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State v. Peters Appellant's Reply Brief Dckt. 45294

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45294
)	
v.)	ADA COUNTY NO. CR-FE-2015-13950
)	
DWIGHT GLENN PETERS,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Dwight Glenn Peters pleaded guilty to aggravated driving under the influence (DUI). The district court imposed a unified sentence of fifteen years, with four years fixed, and retained jurisdiction. After Mr. Peters participated in a “rider,” the district court relinquished jurisdiction. Mr. Peters filed an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence, which the district court denied. Mr. Peters appealed, asserting the district court abused its discretion when it relinquished jurisdiction, and when it denied his Rule 35 motion.

In its Respondent's Brief, the State argues Mr. Peters has not established the district court abused its discretion when it relinquished jurisdiction, or when it denied his Rule 35 motion. (*See* Resp. Br., pp.2-4.)

This Reply Brief is necessary to address the State's contention that Mr. Peters did not present "new" information in support of his Rule 35 motion. (*See* Resp. Br., p.3.) Mr. Peters asserts that even if he had not provided any new information in support of his Rule 35 motion, he submitted additional information that provides a basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion. While Mr. Peters challenges the State's arguments that he has not established the district court abused its discretion when it relinquished jurisdiction, and that he has not established the district court abused its discretion when it denied his Rule 35 motion, he relies on the arguments presented in his Appellant's Brief and will not repeat those arguments here.

Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Peters' Appellant's Brief, and are incorporated herein by reference thereto.

ISSUES

- I. Did the district court abuse its discretion when it relinquished jurisdiction?
- II. Did the district court abuse its discretion when it denied Mr. Peters' Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Peters asserts the district court abused its discretion when it relinquished jurisdiction in his case. The State argues Mr. Peters has not established the district court abused its discretion when it relinquished jurisdiction. Because the State's argument on this point is not remarkable, no further reply is necessary. Thus, Mr. Peters would refer the Court to pages 7-9 of the Appellant's Brief.

II.

The District Court Abused Its Discretion When It Denied Mr. Peters' Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Peters asserts that the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence. The State contends, "[i]n support of his Rule 35 motion, [Mr.] Peters submitted letters of support from friends and his pastor, as well as a letter he wrote expressing his remorse and detailing his success while participating in the rider program. None of this was 'new' information that showed [Mr.] Peters was entitled to a reduction of sentence." (Resp. Br., p.3.)

As the State correctly notes (Resp. Br., p.3), the Idaho Supreme Court has held that "[w]hen 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). "An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information." *Id.*

Mr. Peters asserts that, even assuming (without conceding) he did not provide any new information in support of his Rule 35 motion, he nonetheless has provided a basis for this Court to find that the denial of his Rule 35 motion was an abuse of discretion. At the least, the information presented on Mr. Peters' experiences on the rider program in his letter to the district court (*see generally* Letter from Dwight Peters to the Honorable Judge Hippler, Sept. 25, 2017), as well as the information presented on Mr. Peters' character in the letters of support (*see generally* Letter from Steven Dhanjal, Aug. 17, 2017; Letter from Pastor Terrance Josephson to Idaho State Board of Parole, Aug. 3, 2017; Letter from Jack Morini, undated), was additional information as contemplated by *Huffman*.

Mr. Peters submits the State is incorrect in suggesting that "new information" serves as the only basis for reversal of the denial of a Rule 35 motion. As discussed above, "[w]hen 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." *Huffman*, 144 Idaho at 203. While the Idaho Supreme Court stated in *Huffman* that "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information," *id.*, the Court has indicated that additional information also serves as a basis for an appellate court to find that a denial of a Rule 35 motion was an abuse of discretion.

For example, in *State v. Adair*, 145 Idaho 514 (2008), the Idaho Supreme Court, citing *Huffman*, stated that, "absent the presentation of new evidence, an appeal from a Rule 35 motion merely asks this Court to review the underlying sentence. Without additional information being presented, there is no basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion." *Adair*, 145 Idaho at 517 (citation omitted). The *Adair* Court, because "[n]o

additional information was provided to the trial court to indicate that the sentence was excessive,” decided that “[t]he trial court operated without its discretion when it denied [the defendant’s] Rule 35 motion for reduction of sentence.” *Id.*

Because the Idaho Supreme Court in *Huffman* and *Adair* recognized “additional information” (alongside “new information”) as a way to show that a sentence is excessive in support of a Rule 35 motion, *Huffman*, 144 Idaho at 203, *Adair*, 145 Idaho at 517, Mr. Peters submits that additional information serves as a basis for an appellate court to find that a district court’s denial of a Rule 35 motion was an abuse of discretion. Thus, because Mr. Peters presented additional information in support of his Rule 35 motions, he has provided a basis for this Court to find that the denial of the motions was an abuse of discretion.

The State also argues that Mr. Peters has not established the district court abused its discretion when it denied his Rule 35 motion, because the district court had specifically considered the information Mr. Peters presented and determined, in its discretion, that none of the information showed the sentence was excessive. (*See Resp. Br.*, p.4.) Mr. Peters submits the district court abused its discretion when it denied the Rule 35 motion, for the reasons contained in the Appellant’s Brief and incorporated herein by reference thereto. (*App. Br.*, pp.9-12.)

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Peters respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 8th day of January, 2018.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DWIGHT GLENN PETERS
INMATE #73179
SICI
PO BOX 8509
BOISE ID 83707

STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

JONATHAN LOSCHI
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas