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

LARA E. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9855
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45261
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-16-6037
v.)	
)	
ANTHONY JOHN BOUNDY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Subsequent to an *Alford* plea¹, Mr. Boundy was sentenced to a unified term of seven years, with two years fixed, for possession of a controlled substance. Mr. Boundy appeals his sentence and the denial of his Idaho Criminal Rule 35 Motion for Reconsideration (“Rule 35”) based upon the district court’s failure to fully consider and weigh the mitigating factors.

¹ *North Carolina v. Alford*, 91 S.Ct. 160 (1970), hereinafter *Alford*.

Statement of the Facts & Course of Proceedings

Mr. Boundy came into contact with law enforcement after his vehicle struck a pole. (R., p.13.) According to police, during his interaction with police, Mr. Boundy appeared to display signs and symptoms consistent with substance use. His vehicle was searched pursuant to his parole terms, and the officer located a methamphetamine pipe contained within a box within a Michael Kors purse found behind the passenger seat. (R., p.13.) Mr. Boundy admitted using methamphetamine a few days prior and he was subsequently arrested. (R., p.14.) He was formally charged with possession of a controlled substance in violation of I.C. § 37-2732(c)(1). (R., pp.50-51.)

Rather than litigate his case, Mr. Boundy entered into an agreement with the State - in exchange for his plea to possession of a controlled substance, the State would recommend a unified seven year term, with two years fixed, to run consecutive to his other cases (Gooding County CR-2009-1006, Ada County CR-2009-11600, and Twin Falls County Cases CR-2012-5575 and CR-2013-14143), and agree not to file an Information Part II, persistent violator enhancement. (R., p.122.) Mr. Boundy executed a Plea Advisory Form *Alford Plea* and a prosecutor's Offer-Plea Agreement, waiving his right to appeal any issues (other than an illegal sentence) related to suppression, the plea, the sentence, and Rule 35. (R., pp.115, 122.)² He was then sentenced consistent with the State's recommendation of a seven year term, with two years

² Mr. Boundy notes the Offer-Plea Agreement proffered by the State stated the offer expired on "8-1-2016 at Entry of Plea" (R., p.122), however, in light of Mr. Boundy's and defense counsel's December 18, 2016, signatures on the same, combined with the discussions on the record affirming an intention to abide by the agreement's terms, Mr. Boundy is not challenging the contract. *See also State v. Taylor*, 157 Idaho 369, 372 (Ct. App. 2014) (holding that plea agreements are contractual nature, and are examined by the court consistent with contract law standards).

fixed, consecutive. (R., pp.139-145.) Mr. Boundy filed a timely appeal. (R., pp.155-156.) He also filed a Motion for Correction or Reduction of Sentence, ICR 35, requesting the court to amend his sentence to be served concurrently rather than consecutively. (R., pp.161-167.) Mr. Boundy's Rule 35 motion was denied. (R., pp.186-189.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed upon Mr. Boundy, following his plea of guilty to possession of a controlled substance?
- II. Did the district court abuse its discretion in denying Mr. Boundy's Rule 35 motion for a reduction of sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Seven Year Unified Sentence Following Mr. Boundy's Plea Of Guilty To Possession Of A Controlled Substance

Mr. Boundy asserts that, given any view of the facts, his unified sentence of seven years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). "So long as the sentence is within the statutory limits, the appellant must show that the trial court, when imposing the sentence, clearly abused its discretion." *State v. Knighton*, 143 Idaho 318, 319 (2006). Mr. Boundy does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Boundy must show that in light of the

governing criteria, the sentence was excessive considering any view of the facts. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

Mindful of *State v. Murphy*, 125 Idaho 456, 457, 872 P.2d 719, 720 (1994) (holding a defendant may waive constitutional rights as well as statutory rights, including the right to appeal) and Mr. Boundy's waiver of right to appeal his sentence and conviction, Mr. Boundy nonetheless contends the district court imposed an excessive sentence in light of mitigating factors such as his medical condition, history of trauma, his recent efforts towards rehabilitation, and the non-violent nature of the crime. Specifically, Mr. Boundy contends the court failed to fully consider several mitigating factors: his positive and worthwhile accomplishments (mentoring and co-facilitating a program, performing volunteer work, working at Applebee's Restaurant, producing twenty-nine confirmed clean urinalysis, qualifying for vocational rehabilitation services, and making arrangements to pay his fines and restitution); his lack of guilt for driving under the influence, or being under the influence; and his severe mental health and medical conditions. (R., pp.163-165.)

Mr. Boundy has been significantly affected by mental illness throughout his life. Courts have considered mental health issues as well as substance abuse factors in mitigation. *See Hollon v. State*, 132 Idaho 573, 581 (1999); *State v. Nice*, 103 Idaho 89, 91 (1982). Mr. Boundy's diagnoses include Attention Hyperactivity Disorder ("ADHD"), posttraumatic stress disorder and substance abuse. Mr. Boundy's poor physical health is also a mitigating factor which deserved more weight in the court's analysis. *State v. Turner*, 136 Idaho 629, 636 (Ct. App. 2001) (finding defendant's poor health was a basis for not following the State's recommendation of a fixed life sentence). Mr. Boundy suffers from very debilitating medical illnesses, which affect his life in prison, and exacerbate any punishing effect due to his pain and

discomfort. Mr. Boundy suffers from hepatitis C, cirrhosis of the liver, edema in his lower extremities, hepatic encephalopathy, and liver failure. His doctor, Dr. Wheeler, advised he needed a crucial course of treatment; if he did not receive the same, his life expectancy was only about two years. (PSI, p.22.) That report was over one year. While being at the jail, Mr. Boundy has reported that he suffered from high ammonia levels which caused him to be disoriented and suffer lack of coordination. (PSI, p.22.)

Mr. Boundy has also had a very traumatic upbringing, which has caused him challenges in adult life and explains, to some degree, his self-medication through drugs. Courts have considered a defendant's abusive childhood at sentencing. *See State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993). Mr. Boundy was adopted at age four, but unfortunately, his adoptive father was an abusive alcoholic. As a child, he suffered not only physical abuse, but emotional and sexual abuse and began running away. He was beaten until age 16, when he became strong and confident enough to defend himself. (PSI, p.74.) During his teens, he also met his biological mother, but she introduced him to cocaine and died of an overdose when he was only 16. (PSI, p.74.) Despite promise in academics, his ADHD and trauma affected his ability to ultimately finish school. Mr. Boundy has suffered an inordinate amount of trauma, which must be taken into account.

Mr. Boundy contends that as a whole, the mitigating factors weighed in favor of a lesser sentence, particularly given his severe medical condition which makes his incarceration that much more severe than other defendants. As such, the district court erred by not fully considering the same and this Court should grant relief.

II.

The District Court Abused Its Discretion In Denying Mr. Bounsy's Rule 35 Motion

Upon review of a denial of a motion to reduce or reconsider under Rule 35, the court applies the same standard, and in order to obtain relief, a defendant must demonstrate the sentence is excessive in light of new or additional information. *State v. Huffman*, 144 Idaho 201 (2007). Mindful of *Huffman* and his waiver of the right to appeal, Mr. Boundy contends the district court erred in refusing to reduce his sentence by ordering it to be served concurrently. In support of Mr. Boundy's Rule 35, he submitted a letter from Dr. Seth Wheeler, St. Luke's, who described Mr. Boundy's medical condition as of March 3, 2017:

He has decompensated cirrhosis, from chronic viral hepatitis C. He has ascites as a result of the cirrhosis. This is the collection of fluid in the abdominal cavity around the intestines. When this occurs, in general, there is a roughly 2 year expected survival on average, although we hope to alter that with treatment. He also has hepatic encephalopathy which results in confusion that can impair his ability to function. I hope to treat his hepatitis C and resolve this infection so that his downward trajectory is reduced, but even if we achieve this, his lifespan will be shortened. These patients are at risk of dying from renal failure, liver cancer, complications from bleeding, infections, etc.

(R., p.166.) Although this letter was presented to the district court at the original sentencing, his condition no doubt deteriorated due to the passage of time, and health problems of a defendant are factors to consider when evaluating a motion for sentence reduction. *State v. James*, 112 Idaho 239, 243-244 (Ct. App. 1986). The district court abused its discretion when denying his Rule 35 motion by failing to fully consider his medical condition.

CONCLUSION

Mr. Boundy respectfully requests this Court to reduce his sentence, or alternatively, remand his case to the district court for a new sentencing hearing.

DATED this 5th day of April, 2018.

_____/s/_____
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of April, 2018, 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:

ANTHONY JOHN BOUNDY
INMATE #32540
ISCI
PO BOX 14
BOISE ID 83707

CHERI C COPSEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

LEA/eas