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State v. Fife Appellant's Brief Dckt. 44685

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44685
)	
v.)	TWIN FALLS CO. NO. CR-2012-3466
)	
ALAN BRYAN FIFE, JR.,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Alan Bryan Fife appeals from the district court's order revoking probation. He asserts that the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence made at the disposition hearing.

Statement of the Facts and Course of Proceedings

In 2012, Mr. Fife pleaded guilty to one count of aggravated battery, and the district court imposed a sentence of ten years, with three years fixed, but suspended the sentence and placed Mr. Fife on probation for three years. (R., pp.136-40.) Subsequently, in 2014, Mr. Fife admitted to probation violations, and the district court revoked Mr. Fife's probation and executed his

underlying sentence, but retained jurisdiction. (R., pp.241-44.) After Mr. Fife successfully completed a CAPP rider, the district court placed Mr. Fife on probation again for three years on May 15, 2015. (R., pp.253-56.)

On February 19, 2016, the Idaho Department of Correction submitted a “special progress report” to the district court, which indicated that Mr. Fife had “missed several of his substance tests, and admitted to using methamphetamine from 10/19/15 – 11/19/15.” (R., p.259.) The report also indicated that Mr. Fife was discharged from an aftercare program based on “noncompliance” and “unexcused absences.” (R., p.259.) The State then filed a motion to revoke Mr. Fife’s probation. (R., pp.262-64.) At the subsequent admit/deny hearing, the district court found Mr. Fife had violated his probation by failing to appear for drug testing, using methamphetamine, and getting discharged from aftercare and relapse prevention programs for failing to attend and/or continued drug use. (5/3/16 Tr., p.19, L.25 – p.20, L.12.)

The State asked the district court to set out the disposition hearing because Mr. Fife was allegedly involved in a battery at the jail during the prior month. (5/3/16 Tr., p.20, L.13 – p.21, L.3.) It also filed another motion to revoke probation. (R., pp.304-05.) At the subsequent disposition hearing, Mr. Fife’s counsel said that Mr. Fife had entered a guilty plea to one count of misdemeanor battery, and Mr. Fife later admitted to a new law violation. (10/4/16 Tr., p.23, L.21 – p.25, L.17.) The district court then found Mr. Fife had violated his probation again, and Mr. Fife’s counsel agreed to proceed to disposition. (10/4/16 Tr., p.25, Ls.18-22.)

The State requested that the district court execute the underlying sentence. (10/4/16 Tr., p.26, L.4 – p.30, L.14.) Mr. Fife’s counsel requested that the district court execute the underlying sentence also, but asked the district court—pursuant to Idaho Criminal Rule 35—to reduce the fixed portion of the sentence from three years fixed to two years fixed. (10/4/16

Tr., p.30, Ls.16-21.) Counsel then argued in support of that sentence reduction, but the district court ultimately denied the Rule 35 motion and executed the original underlying sentence. (10/4/16 Tr., p.30, L.22 – p.33, L.13, p.36, L.24; R., pp.322-25.) Mr. Fife filed a notice of appeal timely from the district court’s order revoking probation. (R., pp.329-31.)

ISSUE

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

ARGUMENT

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

Mr. Fife asserts that the district court abused its discretion when it denied his Rule 35 motion because it did not adequately consider Mr. Fife’s progress and productivity while on probation. 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 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 reviewing a district court’s discretionary decision, an appellate court considers “whether the court acted within the boundaries of such discretion, consistent with any legal standards applicable to its specific choices, and whether the court reached its decision through an exercise of reason.” *State v. Hass*, 114 Idaho 554, 558 (Ct. App. 1988).

At the disposition hearing, Mr. Fife’s counsel presented additional information regarding the positive aspects of Mr. Fife’s probationary period. He pointed out that Mr. Fife was a productive person when he was not using drugs but still struggled with addiction problems. (10/4/16 Tr., p.30, L.24 – p.31, L.3.) He discussed the fact that—after Mr. Fife completed his rider in May of 2015—he had several successful months where he was keeping in contact with his probation officer. (10/4/16 Tr., p.31, Ls.4-8.) Counsel also noted that Mr. Fife’s probation officer did not take Mr. Fife into custody when he discovered Mr. Fife had used drugs again because Mr. Fife was clearly trying to beat his addiction, so his probation officer suggested he try another program. (10/4/16 Tr., p.31, Ls.10-16.) And, when the State moved to revoke his probation, Mr. Fife had actually already started in another relapse prevention program. (10/4/16 Tr., p.31, Ls.16-22.) Mr. Fife had also become a supervisor at a cabinet company during the time he was on probation. (10/4/16 Tr., p.31, Ls.23-24.)

Additionally, counsel explained that Mr. Fife had contacted the staff at the “Victory Home” halfway house, and he was willing to stay at any other halfway house once he was on parole. (10/4/16 Tr., p.32, Ls.16-19.) Counsel also pointed out that Mr. Fife would be willing to “do as many meetings as possible” so that he could address his addiction proactively after he was released on parole. (10/4/16 Tr., p.32, Ls.19-22.)

The district court did not adequately consider this additional information. As such, it did not reach its decision to deny Mr. Fife’s Rule 35 motion through an exercise of reason. Therefore, it abused its discretion.

CONCLUSION

Mr. Fife respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 19th day of July, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of July, 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 #61720
ISCC
PO BOX 70010
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas