

3-28-2017

## State v. Turnbull Appellant's Brief Dckt. 44657

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44657
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2014-15930
v.	)	
	)	
SCOTTY DALE TURNBULL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a binding plea agreement, Scotty Dale Turnbull pleaded guilty to felony second-degree murder and felony aggravated battery. The district court accepted the plea agreement and imposed a sentence of fifteen years fixed for the second-degree murder charge, and a consecutive sentence of fifteen years indeterminate for the aggravated battery charge. Mr. Turnbull filed an Idaho Criminal Rule 35 ("Rule 35") motion for a reduction of sentence, which the district court denied. On appeal, Mr. Turnbull asserts the district court abused its discretion when it denied his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

Boise Police Department officers responded to a reported unattended death scene in the area of Americana Boulevard and Cooper Court. (Presentence Report, May 24, 2016 (*hereinafter*, PSI), p.3.) At the scene, officers learned that, the previous evening, witnesses saw Mr. Turnbull kicking Anneca Maestas in the head while she was lying on the ground. (PSI, p.3.) They had reportedly been in and out of a dating relationship. (PSI, p.3.) Ms. Maestas suffered injuries to her head including lacerations, contusions, a skull fracture, and a large hemotoma. (PSI, p.3) She was admitted to the St. Alphonsus Hospital Intensive Care Unit. (PSI, p.3.)

The officers also learned at the scene that a male, later identified as Russell “Rusty” Bitton, was found deceased near the overpass where many transient persons camped. (PSI, p.3.) He appeared to have been severely beaten, with lacerations and cuts to his head. (PSI, p.3.) While investigating, officers discovered Mr. Bitton and Mr. Turnbull had been in a physical altercation before Mr. Turnbull’s fight with Ms. Maestas. (PSI, p.3.)

Later that day, a bystander told officers Mr. Turnbull was near Rhodes Park, and officers took Mr. Turnbull to the Boise Police Department for questioning about the fight with Ms. Maestas. (See PSI, pp.3-4.) Officers eventually took him to the Ada County Jail and booked him for aggravated battery. (PSI, p.4.) Mr. Turnbull was on probation at the time. (See PSI, p.4.)

During the police investigation, officers learned a witness had seen Mr. Turnbull punch Mr. Bitton in the head. (PSI, p.4.) After Mr. Bitton fell to the ground, Mr. Turnbull

reportedly kicked Mr. Bitton in the head several times. (PSI, p.4.) When the witness walked away, he could still hear Mr. Turnbull kicking Mr. Bitton. (PSI, p.4.)

The State charged Mr. Turnbull with one count of murder in the second degree, felony, I.C. §§ 18-4001, 18-4002, and 18-4003(g) (for alleged acts against Mr. Bitton), one count of aggravated battery, felony, I.C. §§ 18-903(a) and 18-907(a) (for alleged acts against Ms. Maestas), and one count of battery, misdemeanor, I.C. § 18-903(a) (for alleged acts against one Jonathan Means). (R., pp.117-18.) Mr. Turnbull entered a not guilty plea for the charges. (R., p.129.)

Pursuant to an Idaho Criminal Rule 11(f)(1)(C) binding plea agreement, Mr. Turnbull subsequently agreed to plead guilty to the second-degree murder and aggravated battery charges. (R., pp.210-11.) The parties agreed that the sentence for the second-degree murder charge would be a term of fifteen years fixed. (R., p.210.) The parties also agreed the sentence for the aggravated battery charge would be a term of fifteen years indeterminate, to be served consecutively to the sentence for second-degree murder. (R., p.211.)

The district court accepted the plea agreement. (Tr., p.15, Ls.10-17.) Thus, the district court imposed a sentence of fifteen years fixed for the second-degree murder charge, and a sentence of fifteen years indeterminate for the aggravated battery charge. (R., pp.245-49.) The sentence for the second-degree murder charge was to be served consecutively to the sentence Mr. Turnbull was serving in the case where he had been on probation, Ada County No. CR 2012-16142 (*hereinafter*, the 2012 case).<sup>1</sup> (See

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<sup>1</sup> In the 2012 felony possession of a controlled substance case, Mr. Turnbull had been on probation for a period of five years, with an underlying suspended unified sentence of seven years, with three years fixed. (See PSI, pp.18, 20.)

R., p.246.) The sentence for the aggravated battery charge was to be served consecutively to the sentence for the second-degree murder charge. (R., p.246.)

Mr. Turnbull filed a Motion for Reconsideration of Sentence and for Leave, under Idaho Criminal Rule 35. (R., pp.253-54.) He also filed a Brief in Support of Defendant's Motion for Reconsideration of Sentence. (R., pp.255-57.) The brief requested the district court reduce Mr. Turnbull's sentence by having it run concurrently with the sentence executed in the 2012 case. (See R., p.256.) The district court later issued an Order Denying Rule 35 Motion for Reconsideration of Sentence. (R., pp.269-72.)

Mr. Turnbull filed a Notice of Appeal timely from the district court's Order Denying Rule 35 Motion for Reconsideration of Sentence. (R., pp.273-75.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Turnbull's Idaho Criminal Rule 35 motion for a reduction of sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Turnbull's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Turnbull asserts the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence. The district court should have reduced Mr. Turnbull's sentence by having it run concurrently with the sentence executed in the 2012 case.

"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.*

In the order denying Mr. Turnbull’s Rule 35 motion, the district court stated the Rule 35 motion “consists of a bare plea for leniency, offering nothing in the way of new information bearing on the reasonableness of sentence and no argument or evidence showing that the sentence was unreasonable as imposed in light of the purposes of sentencing.” (R., p.271.) The Idaho Supreme Court has held that “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Mindful of *Huffman*, Mr. Turnbull asserts the district court abused its discretion when it denied his Rule 35 motion because his sentence is excessive. As stated in the brief in support of the Rule 35 motion, “Mr. Turnbull is eager and willing to be rehabilitated.” (R., p.256.) While the presentence investigator believed Mr. Turnbull “demonstrated a lack of remorse while speaking about” Mr. Bitton (see PSI, p.34), at the sentencing hearing Mr. Turnbull stated, “I’d like to apologize to Mr. Bitton’s family on

behalf of my actions that resulted in the death in their family. They don't deserve to go through something like this for any circumstances." (Tr., p.39, Ls.22-25.) He also stated Mr. Bitton "didn't deserve to die on any means." (Tr., p.40, Ls.3-4.) Further, Mr. Turnbull apologized to Ms. Maestas and her family. (Tr., p.40, Ls.5-10.) He stated, "if I could, I'd go back in time and I would take it all back." (Tr., p.40, Ls.10-11.)

During the sentencing hearing, Mr. Turnbull's counsel mentioned how Mr. Turnbull had stated he became angry with Mr. Bitton after witnessing Mr. Bitton touch a female without her permission. (Tr., p.33, Ls.16-21; see PSI, p.12.) Mr. Turnbull had indicated he became blinded by his own rage, and while it had been his intent to beat Mr. Bitton, he accepted the beating should have stopped after Mr. Bitton went down and he did not want Mr. Bitton to die. (Tr., p.33, L.16 – p.34, L.8.)

Further, according to counsel, Mr. Turnbull agreed "that both alcohol and meth were probably still in his system." (Tr., p.34, Ls.9-10.) Defense counsel also noted Mr. Turnbull does "suffer from some mental health issues; including paranoia." (Tr., p.37, Ls.9-11.) Additionally, counsel stated Mr. Turnbull "has always been upfront and honest with us about what he has done and what the facts of the case were as he understood them to be. . . . [H]e's been very realistic and thoughtful of the circumstances that he created and what he has to pay for as a result of that." (Tr., p.38, Ls.11-23.)

In light of the above, Mr. Turnbull submits his sentence is excessive and the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence. The district court should have reduced Mr. Turnbull's sentence by having it run concurrently with the sentence executed in the 2012 case.

CONCLUSION

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

DATED this 28<sup>th</sup> day of March, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28<sup>th</sup> day of March, 2017, 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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INMATE #108173  
IMSI  
PO BOX 51  
BOISE ID 83707

SAMUEL A HOAGLAND  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

CRAIG A STEVELEY  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

BPM/eas