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State v. Chappell Appellant's Brief Dckt. 44960

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44960
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY NO. CR42-15-11025
v.	)	
	)	
ALEX JAMES CHAPPELL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

After seventeen-year-old Alex James Chappell pled guilty to possession of marijuana with the intent to deliver, the district court sentenced him to five years, with two years fixed, and retained jurisdiction. About four months later, the district court relinquished jurisdiction without a hearing. Alex then filed an Idaho Criminal Rule 35 ("Rule 35") motion. The district court held a hearing and denied the motion. Alex now appeals to this Court, arguing the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

On July 30, 2015, a police officer was dispatched to Alex's family home in reference to a drug call. (Presentence Investigation Report ("PSI"),[1] p.4.) Alex's stepfather believed Alex had marijuana in his room. (PSI, p.4.) Alex was seventeen years old and just finished his junior year of high school. (PSI, pp.2, 4, 12.) The police officer searched his room and found 3.83 ounces of marijuana. (PSI, pp.4–5.) The next day, the State filed a Petition in magistrate court alleging Alex committed the crime of possession of a controlled substance, marijuana, with the intent to deliver, in violation of I.C. § 37-2732(a), (e). (R., pp.10–11.) Alex stipulated to the waiver of juvenile court jurisdiction. (R., p.63.) Based in part upon the stipulation, the magistrate issued a decree waiving jurisdiction. (R., pp.63–65.)

Alex then waived a preliminary hearing. (R., pp.84–86.) The magistrate bound him over to district court. (R., pp.84–86.) The State charged him with possession of marijuana with the intent to deliver. (R., pp.88–89.) Pursuant to a plea agreement, Alex pled guilty to the charge. (R., pp.94, 98; Tr. Vol. I,[2] p.8, Ls.7–16, p.11, L.20–p.13, L.7.) The State agreed to recommend three years of probation, with an underlying sentence of four years, with two years fixed. (R., p.98.)

Alex failed to comply with court compliance and failed to appear at the first sentencing hearing. (R., pp.98, 134–38, 147.) As such, the State was no longer bound by its recommendation and recommended a sentence of five years, with two years fixed. (R., p.98; Tr. Vol. II, p.6, Ls.20–24, p.7, Ls.10–11.) In addition, the State recommended the district court

[1] Citations to the PSI refer to the eighty-two page electronic document containing the confidential exhibits, including the Addendum to the PSI ("APSI").

[2] There are two transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing, held on December 21, 2015. The second, cited as Volume II, contains the sentencing hearing, held on June 13, 2016, and the Rule 35 motion hearing, held on February 17, 2017.

retain jurisdiction instead of probation.[3] (Tr. Vol. II, p.6, Ls.19–20.) Alex requested probation or, in the alternative, a period of retained jurisdiction. (Tr. Vol. II, p.9, Ls.17–19.) The district court sentenced him to five years, with two years fixed, and retained jurisdiction. (R., pp.159–63; Tr. Vol. II, p.15, Ls.7–12.)

About four months after sentencing, the district court issued an order relinquishing jurisdiction. (R., pp.169–71.) The district court did not hold a hearing. (R., p.170.) The district court's decision was based solely on the APSI, which informed the district court that Alex received two formal disciplinary sanctions ("DORs") for tattooing in a correctional facility and possession of drugs (inhaling NO2 gas). (PSI, p.75.) Alex timely appealed from the district court's order. (R., pp.173–74.)

Alex then moved for reconsideration of his sentence pursuant to Rule 35. (R., p.180.) The district court held a hearing on the motion and took the matter under advisement. (*See generally* Tr. Vol. II, p.18, L.6–p.80, L.9.) Four days later, the district court issued an order denying Alex's Rule 35 motion. (R., pp.220–23.)

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[3] The written plea agreement included an appeal waiver. It stated in relevant part:

> By accepting this offer the defendant waives the right to: . . . appeal any issue in this case, including . . . the sentence . . . . However, the defendant may appeal the sentence if the Court exceeds the recommendation made by the State at sentencing regarding: (1) the determinate portion of the sentence, and/or (2) a probation recommendation, and/or (3) a retained jurisdiction recommendation.

(R., p.98.) During the entry of plea, the district court informed Alex that only "two exceptions" to the appeal waiver "would apply here": "If the Court exceeded the fixed part of the State's recommendation, that being the two years, or if I declined to put you on probation, then you have the right of appeal. Short of that, you do not." (Tr. Vol. I, p.9, Ls.7–15.) However, this appeal waiver provision is no longer valid, as the plea agreement itself was not binding on the parties by the time of sentencing. Alex breached the agreement by failing to appear at a hearing and by failing to comply with court compliance; the State recommended a harsher sentence. Because the plea agreement was not binding, Alex regained his right to appeal the district court's sentencing decision.

ISSUES

I. Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, without probation, upon Alex, following his guilty plea to possession of marijuana with the intent to deliver?

II. Did the district court abuse its discretion when it denied Alex's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Without Probation, Upon Alex, Following His Guilty Plea To Possession Of Marijuana With The Intent To Deliver

"It is well-established that '[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.'" *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Alex's sentence does not exceed the statutory maximum. *See* I.C. § 37-2732(e) (five year maximum). Accordingly, to show that the sentence imposed was unreasonable, Alex "must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002). Similarly, "[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court . . . ." *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

"'Reasonableness' of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed." *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

> In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. "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. Delling*, 152 Idaho 122, 132 (2011).

Here, Alex asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. He contends the district court should have suspended execution of his sentence and placed him on probation in light of the mitigating factors, including his young age, troubled childhood, and family support.

Alex grew up in an unstable environment. His parents "always fought" when he was a child. (PSI, p.10.) His father was an alcoholic and used drugs. (PSI, p.39.) Alex remembers his parents "throwing stuff and breaking things." (PSI, p.37.) Likely in response to the trauma at home, Alex started acting out in the fourth grade and "hanging around the wrong kids." (PSI, p.37.) In 2010, around the same time his parents separated, Alex started using marijuana and haze (synthetic marijuana). (PSI, pp.13–14, 37, 38.) After his parents' divorce, Alex lived primarily with his father. (PSI, pp.10, 40.) His father "was his best friend," and they were very close. (PSI, p.10.) Then, in January of 2013, Alex's father died unexpectedly of a heart attack in his sleep. (PSI, pp.10, 37.) Alex, who was fourteen years old at the time, was the last person to see his father alive. (Tr. Vol. II, p.11, L.6.) Alex "struggled greatly" to cope with his father's death. (PSI, p.10.) A close family friend explained:

> Alex and his father were very close. Almost too close at times. They did everything together such as dirt bike riding and camping. I believe Alex has not fully dealt with the grief of his father's sudden death three years ago. Since that time, Alex has battled with depression and the feeling of worthlessness. I have seen first hand [sic] how hard it has been for him to grow up without a father and to lose such an important person in the midst of his teenage years. He has had so much grief that it became a challenge for him to communicate with other people.

(PSI, p.26.) Following his father's death, Alex was diagnosed with depression, prescribed anti-depressants, and considered suicide. (PSI, pp.13, 36, 37, 39.) He moved back in with his mother and stepfather. (PSI, p.10.) He also received counseling through the Idaho Department of Health and Welfare, Children's Mental Health. (PSI, p.22.) Before his father's death, Alex was very active in sports, especially boxing, but this and other positive aspects of his life fell to the wayside as he continued to make poor choices. (PSI, pp.11, 12, 22, 26, 40; Tr. Vol. II, p12, Ls.6–23.) Alex kept using drugs and alcohol, hanging out with the wrong crowd, and getting in trouble, culminating with the instant offense. (PSI, pp.6–9, 13–14, 39, 40.)

After the instant offense, Alex realized he had to change. He told the district court at sentencing:

> I know what mistakes I made. I wish I could take them back. Two months I've spent in this jail has been a learning experience. I never want to come back to this place. This has been the longest I've been incarcerated. There are people in this jail twice and three times my age still making the same mistakes. That's not who I want to be. That's not who I want to be around. I'd rather get it into my head now before I waste my life behind bars because each day I am locked up is a day I can never get back. I'm better than this, I just want to prove it.

(Tr. Vol. II, p.10, L.20–p.11, L.4.) Alex also told the district court that he was motivated to succeed, was ready to turn his life around, and had learned from his mistakes. (*See* Tr. Vol. II, p.10, L.20–p.13, L.13.) Further, he explained to the district court that he had not fully dealt with his father's death and that he wanted to make his father proud. (Tr. Vol. II, p.11, Ls.5–11.) Once Alex turned eighteen (about four months before sentencing), he started receiving survivor benefits through social security. (Tr. Vol. II, p.11, Ls. 11–12.) He only received those benefits if he enrolled in school, passed his classes, and was not incarcerated. (Tr. Vol. II, p.11, Ls.12–14.) He told the district court that he planned to save that money while he finished high school and then use it to enroll in the College of Southern Idaho for an associate's degree in business and

financing. (Tr. Vol. II, p.11, Ls.16–20.) In sum, Alex's plan on probation was "to continue intensive outpatient, obtain another job, complete summer school, and right after my final semester of high school, I will get back into the boxing gym, start competing again." (Tr. Vol. II, p.12, L.24–p.13, L.2.)

Moreover, Alex had great support from his family. His mother, sister, and two close family friends wrote letters of support. (PSI, pp.21–27.) In one letter, his mother stated:

> Alex is a person with a good heart. Alex has not had the normal teenage experience. Life has thrown him more of this terrible world than most of us will ever go through. Through it all, the good and the bad, as well as the joys and sorrows, he has remained a good soul. I strongly believe in Alex.
>
> Alex is remorseful for his mistakes. I believe sentencing him to a term in prison would only expose him to further bad influences. I humbly ask you to please give Alex an opportunity to set his life back on track and not let a bad decision alter his life's direction.

(PSI, p.21.) His sister explained:

> I care about Alex's future and I want to try to make you feel the same way.
>
> Alex is a person of good moral character. I realize that might seem hard to believe, given his history, but it's true nonetheless. I have seen him go through ups and downs, but all the while I have been convinced that he is a kind and decent person at the core. I believe that he just needs some guidance. He just needs to know that people believe in him so that he can become the person I know he is on the inside.
>
> Alex has made some mistakes, but he is incredibly remorseful, and is willing to do whatever it takes to make amends. I believe that he just needs a chance to show everyone that he is a good person. I realize that Alex broke the law, and I do not believe that he should go without punishment.
>
> I believe that Alex known [sic] realizes how large the repercussions are of breaking the law. As a result of his time spent in custody, he lost his job. I believe this was a wake-up call for him and I truly believe that in the future he will do better.

(PSI, p.24.) Along with these letters of support, Alex's mother was present at the sentencing hearing. (Tr. Vol. II, p.9, L.2.) Alex's attorney informed the district court that his mother had

been in contact with a local doctor to establish a treatment plan for Alex on probation. (Tr. Vol. II, p.9, Ls.3–16.)

This information available at sentencing showed Alex could succeed on probation. Despite his setbacks as a juvenile, Alex was motivated to become a contributing member of society, and he had the family support to make those changes. But the district court did not give adequate weight to this information. For example, the district court faulted Alex for thinking only about himself (such as his plan for probation) rather than how his crime harmed the community. (Tr. Vol. II, p.13, L.25–p.14, L.14.) It is unreasonable, however, to expect someone of Alex's age and background to have the wherewithal to fully grasp how his crime affected others. The district court should have viewed Alex's goal to succeed on probation as a mitigating factor. Similarly, the district court faulted Alex for being smart and motivated to get sober. (Tr. Vol. II, p.14, Ls.15–25.) The district court focused on Alex's belief that he could easily get sober if he "really put effort into it" as showing that he made the choice to sell marijuana. (Tr. Vol. II, p.14, Ls.15–25.) Again, it is unreasonable to hone in on single statement made by a teenage boy on his goals for sobriety and then base sentencing decisions on that statement.

As another example, the district court failed to give any weight to Alex's youth as a mitigating circumstance. The district court stated at sentencing:

> Trust me, I'm very sensitive to the fact that a person of your age has the potential not to fare well in the Idaho State Penitentiary, okay? I understand that. But you're in the big leagues now. We're not in juvenile court anymore. Your life so far in the judicial system has been a slap on the wrist.

(Tr. Vol. II, p.15, Ls.1–6.) After ordering the period of retained jurisdiction, the district court went on to describe "what you are about to have happen to you in your life" while on the rider. (Tr. Vol. II, p.15, L.20–p.16, L.10.) The district court discussed how Alex would fare in adult prison:

> [On the rider,] [y]ou're going to be in – associating with people just like you have seen in the Twin Falls County jail. Some of those people are going to be very motivated to change their lives. Some of those people are there to play the game, okay? They won't last very long because they'll get shipped to Boise to go out and serve their sentences. You have to be your own man. By that I mean make your own decisions, and if you are truly committed to wanting to change your life, you will get a ton out of this program, and if you're just here to play the game, I'll get a report back that says Alex Chappell doesn't really want to program, impose his sentence. Then you and I won't see each other anymore. *Then you will be living up at the main site. What do you suppose happens there to somebody your size? Think you're a boxer? You would be a punk in that system, given your size, the way you look. Nothing wrong with the way you look, but you're fair game. Believe me, that is not a life you want to live.*
>
> I think that you have got to make some significant mental changes in your life, and I think this program is the best I can offer you. I think if I put you back on probation today, it would just be a question of time before you relapsed and got back in trouble again. I'm not going to do it. It's time that you faced the consequences for the decision that you made.

(Tr. Vol. II, p.16, L.11–p.17, L.9 (emphasis added).) Examining these statements, Alex submits the district court failed to give any consideration to his young age as a mitigating factor. Instead, the district court openly acknowledged that Alex would be "a punk" and "fair game" in prison "given your size" and "the way you look." In addition, the district court failed to give sufficient, if any, weight to the support of his family. In light of Alex's age, maturity level, and troubled childhood, the district court failed to exercise reason in fashioning the appropriate sentence for Alex. Therefore, he submits the district court abused its discretion by imposing an excessive sentence.

II.

The District Court Abused Its Discretion When It Denied Alex's Rule 35 Motion

"A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court." *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). Rule 35 states in relevant part:

> The court may correct a sentence that has been imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. . . . Motions to correct or modify sentences under this rule must be filed within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction and shall be considered and determined by the court without the admission of additional testimony and without oral argument, unless otherwise ordered by the court in its discretion; provided, however that no defendant may file more than one motion seeking a reduction of sentence under this Rule.

I.C.R. 35(b).[4] In reviewing the grant or denial of a Rule 35 motion, the Court must "consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence." *Carter*, 157 Idaho at 903. The Court "conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest." *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). "Where an appeal is taken from an order refusing to reduce a sentence under Rule 35," the Court's scope of review "includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce." *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). "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 (2007).

[4] This version of Rule 35 was in effect when Alex filed his motion. Effective July 1, 2017, Rule 35 reads:

> Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. . . . Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. A defendant may only file one motion seeking a reduction of sentence.

I.C.R. 35(b).

Recently, this Court outlined the appropriate requests for relief in a Rule 35 motion after relinquishment. In *State v. Flores*, the defendant filed a Rule 35 motion after relinquishment requesting that the district court reinstate jurisdiction. No. 43946, 2017 Opinion No. 68, pp.1, 5 (June 20, 2017). This Court held that Rule 35 does not allow the district court to consider that request. *Id.* at p.5 & n.1. This Court reasoned:

> Rule 35 does not create a general basis for requesting reconsideration of an order or a judgment in the criminal context. Rule 35 instead narrowly operates to permit the correction, modification, or reduction of criminal sentences in certain instances. Flores's request for jurisdiction to be reinstated does not constitute a correction, modification, or reduction of a criminal sentence. Thus, Rule 35 is inapplicable here.

Id. at p.5. This Court also noted, "In fact, there is no criminal procedural rule that provides a basis to reconsider a decision of this kind." *Id.* at p.5 n.1. Thus, none of the criminal rules, including Rule 35, permit a defendant to request that the district court reinstate jurisdiction after relinquishment. Here, in contrast, Alex requested the district court place him on probation. (Tr. Vol. II, p.71, L.25–p.72, L.1.) This constitutes a modification of his sentence—the sentence is suspended, rather than imposed. As such, Alex's motion was within the confines of Rule 35 and *Flores*.

Turning to the merits, Alex submits the district court abused its discretion by denying his Rule 35 motion. Initially, the district court had relinquished jurisdiction, without a hearing, after learning Alex received two DORs for tattooing in a correctional facility and allegedly possessing drugs (inhaling NO2 gas). (PSI, p.75; R., pp.169–71.) At the Rule 35 motion hearing, the evidence showed that the DOR for drug possession had been dismissed. (R., pp.183, 186, 220–21; Tr. Vol. II, p.26, L.19–p.27, L.8, p.63, Ls.12–16; *see also* Def.'s Ex. 1 (audio of disciplinary hearings for both DORs).) Moreover, the district court stated at the hearing that it only relinquished jurisdiction "because of the drug offense." (Tr. Vol. II, p.78, Ls.6–8; *see also*

R., p.221.) The district court also learned, however, that Alex got another tattoo and, consequently, another DOR sometime after he filed the Rule 35 motion. (R., p.221; Tr. Vol. II, p.29, Ls.9–24, p.30, L.18–p.31, L.2; State's Ex. A.) Based on this information, the district court reasoned:

> The new DOR shows the Court that the defendant is willing to violate the simplest of rules, even during the pendency of his Rule 35 motion when his behavior would perhaps be scrutinized the most. The defendant knew the likely consequences of this behavior from his first tattoo-related DOR months ago, yet still willingly engaged in that same behavior. The defendant downplays his decision as merely unwise or impulsive, but in the Court's view it is evidence of deep-seated criminal thinking. Despite whatever progress he has made while in custody, the defendant has still not learned respect for rules and is therefore ill-prepared for probation. Although it is now clear that the Court's relinquishment decision was largely misguided by the incomplete information in the APSI regarding the drug-related DOR, the new DOR convinces the Court that its decision was the appropriate one. For whatever reason(s), this defendant still has not progressed to the point where he can be successful on probation.

(R., pp.222–23.) Alex contends the new tattoo DOR does not prove that he will be unsuccessful on probation. As argued by his attorney, the new tattoo only illustrates that Alex is an impulsive and immature teenager. (Tr. Vol. II, p.71, Ls.13–18.) It is not "evidence of deep-seated criminal thinking." (R., p.222.) Alex's family support, mental health treatment plan, and commitment to sobriety shows that he should be given the opportunity to be rehabilitated in the community under proper control and supervision.

CONCLUSION

Alex respectfully requests that this Court reduce his sentence as it deems appropriate or, in the alternative, vacate his judgment of conviction and remand this case for a new sentencing hearing. Alternatively, Alex respectfully requests that this Court reverse or vacate the district court's order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 25th day of July, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas