

12-28-2017

## State v. Linford Appellant's Brief Dckt. 45358

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ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender  
I.S.B. #7259  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: [documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 45358 & 45359
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NOS. CR 2013-1187 &
v.	)	CR 2014-13658
	)	
CHERYL LINFORD	)	APPELLANT'S BRIEF
AKA CHERYL STONE,	)	
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358, Ms. Linford was sentenced to a unified sentence of seven years, with three years fixed following her guilty plea to one count of delivery of a controlled substance. In Bannock County Case CR 2014-13658, Supreme Court Docket Number 45359, she was sentenced to a unified sentence of six years, with three years fixed, following her guilty plea to possession of a controlled substance, methamphetamine. On appeal, Ms. Linford asserts that the district court should have

granted her Rule 35 Motion filed in CR 2013-1187. She has also appealed from the Order on Motion for Credit for Time Served in both cases.

Statement of the Facts & Course of Proceedings

Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358

On February 28, 2013, a Prosecuting Attorney's Information was filed charging Ms. Linford with two counts of delivery of a controlled substance. (R., pp.66-67.) A Prosecuting Attorney's Information Part II also charged Ms. Linford with a sentencing enhancement for a second or subsequent drug offense. (R., pp.68-69.) Eventually, she entered a guilty plea to one count of delivery of a controlled substance and was sentenced to a unified sentence of seven years, with three years fixed, jurisdiction retained for 365 days. (R., pp.89-90.) After successfully completing a period of retained jurisdiction, Ms. Linford was placed on probation for a five year term. (R., pp.122-126.)

In October of 2014, a Report of Probation Violation was filed. (R., pp.134-135.) Ms. Linford admitted to violating the terms of her probation, her probation was revoked, and she was allowed another opportunity to complete a period of retained jurisdiction. (R., pp.162-163, 168-172.) After successfully completing a second period of probation, Ms. Linford was placed on probation for a new five year term. (R., pp.183-184.)

In July of 2016, another Report of Probation Violation was filed. (R., pp.195-196.) Ms. Linford admitted to violating the terms of her probation and her probation was continued. (R., pp.201-202.)

A Report of Probation Violation was filed again in May of 2017. (R., pp.215-217.) After admitting to violating the terms of her probation, probation was revoked and her sentence was

reinstated. (R., pp.225-228.) Ms. Linford filed a timely Rule 35 Motion. (R., p.230.) She also filed a Motion to Calculate, And Issue Credit for Time Served. (R., p.234.) The district court provided an Order on Motion for Credit for Time Served. (R., pp.236-237.) Following a hearing on the motions, the district court determined that the previous order on credit for time served was appropriate and denied the Rule 35 Motion. (R., p.241.) Ms. Linford filed a Notice of Appeal timely from the Minute Entry and Order (denying the Rule 35 Motion) and the Order on Motion for Credit for Time Served. (R., pp.243-244.)

Bannock County Case CR 2014-13658, Supreme Court Docket Number 45359

On October 9, 2014, a Prosecuting Attorney's Information was filed charging Ms. Linford with possession of a controlled substance, methamphetamine. (R., pp.292-293.) A Prosecuting Attorney's Information Part II also charged Ms. Linford with a sentencing enhancement for a second or subsequent drug offense. (R., pp.294-295.) Eventually, she entered a guilty plea and was sentenced to a unified sentence of six years, with three years fixed, jurisdiction retained for 365 days. (R., pp.335-338, 345-349.) After successfully completing a period of retained jurisdiction, Ms. Linford was placed on probation for a five year term. (R., pp.379-381.)

In July of 2016, another Report of Probation Violation was filed. (R., pp.390-391.) Ms. Linford admitted to violating the terms of her probation and her probation was continued. (R., pp.395-397.)

A Report of Probation Violation was filed again in May of 2017. (R., pp.405-407.) After admitting to violating the terms of her probation, probation was revoked and her sentence was reinstated. (R., pp.413, 415-418.) Ms. Linford filed a Motion to Calculate, And Issue Credit for Time Served. (R., p.420.) The district court provided an Order on Motion for Credit for Time

Served. (R., pp.422-423.) Ms. Linford filed a Notice of Appeal timely from the Order on Motion for Credit for Time Served. (R., pp.425-426.)

### ISSUES

- I. Did the district court abuse its discretion when it denied Ms. Linford's Idaho Criminal Rule 35 Motion for a Reduction of Sentence in Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358?
- II. Did the district court err in granting credit for time served in both Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358 and CR 2014-13658, Supreme Court Docket Number 45359?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Denied Mr. Linford's Rule 35 Motion For A Reduction Of Sentence In Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Ms. Linford must show that in light of

the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). “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).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mindful that Ms. Linford provided no new or additional information in support of her Rule 35 Motion, she asserts that the district court abused its discretion in denying the motion. In the motion, Ms. Linford requested leniency. (R., p.230.) At the hearing on the motion, defense counsel noted that Ms. Linford was asking for a reduction in her fixed time and for the district court show her mercy. (Tr., p.15, Ls.23-25.)

Based upon the information presented, Ms. Linford asserts that the district court abused its discretion in denying her Rule 35 motion.

## II.

### The District Court Erred In Granting For Credit For Time Served In Both Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358 and CR 2014-13658, Supreme Court Docket Number 45359

A determination as to “[w]hether the district court properly applied the law governing credit for time served is a question of law over which” appellate courts exercise free

review. *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006). On appeal, the appellate court will “defer to the district court’s findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous.” *Id.* The Court exercises “free review over statutory interpretation because it is a question of law.” *State v. Owens*, 158 Idaho 1, 3 (2015).

The Idaho Criminal Rules specifically provide that a defendant may file a motion to correct the calculation of credit at any time. I.C.R. 35(c). Further, as the Idaho Court of Appeals has recently made clear, “the language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or (as in this case) when hearing an I.C.R. 35(c) motion for credit for time served, the court give the appropriate credit . . . .” *State v. Moore*, 156 Idaho 17, 20-21 (Ct. App. 2014). “This means that the defendant is entitled to credit for all time spent incarcerated,” as defined by the statute. *Id.*

Mindful that Ms. Linford was granted all of the credit for time served that she was due (Tr., p.16, Ls.5-10), she has appealed from that decision. She asserts that the district court erred in entering the order and, presumably, in not granting her additional credit for time served.

CONCLUSION

In Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358, Ms. Linford respectfully requests that the order denying her Rule 35 motion be vacated and the case remanded to the district court for further proceedings. In both Bannock County Case CR 2013-1187, Supreme Court Docket Number 45358, and Bannock County Case CR 2014-13658, Supreme Court Docket Number 45359, Ms. Linford requests that additional credit for time served be awarded.

DATED this 28<sup>th</sup> day of December, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28<sup>th</sup> day of December, 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:

CHERYL LINFORD  
INMATE #70416  
C/O JEFFERSON COUNTY  
SHERIFF'S OFFICE  
200 COURTHOUSE WAY  
RIGBY ID 83442

ROBERT C NAFTZ  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

CRAIG W PARRISH  
ATTORNEY AT LAW  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

EAA/eas