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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|--------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 45272 |
| Plaintiff-Respondent, |) | |
| |) | Kootenai County Case No. |
| v. |) | CR-2016-21519 |
| |) | |
| JON JEFFREY WALLACE, |) | |
| |) | RESPONDENT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Wallace failed to establish that the district court abused its discretion by not further reducing his sentences pursuant to his Rule 35 motion for reduction of sentence?

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

The state charged Wallace with delivery of methamphetamine, two counts of delivery of heroin, and possession of heroin with the intent to deliver, with a persistent violator enhancement. (R., pp.31-33.) Pursuant to a plea agreement, Wallace pled guilty to delivery of methamphetamine and one count of delivery of heroin, and the state dismissed the remaining

charges and the enhancement. (R., pp.40-41, 44.) The district court imposed concurrent unified sentences of 10 years, with four years fixed. (R., pp.53-56.) Wallace filed a timely notice of appeal. (R., pp.57-61.) He also filed a timely Rule 35 motion for reduction of sentence, which the district court granted, reducing his sentences to concurrent unified sentences of 10 years, with one and one-half years fixed. (R., pp.74-75; Aug., pp.1-3.)

Wallace asserts that the district court abused its discretion by failing to further reduce his sentences pursuant to his Rule 35 motion in light of his acceptance of responsibility, substance abuse and mental health issues, family support, and desire to sooner participate in treatment and continue helping his elderly parents. (Appellant's brief, pp.3-5.) Wallace requested the sentences he received and is therefore precluded by the invited error doctrine from challenging the sentences on appeal.

A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error. State v. Carlson, 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000). The purpose of the invited error doctrine is to prevent a party who "caused or played an important role in prompting a trial court" to take a particular action from "later challenging that decision on appeal." State v. Blake, 133 Idaho 237, 240, 985 P.2d 117, 120 (1999). This doctrine applies to sentencing decisions as well as to rulings during trial. State v. Leyva, 117 Idaho 462, 465, 788 P.2d 864, 867 (Ct. App. 1990).

On appeal, Wallace acknowledges that, at the hearing on his Rule 35 motion, he "requested that the district court reduce [his] sentences to ten years, with one year fixed, or ten years, with one and one-half years fixed." (Appellant's brief, p.2 (citing 11/6/17 Tr., p.8, Ls.20-23).) Indeed, at the Rule 35 hearing, Wallace's counsel asked that Wallace's sentences "be

altered for one of those two options.” (11/6/17 Tr., p.9, Ls.11-12.) The district court granted Wallace’s request and, selecting the second option, reduced his sentences to 10 years, with one and one-half years fixed. (11/6/17 Tr., p.13, Ls.2-6; Aug., pp.1-3.) Because Wallace received the sentences he requested at the hearing on his Rule 35 motion, he cannot claim on appeal that the sentences are excessive or that the district court abused its discretion by declining to further reduce the sentences. Therefore, Wallace’s claim of an abuse of sentencing discretion is barred by the doctrine of invited error and the district court’s order granting Wallace’s Rule 35 motion for reduction of sentence should be affirmed.

Even if this Court considers the merits of Wallace’s claim, he has still failed to establish an abuse of discretion. 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, Wallace 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. Wallace has failed to satisfy his burden.

Wallace provided no new information in support of his Rule 35 motion. He merely requested that his sentences be reduced so that he could sooner attend counseling, participate in treatment at Good Samaritan, and continue helping his elderly parents. (Appellant’s brief, p.4 (citing 11/6/17 Tr., p.4, L.15 – p.7, L.15).) Information with respect to Wallace’s desire to participate in the Good Samaritan program and counseling, and the fact that he provided help to his elderly parents, was before the district court at the time of sentencing, and Wallace’s statement that he would like to be released sooner for these purposes is not “new” information.

(6/14/17 Tr., p.4, Ls.19-24; p.7, Ls.6-8; PSI, pp.10-11, 14, 41-43.¹) Because Wallace presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentences were excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's decision to not further reduce his sentences pursuant to his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order granting Wallace's Rule 35 motion for reduction of his sentences.

DATED this 1st day of March, 2018.

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

VICTORIA RUTLEDGE
Paralegal

¹ PSI page numbers correspond with the page numbers of the electronic file "Wallace Sealed 45272.pdf."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of March, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
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