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State v. Severin Respondent's Brief Dckt. 44728

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44728
)	
vs.)	Teton County No. CR-2015-268
)	
JENNIFFER MARIE SEVERIN,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Severin failed to show that the district court abused its discretion when it denied her Rule 35 motion request for leniency?

ARGUMENT

Severin Has Failed Show That The District Court Abused Its Discretion

A. Introduction

During the course of a physical fight while the two were intoxicated, Jenniffer M. Severin hit her husband John with an aluminum T-ball bat. (PSI, pp. 4-5.) The state charged Severin with felony domestic battery resulting in a traumatic injury and misdemeanor counts of

possession of marijuana and possession of paraphernalia. (R., pp. 12-13.) Severin pled guilty to the felony pursuant to a plea agreement whereby the state dismissed the two misdemeanors. (R., pp. 36-40.) The district court imposed a sentence of six years with two years determinate and retained jurisdiction. (R., pp. 46-51.) The court later relinquished its jurisdiction. (R., p. 57.) Severin did not appeal from the initial judgment or the order relinquishing jurisdiction. (See generally, R.)

Severin filed a Rule 35 motion within 120 days of entry of the written order relinquishing jurisdiction. (R., pp. 59-63.) The district court denied the motion. (R., pp. 69-70.) Severin filed a notice of appeal timely from the order denying her Rule 35 motion. (R., pp. 72-73.)

B. Standard Of Review

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016). “When 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, 159 P.3d 838, 840 (2007).

C. Severin Has Shown No Abuse Of The District Court’s Discretion

The district court concluded that the rehabilitation it had hoped at the time of sentencing would happen was “in process of happening.” (Tr., p. 20, Ls. 19-21.) Based on the evidence presented in support of the Rule 35 motion, the district court concluded that “incarceration and treatment is accomplishing exactly what the Court hoped it would.” (Tr., p. 21, Ls. 19-22.) The question, then, was whether rehabilitation that was “working out the way you hope [it] would”

was “a reason to change anything.” (Tr., p. 21, Ls. 22-24.) The district court ultimately concluded that rehabilitation consistent with what the court hoped to achieve when it imposed sentence was not a reason to change the sentence. (Tr., p. 26, L. 5 – p. 27, L. 12.)

In reaching this conclusion the court specifically considered the effect of Severin being separated from her son. (Tr., p. 21, L. 25 – p. 22, L. 15.) It specifically considered her support in the community. (Tr., p. 22, Ls. 16-20.) However, the district court had “concerns” over granting the requested relief. (Tr., p. 22, Ls. 21-22.)

The district court, although it did not want it to be the emphasis of its ruling, noted factors that indicated a sentence of incarceration was called for, including the facts the offense was serious because it was an act of violence, Severin perpetrated the violence with her son present, and Severin received an “appalling report” regarding her rider that resulted in the relinquishment of jurisdiction. (Tr., p. 22, L. 23 – p. 24, L. 3.) The district court stated that it appeared that since then Severin had made progress, but expressed “concern” that granting the motion would “halt the programming that she’s receiving right at a time when she’s getting what she needs the most and it appears to be effective.” (Tr., p. 24, Ls. 4-13.) Some of the programming she was receiving was not scheduled to be completed until the following February and April, which coincided with considerations for parole, and the court was “very reluctant to do anything” that would prevent her from getting the full benefit of that programming. (Tr., p. 24, L. 14 – p. 25, L. 14.) The district court reviewed again the application of the probation factors in I.C. § 19-2521 and concluded the “fact that the defendant is doing better now doesn’t change” the finding that Severin was not ready for probation because she was “on target” for rehabilitation but “not quite there yet.” (Tr., p. 25, L. 15 – p. 26, L. 4.)

The district court's factual findings and application of the law to those facts show that the denial of the Rule 35 motion was within the court's discretion. It specifically considered the new evidence in light of the evidence, factual findings, and sentencing decisions previously made and concluded that although the indications of rehabilitation were a definite positive, they did not show that a reduction of the sentence was appropriate.

On appeal Severin argues that the district court "did not reach its decision ... through an exercise of reason because it did not adequately consider the information" submitted with the motion. (Appellant's brief, p. 6.) This argument does not withstand analysis.

The evidence submitted included a letter by Severin attached to the motion (R., pp. 62-63) and three letters submitted at the hearing, one by Severin's son and two by supporting members of the community (Defendant's Exhibits A, B and C). Severin also addressed the court. (Tr., p. 19, L. 8 – p. 20, L. 9.) The district court specifically addressed all of the evidence presented. (Tr., p. 21, L. 25 – p. 22, L. 15 (addressing evidence regarding son); p. 22, Ls. 16-20 (addressing evidence of community support); (Tr., p. 24, L. 4 – p. 25, L. 14 (addressing evidence regarding progress in programming).) Severin has failed to show that the sentence was excessive in light of the new information. That Severin believes the district court should have reached different conclusions on the basis of this evidence does not show an abuse of discretion.

The district court considered the evidence presented in support of the Rule 35 motion and concluded that it showed the type of progress the district court had hoped for when it imposed sentence, but that achieving the hoped-for rehabilitative progress did not warrant reducing the sentence, especially where granting the requested reduction would put the very progress achieved in jeopardy. The district court's decision was well within its discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Severin's Rule 35 motion.

DATED this 29th day of August, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of August, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd