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State v. Mailloux Respondent's Brief Dckt. 44758

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44758
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2016-4562
)	
DONALD JOSEPH MAILLOUX, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Mailloux failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of five years, with one and one-half years fixed, imposed upon his guilty plea to possession of methamphetamine?

Mailloux Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Mailloux pled guilty to possession of methamphetamine and the district court imposed a unified sentence of five years, with one and one-half years fixed. (R., pp.35-36, 90, 114-17.) Mailloux filed a timely Rule 35 motion for a reduction of sentence,

which the district court denied. (Motion to Reduce Sentence; Amended Order Denying Motion to Reduce Sentence (Augmentations).) Mailloux filed a timely notice of appeal. (R., pp.121-23.)

Mailloux asserts that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence in light of his continued health issues, employability, and willingness to help his family and to participate in rehabilitative programs. (Appellant's brief, pp.4-5.) Mailloux has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Mailloux 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." Id. Mailloux has failed to satisfy his burden.

Mailloux provided no new or additional information in support of his Rule 35 motion for reduction of sentence. The same information with respect to Mailloux's health issues, desire to help his family, willingness to participate in rehabilitative programs, work ethic and employability, and support from others who believe he is a devoted father and son was before the district court at the time of sentencing. (R., p.112; Tr., p.31, Ls.15-20; p.36, L.23 – p.38, L.8; PSI, pp.12, 14, 16, 18-19, 130, 134, 191-95.¹) Because Mailloux presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having

¹ PSI page numbers correspond with the page numbers of the electronic file "Mailloux 44758 psi.pdf."

failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion for reduction of sentence.

Even if this Court addresses the merits of Mailloux's claim, he has still failed to establish an abuse of discretion, for reasons more fully set forth in the district court's Amended Order Denying Motion to Reduce Sentence, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Mailloux's Rule 35 motion for reduction of sentence.

DATED this 14th day of August, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of August, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

FILED By: Seth Moxter Deputy Clerk
Fourth Judicial District, Ada County
CHRISTOPHER D. RICH, Clerk

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,
Plaintiff,

CASE NO. CR-FE-2016-4562

vs.

**AMENDED ORDER DENYING
MOTION TO REDUCE SENTENCE**

DONALD JOSEPH MAILLOUX, JR.,
Defendant.

INTRODUCTION

The Defendant, DONALD JOSEPH MAILLOUX, JR., was sentenced before the court on December 21, 2016, to an aggregate five year term, one and one-half years determinate, three and one-half years indeterminate, for the felony crime of Possession of a Controlled Substance, in violation of I.C. § 37-2732(c). Defendant filed a Motion to Reduce Sentence on March 21, 2017, which the State opposed on May 5, 2017. Based upon the pleadings, the court determines that an evidentiary hearing is unnecessary and declines to grant defendant's Rule 35 motion for the reasons set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

On April 9, 2016, defendant was operating a motor vehicle and was pulled over for failure to properly signal. During a search of his vehicle, officers discovered methamphetamine, marijuana extract and drug paraphernalia. Defendant was arrested and eventually entered a guilty plea to

1 Possession of a Controlled Substance on September 26, 2016. Defendant now seeks leniency from
2 the court.

3 ANALYSIS

4 The issue is whether to grant defendant's request for a reduced sentence based upon the fact
5 that he is a good, hard-working, and employable person, and needs to be present to assist his ailing
6 parents and financially and emotionally support his son. A sentence is reasonable to the extent it is
7 necessary to ensure the "good order and protection of society." *State v. Toohill*, 103 Idaho 565, 650
8 P.2d 707 (Ct. App. 1982). Broken down, these *Toohill* factors include consideration of the (1)
9 protection of society; (2) deterrence of the individual and the public generally; (3) possibility of
10 rehabilitation; and (4) punishment for wrongdoing. *Id.* Under Idaho Criminal Rule 35(b) ("ICR 35"
11 or "Rule 35"), a court may correct a sentence which has been imposed in an illegal manner or reduce
12 an unreasonable sentence.
13

14 Motions submitted under Rule 35 must be filed within 120 days after the judgment of
15 conviction. They shall be considered and determined without an evidentiary hearing, additional
16 testimony, or oral argument, absent court discretion to permit the same. Rule 35(b); *State v.*
17 *Peterson*, 126 Idaho 522, 525, 887 P.2d 67, 70 (Ct.App.1994). A motion to reduce a sentence under
18 Rule 35 is often a plea for leniency, which may be granted if the originally imposed sentence was
19 unduly severe. If the sentence was not excessive when pronounced, then the defendant must show
20 that it is excessive in view of new or additional information presented with the motion for reduction.
21 *State v. Burdett*, 134 Idaho 271, 279, 1 P.3d 299, 307 (Ct. App. 2000). It is not appropriate to simply
22 reargue the sentence. "However, Rule 35 does not function as an appeal of a sentence. The
23 determination of whether to grant the relief requested by defendant is a matter committed to the
24 court's discretion and is governed by the same standard as the original sentence." *State v. Gardiner*,

1 127 Idaho 156, 164, 989 P.2d 615 (Ct. App. 1995); *State v. Ricks*, 120 Idaho 875 (Ct. App. 1991).
2 The denial of a motion for reduction under Rule 35 will not be disturbed on appeal absent a showing
3 that the court abused its sentencing discretion. *State v. Robertson*, 130 Idaho 287, 289, 939 P.2d 863,
4 865 (Ct. App.1997).

5 Here, pursuant to Rule 35(b), defendant moves for leniency and requests the court to modify
6 his sentence by vacating the previous order, suspending the sentence and placing him on probation.
7 In such manner, he can emotionally, financially and physically support his family, and address his
8 own medical needs. In order to be entitled to relief, he must demonstrate that the original sentence
9 was unduly harsh or excessive, or that it has become so in light of new and additional information.
10 *State v. Burnight*, 132 Idaho 654, 978 P.2d 214, 219 (1999). Defendant submitted new information
11 to the court through his motion and addendums consisting of letters by family and friends. In
12 summary, these letters attest to defendant's hard work ethic, carpentry and auto mechanic skills and
13 employability, his parents declining health including father's dementia and their need for care
14 assistance, his care and attention to his family, his good character and his medical condition of
15 cancer, and concerns that the Idaho Department of Corrections facility where he has been staying
16 was not even aware of his cancer and has provided substandard care. His parents wrote a follow-up
17 letter on April 22, 2017, explaining specific concerns about his treatment while in prison, that he is
18 not receiving treatment for edema on his feet and legs, his recent test results have been lost, he is
19 living in "deplorable surroundings," and was served uncooked meatloaf. Despite Mailloux's
20 parents' concern, as evidenced below, as a whole, these letters do not represent new information, nor
21 do they persuade the court.
22

23
24 At the sentencing hearing, the prosecution deviated from the plea agreement from a
25 suspended sentence to an imposed sentence, based upon defendant's continued drug use throughout
26

1 the stages of this case, and denial and minimization of his criminal conduct during the pre-sentence
2 interview. In addition, the State expressed concerns for the protection of society due to his lengthy
3 criminal history dating back thirty years, comprised of driving offenses and crimes victimizing
4 society such as theft, and arson, which included four felonies. Defendant's counsel argued
5 defendant's prior felonies occurred back in 2002 and the 1990's, and his more recent criminal
6 history, excluding this offense, included relatively minor crimes. Counsel also expressed the
7 sobering effect of defendant's discovery of cancer, and the fact that he has support through family, a
8 potential job and home, and is motivated by desires to assist his parents given their declining health,
9 as well as support and care for his son and fulfill financial obligations. Defendant also addressed the
10 court, expressing concerns about his health and his family. The court was not convinced by
11 defendant's and counsel's arguments.
12

13 In fashioning defendant's sentence, the court applied the *Toohill* sentencing objectives of
14 protection of society, deterrence, rehabilitation and punishment, the paramount of these goals being
15 protection of society. The court was most negatively impressed by defendant's lack of remorse and
16 inability to accept responsibility for the actions which brought him before the court, instead focusing
17 on his perceived injustice of the purported untruthful law enforcement officers. Yet, the fact remains
18 that drugs and paraphernalia were found in defendant's vehicle and defendant's admitted to
19 "partying" that night. Further, the reliance upon his concern for the need to care for his son, parents,
20 and medical condition as motivating factors was disingenuous, particularly when these obligations
21 existed in the past, yet failed to deter him. In fact, defendant continued to use substances through the
22 pendency of this case, and even stated that the sentencing hearing that he had been trying to "cut
23 back," when he was obligated to abstain completely. The fact that he has not abstained presents
24 grave concerns for the court about his ability to comply with probation. Even while the court was
25

1 sympathetic to defendant and his family due to medical concerns, the court noted defendant
2 demonstrated an overall lack of commitment to change. As such, the court rejected the plea to
3 suspend his sentence, instead imposing the aforementioned prison sentence. In such fashion,
4 defendant will be deterred from committing new crimes due while incarcerated, will receive
5 rehabilitation, and will be punished for his conduct. This will in turn protect society.

6 Despite the new documents submitted to the court, the court finds no new information, absent
7 uncorroborated claims of lack of medical care while in custody. If defendant and his counsel believe
8 the treatment through the Idaho Department of Corrections is substandard or inadequate to address
9 his medical needs, defendant can pursue other remedies addressing medical care, and such motions
10 should be augmented by medical and other documentation. Other letters attached to his current
11 motion for a reduced sentence duplicate arguments made at the sentencing hearing.
12

13 The maximum potential sentence for defendant's crime is seven years determinate, whereas
14 the court imposed one and one-half years (1.5) years fixed, and three and one-half (3.5) years
15 indeterminate. Given the totality of the circumstances, defendant's sentence was reasonable and
16 appropriate on the date of sentencing. There is no information before the court now which suggests
17 his sentence has now become unreasonably severe. Accordingly, he has failed to demonstrate that
18 he is entitled to relief.


19
20 **CONCLUSION**

21 Based upon the foregoing, defendant's Rule 35 motion is hereby DENIED.

22 IT IS SO ORDERED.

Signed: 5/11/2017 08:14 AM

23 DATED this _____ day of May, 2017.

24 
25 _____
Michael J. Reardon, District Judge

26 Amended Order Denying Motion to Reduce Sentence
State v. Donald Joseph Mailloux, Jr., Case No. CR-FE-2016-4562 – Page 5