §§ 18-903(a)-(c) and 18-907(a). (R., pp.40-42.) Mr. Caraway initially entered a not guilty plea. (R., p.57.) The State later filed an Amended Information to add additional alleged injuries. (*See* R., pp.102-05.)

Pursuant to a plea agreement, Mr. Caraway agreed to plead guilty by way of an *Alford* plea[1] to the charge. (R., pp.123-35.) The State agreed to recommend the district court impose a unified sentence of ten years, with three years fixed, suspend the sentence, and place Mr. Caraway on probation. (R., p.123.) The district court accepted Mr. Caraway's *Alford* plea. (R., p.135.) The district court subsequently imposed a unified sentence of ten years, with three years fixed, suspended the sentence, and placed Mr. Caraway on probation for a period of four years. (R., pp.152-175.)

About one-and-one-half-years later, the State filed a Motion to Revoke Probation and Issue a Warrant, alleging Mr. Caraway had violated the terms of his probation. (R., pp.182-89.) Mr. Caraway admitted to violating his probation by failing to report to the probation officer as directed, being evicted for not paying rent and not advising his probation officer of a new address, not making himself available for supervision and absconding supervision, being fired from his job, smoking marijuana, and failing to submit to random UAs as instructed. (R., p.198; *see* R., pp.182-84.) The district court revoked Mr. Caraway's probation and retained jurisdiction. (R., pp.199-203.) After

[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

Mr. Caraway participated in a "rider," the district court suspended the sentence and placed him on probation for a new period of three years. (R., pp.213-18.)

About two months later, the State filed a State's Ex Parte Motion to Revoke Probation and Issue a Warrant, alleging Mr. Caraway had violated the terms of his probation. (R., pp.219-30.) Mr. Caraway admitted to violating his probation by failing to pay rent, failing to follow house rules, failing to check in for work, admitting to using marijuana, failing to appear for UA testing as directed, and absconding from supervision. (R., p.240; *see* R., pp.220-21.) The district court revoked Mr. Caraway's probation and retained jurisdiction. (R., pp.241-46.)

Mr. Caraway was placed in a traditional rider. (R., pp.247-48.) Shortly thereafter, rider program staff sent a letter to the district court "to update you as the reason to Mr. Caraway's removal from the North Idaho Correctional Institution." (PSI, p.50.) The letter stated that "through a fact finding investigation, it was discovered that Mr. Caraway was involved in two separate incidents that almost led to physical altercations." (PSI, p.50.) The letter reported Mr. Caraway "was making harassing statements to another offender who happened to be a sex offender." (PSI, p.50.) He allegedly "made a harassing statement calling this offender a 'cho-mo' . . . ." (PSI, p.50.) The letter further reported, "Mr. Caraway also admitted to making a threatening statement, something to the effect of, 'Words like that will get the right side of your face introduced to the left side.'" (PSI, p.50.) The letter concluded: "Due to Mr. Caraway's behavior and threats toward a peer, he has been deemed a security risk; therefore, he has been transferred to the Idaho Correctional Institution—Orofino and is being recommended for relinquishment." (PSI, p.50.)

Without conducting a rider review hearing, the district court then relinquished jurisdiction. (*See* R., pp.249-52.) The district court had reviewed the letter from rider program staff. (R., p.250.) The district court stated it "agrees that the defendant's conduct indicates that the defendant is not a candidate for probation at this time. Given the defendant's behavior during the programming, and failure to complete it before being removed, it is apparent to the Court that the defendant is not adequately prepared to be successful on probation." (R., pp.250-51.)

Pursuant to Idaho Criminal Rule 35, Mr. Caraway filed a Motion for Reconsideration of Order Relinquishing Jurisdiction and Memorandum in Support. (R., pp.253-58.) Attached to the Rule 35 motion was a letter by Mr. Caraway explaining "for the court his account of what happened during the incident with the individual he is accused of threatening (Mr. Trafford)." (R., p.254, *see* R., pp.257-58.)[2]

The district court then entered an Order Denying Defendant's I.C.R. 35 Motion Without a Hearing. (R., pp.259-63.) After reviewing the Rule 35 motion and attached letter, the district court was "not persuaded that the defendant is suitable for probation at this time." (R., p.261.) The district court mentioned Mr. Caraway's "lengthy criminal history," which included violent conduct such the circumstances leading to the present charge of aggravated battery. (R., p.261.) The district court stated, "[h]is behavior on the rider, which the defendant regrets and attempts to mitigate in his letter, is in a similar violent vein even though it apparently did not actually rise to physical conduct." (R., p.261.) The district court concluded "this pattern of behavior poses a threat to the

[2] It appears that one of the three pages of the letter was inadvertently left out of the Clerk's Record on Appeal. The Rule 35 motion including the full letter is the subject of Mr. Caraway's Motion to Augment, filed contemporaneously with this brief.

community and demonstrates that this defendant is not yet ready for probation." (R., p.261.)

Mr. Caraway filed a Notice of Appeal timely from the district court's Order Denying Defendant's I.C.R. 35 Motion Without a Hearing. (R., pp.264-67.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Caraway's Idaho Criminal Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Caraway's Idaho Criminal Rule 35 Motion

Mr. Caraway asserts the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence. "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) (citation omitted). "The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion." *Id.* "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.*

Mr. Caraway submits the new and additional information he presented with his Rule 35 motion shows his sentence is excessive. Specifically, Mr. Caraway in the Rule 35 motion and attached letter explained "his account of what happened during the incident with the individual he is accused of threatening (Mr. Trafford)." (*See* R., p.254.) As stated in the Rule 35 motion, although Mr. Caraway "did use an inappropriate term, 'cho-mo' to describe Mr. Trafford, Mr. Caraway assures that he was not the aggressor in the situation." (R., p.254.) After another sex offender complained to Mr. Caraway that Mr. Trafford was harassing him, Mr. Caraway used the term "cho-mo." (R., p.254.) Mr. Trafford overheard the remark and "proceeded to challenge Mr. Caraway both verbally and physically." (R., p.254.)

Mr. Caraway explained in the Rule 35 motion that he was walking away from the situation when Mr. Trafford verbally insulted him. (*See* R., p.255.) The Rule 35 motion stated that "Mr. Caraway's remark in response to Mr. Trafford's verbal assault, 'words like that will get the right side of your face introduced to the left side,' was not a threat, and was not intended as a threat." (R., p.255.) Rather, the remark "was his opinion aimed at Mr. Trafford about the danger that Mr. Trafford's verbal and aggressive behaviors could bring upon himself; not at the hand of Mr. Caraway but at the hand of others." (R., p.255.)

The Rule 35 motion further explained Mr. Caraway had not started his programming at the time of the incident, and he "was walking away from the situation because he understood the risk of losing his rider and he was not willing to put his rider in jeopardy . . . ." (R., p.255.) Mr. Caraway also stated "he was honest with prison officials about what happened during the incident and cooperated during the

investigation," and that he and Mr. Trafford "ironed out their differences later with each apologizing to the other." (R., p.255.)

The above new or additional information presented with Mr. Caraway's Rule 35 motion shows his sentence is excessive. Thus, Mr. Caraway asserts the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Mr. Caraway respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 16th day of November, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of November, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

MICHAEL LANCE CARAWAY
INMATE #108046
ISCC
PO BOX 70010
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

L CARLOS RODRIGUEZ
OFFICE OF THE PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas