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State v. Garcia Respondent's Brief Dckt. 44812

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 44812, 44813 & 44814
Plaintiff-Respondent,)	
)	Bannock County Case Nos.
v.)	CR-2010-5635, CR-2013-15623,
)	& CR-2015-6599
RAMON S. GARCIA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Garcia failed to establish that the district court abused its discretion, either by declining to place him on probation or to retain jurisdiction a third time upon revoking his probation in case numbers 44812 and 44813; by imposing a unified sentence of seven years, with three years fixed, and declining to place him on probation or to retain jurisdiction in case number 44814; or by denying his Rule 35 motion requesting to be placed on probation or on a third rider in case number 44814?

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

In case number 44812, Garcia pled guilty to felony DUI and the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.154-

59.) Following the period of retained jurisdiction, the district court suspended Garcia's sentence and placed him on supervised probation for four years. (R., pp.169-77.)

Approximately two years later, Garcia committed new crimes and subsequently pled guilty, pursuant to a plea agreement, to first degree stalking in case number 44813 and admitted that he violated his probation in case number 44812 (by failing to pay the costs of supervision; being charged with new crimes including misdemeanor stalking, felony stalking, felony domestic battery, resisting/obstructing officers, rape, and an enhancement for use of a deadly weapon in the commission of a felony; violating a no contact order; consuming alcohol on at least six separate occasions; and failing to return to rider aftercare group and counseling at Behavioral Treatment Services), and the state dismissed a second charge of first degree stalking, as well as a second case in which Garcia was charged with first degree stalking, domestic battery, and rape, with a deadly weapon enhancement.¹ (R., pp.188-90, 200-01, 378-80, 478-79; PSI, p.159.²) The district court imposed a consecutive unified sentence of five years, with one year fixed, in case number 44813, revoked Garcia's probation and executed the underlying sentence in case number 44812, and retained jurisdiction in both cases. (R., pp.224-32, 523-29.) Following Garcia's second period of retained jurisdiction, the district court suspended his sentences and placed him on supervised probation for four years. (R., pp.235-38, 532-40.)

Approximately one month later, Garcia was charged with a new felony DUI in case

¹ At sentencing, the district court found "a material breach of the Rule 11 agreement pursuant to [Garcia] not complying with his conditions of release" by damaging his ankle tracking monitor and consuming alcohol; as a result, the state was "free to argue their own recommendations." (R., pp.493, 511, 523.)

² PSI page numbers correspond with the page numbers of the electronic file "CONFIDENTIAL CERTIFICATE OF EXHIBITS GARCIA 44812.pdf."

number 44814 and his probation officer filed a report of violation alleging that Garcia had violated the conditions of his probation in case numbers 44812 and 44813 by committing the new crime of DUI, failing to notify law enforcement that he was on felony probation, possessing a case of beer, refusing to complete field sobriety testing or to provide a breath sample and being “combative” during a blood draw, and driving while under the influence of alcohol, Vicodin, and Oxycodone. (R., pp.239-41, 543-45, 638-39.) A few months later, Garcia’s probation officer filed an addendum to the report of violation, alleging that Garcia had also violated the conditions of his probation by being charged with the new crimes of attempted strangulation, intentional destruction of a telecommunication line or instrument, and malicious injury to property. (R., pp.250-51, 548-49.) Garcia’s probation officer later filed a second addendum to the report of violation, alleging that Garcia had also violated the conditions of his probation by consuming alcohol. (R., pp.316-317, 619-20.)

Pursuant to a plea agreement, Garcia pled guilty to felony DUI in case number 44814 and admitted that he violated his probation in case numbers 44812 and 44813 (by committing the new crime of DUI, failing to notify law enforcement that he was on felony probation, possessing alcohol, refusing to cooperate with alcohol testing, and driving while under the influence of alcohol, Vicodin, and Oxycodone), and the state withdrew the remaining allegations and dismissed a separate domestic battery case. (R., pp.307-09, 607-09, 778; 9/19/16 Tr., p.9, L.22 – p.10, L.14.) The district court revoked Garcia’s probation and executed the underlying sentences in case numbers 44812 and 44813, but reduced the sentences by ordering that they run concurrently instead of consecutively. (R., pp.322-26, 625-29.) In case number 44814, the district court imposed a concurrent unified sentence of seven years, with three years fixed. (R., pp.802-05.) Garcia filed a notice of appeal in each case, timely from the district court’s orders

revoking probation and executing his underlying sentences in case numbers 44812 and 44813, and timely from the judgment of conviction in case number 44814. (R., pp.327-29, 630-32, 806-08.) He also filed a timely Rule 35 motion for a reduction of sentence in case number 44814, which the district court denied. (Motion Pursuant to Idaho Criminal Rule 35; Minute Entry & Order (Augmentations).)

Garcia asserts that the district court abused its discretion by declining to reinstate him on probation or to retain jurisdiction a third time when it revoked his probation in case numbers 44812 and 44813 and by imposing and ordering into execution a unified sentence of seven years, with three years fixed, in case number 44814, in light of his alcohol abuse and mental health issues, completion of two prior rider programs and subsequent poor performance in the community absent the structure of the rider program, and acceptance of responsibility for his “failure while on probation.” (Appellant’s brief, pp.4-8.) Garcia has failed to establish an abuse of discretion.

Sentencing decisions are reviewed for an abuse of discretion. State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)). A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (citations omitted). The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; Moore, 131 Idaho at 825, 965 P.2d at 185 (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might

differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

A trial court's decision regarding whether imprisonment or probation is appropriate is within its discretion. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citations omitted); I.C. § 19-2601(4). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. Id. (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)). Likewise, the decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). Probation is the ultimate goal of retained jurisdiction. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

Pursuant to I.C. § 19-2521(1):

The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1).

The maximum prison sentence for felony DUI is 10 years. I.C. §§ 18-8005(6), -8005(9). The district court imposed a unified sentence of seven years, with three years fixed, in case number 44814, which falls well within the statutory guidelines. (R., pp.802-05.) Furthermore, Garcia is not a suitable candidate for probation in light of his high risk to reoffend, ongoing disregard for the law and the terms of community supervision, failure to follow through with community-based treatment, and because a prison sentence is necessary to provide an appropriate punishment and deterrent due to the fact that Garcia has multiple prior convictions for crimes of violence and alcohol-related offenses.

Garcia has an extensive criminal record that spans nearly two decades and includes juvenile adjudications for two counts of disorderly conduct, two counts of burglary, curfew violation, minor in possession of alcohol, petit theft, malicious injury to property, and injury to a child (amended from rape); criminal convictions for domestic battery/violence, domestic battery (amended from domestic battery in the presence of a child), battery, first degree stalking, two convictions for violation of a no contact order, disturbing the peace (amended from domestic battery), providing false information/identification to police, liquor – minor loitering at certain licensed premises, minor in consumption of alcohol, petit theft, five convictions for DUI, three convictions for failure to purchase a driver's license (one of which was amended from DWP), and two convictions for DWP; and numerous probation violations. (PSI, pp.152-61.) In case numbers 44812 and 44813, Garcia was twice afforded the opportunity of the retained jurisdiction programs, but nevertheless continued to violate his probation, consume alcohol, fail to follow

through with treatment in the community, and commit multiple new crimes. (PSI, pp.157-62, 172-73, 177; R., pp.188-90, 239-41, 250-51, 316-17, 493.) Following his second probation violation and his most recent conviction for felony DUI, the presentence investigator determined that Garcia presents a high risk to reoffend, and stated:

Since [Garcia] completed his second Rider he has continued to violate the law and the terms and conditions of his probation. His actions seem to suggest that he's not willing to obey the laws of society and his second felony DUI arrest only confirms that he's a continued risk to society. Based on [Garcia's] actions and his lengthy and violent criminal history, I do not believe he's a viable candidate for probation. Furthermore, I believe [Garcia] is a risk to society and feel a prison sentence is appropriate in this matter.

(PSI, pp.174, 177.) Garcia's probation officer likewise recommended imprisonment, concluding, "Garcia is either unable or unwilling to change at this time. His continued substance use places the community at undue risk. I do not believe that Mr. Garcia can be safely rehabilitated in the community at this time." (R., p.241.)

At sentencing, the district court articulated the correct legal standards applicable to its decisions and also set forth its reasons for imposing Garcia's sentence in case number 44814 and for declining to retain jurisdiction or place Garcia on probation in all three cases. (12/19/16 Tr., p.36, L.22 – p.41, L.6.) The state submits that Garcia has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Garcia next asserts that the district court abused its discretion by denying his Rule 35 request to be placed on probation or in the retained jurisdiction program in case number 44814, in light of his continued participation in MRT while at the jail. (Appellant's brief, pp.8-9.) 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, Garcia 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. Garcia has failed to satisfy his burden.

The only information Garcia presented in support of his Rule 35 motion was that he was participating in MRT while at the county jail. (5/8/17 Tr., p.8, Ls.14-21; p.10, Ls.1-11.) That Garcia continued to participate in MRT was not “new” information before the district court as, at the time of sentencing, Garcia advised the court that he was continuing to work on his recovery, desired additional treatment, and intended to participate in further programming. (12/19/16 Tr., p. 26, Ls.5-19; p.27, Ls.4-7; p.31, L.12 – p.32, L.2; p.34, Ls.10-17.) Even if it were considered new information, Garcia’s participation in a class while incarcerated does not render him an appropriate candidate for probation or the retained jurisdiction program. At the hearing on Garcia’s Rule 35 motion, the district court articulated its reasons for denying Garcia’s Rule 35 request. (5/8/17 Tr., p.11, L.19 – p.12, L.25.) The state submits that Garcia has failed to establish that the district court abused its discretion by denying his Rule 35 motion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix B.)

Conclusion

The state respectfully requests this Court to affirm the district court's orders revoking Garcia's probation and executing his underlying sentences in case numbers 44812 and 44813, and Garcia's conviction and sentence and the district court's order denying Garcia's Rule 35 motion for a reduction of sentence in case number 44814.

DATED this 17th day of October, 2017.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of October, 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

1 tried. I don't understand how that is not for
2 the risk. That is what we should be doing is
3 giving me this chance, to say, hey, we gave
4 you every chance we had here. We gave you
5 diversionary program, we gave you this.

6 I don't know what else to say
7 besides I don't feel that I have had every
8 opportunity to try in the community.

9 THE COURT: All right. Thank you,
10 sir. I appreciate your comments.

11 Okay. Any legal reason we shouldn't
12 proceed to final disposition then,
13 Mr. Andrew?

14 MR. ANDREW: No, Your Honor.

15 THE COURT: And sentencing, I
16 guess.

17 MR. ANDREW: No, sir.

18 THE COURT: Mr. Garcia, any legal reason
19 I shouldn't proceed to final disposition and
20 sentencing then?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. All right. Remember,
23 you have forty-two days in which to appeal any
24 decision the Court makes here.

25 I have considered the presentence

1 investigation report and the facts and
2 circumstances of this case, along with your prior
3 criminal record and the comments from
4 Mr. Stoddard and from Mr. Andrew and from
5 you, Mr. Garcia.

6 So I have concerns about just simply
7 putting you back on probation because, you know,
8 here the bottom line from my perspective is that
9 you were on probation when you committed this
10 felony, and you absconded from probation. And
11 so for me just to say, oh, yeah, he has got it,
12 and he can be put on probation, even you,
13 yourself, say without structure, I can't make it
14 on probation. I need -- you believe you need a
15 problem-solving court. And the problem-solving
16 courts have been around.

17 I think that the eligibility for the
18 problem-solving court has always -- it's an
19 interesting question, but with your first DUI,
20 the first felony DUI, you, in fact, were eligible
21 to participate in the problem-solving court
22 program. No, you have never been eligible.
23 You have had such -- your prior record has
24 prevented you from being able to participate in
25 the DUI Court, so you weren't eligible to

1 participate in that program even back in 2010
2 when you first got this DUI. So I mean,
3 unfortunately, you bring a lot of baggage
4 here.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And it's not that I
7 don't think at some point in time you can get
8 this, but you continue to put yourself and society
9 at risk. I think the efforts that we have made
10 at rehabilitation have been great, put you
11 through two Riders. You have had community-based
12 programming. You have -- even now the GAIN
13 recommends residential treatment for you.

14 I think that -- I'm concerned because now this
15 is your second DUI, felony, within ten years,
16 less than ten years, and you continue to put
17 society at risk with your criminal behavior.

18 So simply to impose a lesser sentence
19 by placing you on probation, I think, depreciates
20 the seriousness of the crime you have committed
21 now. Now you're repeating the felony DUIs again.

22 To imprison you would at least provide
23 punishment and deterrence to you. You haven't
24 been deterred. You continue to commit new
25 felonies, and you do it even on probation.

1 Now you're up to your third felony
2 in this -- in this period of time, so it concerns
3 me, Mr. Garcia.

4 So with regard to case numbers
5 2010-5635 and 2013-15623, simply, you're just
6 not a viable candidate that could be continued
7 on probation in these particular cases.
8 You have done nothing to show that you can
9 conform to society's rules and comply with those
10 conditions, and, in fact, you put society at
11 risk, and that's -- that's my bigger concern
12 here is that you continue to put society at risk
13 with regard to your behavior.

14 Now, each one of those sentences were
15 three plus four on the 2010 case, and four plus
16 one on the 2013 case. They were consecutive,
17 but I'm going to modify those and run those
18 concurrently.

19 And then in case number 2015-6599.
20 I'm going to impose a concurrent sentence of
21 three years fixed, four years indeterminate.
22 I'm going to require that you pay restitution
23 in the amount of -- or no restitution. I
24 don't -- I haven't heard any amount of restitution
25 in these cases, Mr. Stoddard, but I am going to

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1 require that you reimburse the county \$500
2 for partial costs of your attorney, and \$300
3 fine, plus court costs.

4 I'm going to suspend your driving
5 privileges for one year upon your release
6 from incarceration, and -- I'm going to give
7 you credit for all time served in these cases,
8 Mr. Garcia.

9 I have simply considered protection
10 of society, punishment, deterrence, and
11 rehabilitation in this case, and I do feel -- I
12 know you don't feel that you have been given the
13 chance, but I think I have been working with you
14 for a long time to try to get you to where you
15 need to be, and I have given you multiple
16 opportunities and through programs that should
17 have been able to get your attention and be
18 able to help you be successful, and I want you
19 to be successful. You're a young man, and you
20 shouldn't be having to go to prison because of
21 these acts, but you continue to do it, and you
22 put people at risk because of it.

23 I have to look at the bigger picture
24 here. I have to look at protection of society
25 in this particular case, and that's why I have

42

1 Mr. Andrew?

2 MR. ANDREW: No, Your Honor.

3 THE COURT: Thank you. I'll go ahead
4 and excuse you.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: All right. Good luck to
7 you, Mr. Garcia.

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13 (CONCLUSION OF PROCEEDINGS HELD 12/19/2016.)
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1 to do this; all right?

2 I wish that you would do very well up
3 there. I hope the very best for you, and I hope
4 that you can come out and be successful and
5 productive in life and be able to get what you
6 need; okay?

7 All right. Remember, you have forty-two
8 days in which to appeal any decision from the
9 Court here.

10 MR. STODDARD: Your Honor, I did find a
11 letter sent to the Court for the 2015 case for
12 request for restitution for the labs for \$100.

13 THE COURT: Okay. I'm going to impose
14 restitution of \$100. I'm going to dismiss the
15 second addendum to the report of violation,
16 Mr. Garcia.

17 I don't think Mr. Stoddard has any
18 objection; correct?

19 MR. STODDARD: No objection.

20 THE COURT: Okay. I wish you the very
21 best of luck; okay? I do mean that.

22

23 (WHEREUPON, DEFENDANT SPEAKS PRIVATELY WITH COUNSEL.)
24

25 THE COURT: All right. Anything else,

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1 CERTIFIED COURT REPORTER'S CERTIFICATE
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4 I, STEPHANIE DAVIS, Certified Shorthand Reporter,
5 Official Court Reporter in the Sixth Judicial
6 District, State of Idaho, do hereby certify that the
7 foregoing transcript, consisting of Pages 1 to 42,
8 inclusive, is a true and accurate record of the
9 proceedings had on the dates and at the times
10 indicated herein as stenographically reported by me
11 to the best of my ability and contains all evidence,
12 objections of counsel and rulings of the Court, all
13 testimony of witnesses, and all matters to which the
14 same relate.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this 5th day of May, 2017.

18
19

20 STEPHANIE D. DAVIS, Official Reporter
21 Idaho CSR No. 594
22 Calif CSR No. 9767
23
24
25

APPENDIX B

9

1 good attitude and positive attitude. He wanted
2 to try and do something different because he
3 knew the traditional rehabilitation just hadn't
4 been working with him.

5 I tried really hard to get him into a
6 specialty court. Wasn't able to do that because
7 of his LSI. He was out working. He was trying
8 to engage in treatment. Couldn't get into the
9 Crossroads Program. Just didn't -- really
10 getting shut down everywhere he turned.

11 What I'm asking is the Court reconsider
12 its sentence. Consider letting him complete a
13 Rider Program, finish those steps, and then come
14 back and see if his LSI has dropped enough that he
15 could get into a specialty court.

16 I know from conversations with him,
17 he would be concerned about simply coming back
18 out because he wants a different style of
19 supervision and accountability, and he really
20 likes -- as I have talked to him about how the
21 specialty courts work, he really did get excited
22 to be in one of those because he thought that
23 was something that would work for him.

24 So he hasn't just decided he is going
25 to sit out his time and just be a bump on a log.

11

1 actually given several opportunities to not
2 go to prison, and he violated. There was a
3 Rule 11 in place, and he was not able to stay good
4 with that.

5 Everything that Mr. Andrew is saying, I
6 think that he has changed his attitude, that he
7 has stayed positive, and that the approximately
8 six months he has been there, maybe this is
9 exactly what he needed, and so I would just ask
10 the Court consider that. Thank you.

11 THE COURT: All right. Well, thank you.
12 Mr. Andrew, anything else from you?

13 MR. ANDREW: Just I know that he had
14 sat the one year in jail. He didn't have
15 disciplinary issues and was doing well, was,
16 again, very positive when he was out working, just
17 was hoping he could get into a different style of
18 treatment.

19 THE COURT: All right. Well, thank you.
20 Okay. Well, I have considered the
21 additional information that you have provided me,
22 Mr. Andrew, along with the fact that he is now
23 participating in MRT. I know that the sentences
24 here that were imposed were not illegal, and I know
25 that he wanted me to be able to give him another

10

1 He is into MRT, and I know he has still got that
2 attitude that he wants to get this done, so I know
3 he would like the Court to consider putting him on
4 probation, and I understand that that's a stretch
5 for the Court. I'm asking that this Court at least
6 allow him to do the Rider. We did ask for that
7 at sentencing, and considering that his attitude
8 is still good, and he is still working on
9 treatment of -- step two of MRT, so he is not just
10 pining away, and he is still trying to improve
11 himself.

12 So ask for the Court to reconsider its
13 sentence, and he would like the Court to
14 consider probation. If not that, I'm asking
15 the Court to consider doing retained jurisdiction.

16 THE COURT: Okay. Well, thank you,
17 Mr. Andrew.

18 Ms. Call?

19 MS. CALL: Well, Your Honor, in reviewing
20 the cases, I didn't see anywhere that the sentence
21 -- or hear anything -- that it's illegal. The
22 sentence previously imposed appeared fair on its
23 face.

24 I looked back through some of what had
25 happened, and it looked like the defendant was

12

1 chance at the Retained Jurisdiction Program.
2 There came a time when I really felt like I
3 wanted his success more than he did, and that was
4 one of those things.

5 I did give him multiple opportunities.
6 I really felt that there was something there that
7 perhaps somewhere else along the way I would have
8 just simply said, enough, and let him go do his
9 time.

10 I really had hoped that he could turn his
11 life around and make the changes that he needed
12 to, and, unfortunately, he just kept coming back
13 and it just kept building against him, and I
14 think looking at protection of society in this
15 particular case and punishment and deterrence and
16 rehabilitation, I think the sentence imposed
17 was appropriate and the opportunity for him
18 to be able to do that time. And I'm glad --
19 I'm very happy to hear that he is not -- he
20 is not resentful and that he has accepted his
21 situation and that he is working hard to be able
22 to change his life, and I hope that's exactly
23 what he does, but based on everything I have
24 here, there is just no justification for granting
25 a Rule 35, so I'm going to deny it.