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

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
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,)	
)	
Plaintiff-Respondent,)	NO. 45280
)	
v.)	MINIDOKA COUNTY NO. CR 2012-642
)	
TRAVIS SCOTT RAY,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to an agreement with the State, Travis Scott Ray pled guilty to possession of methamphetamine, and both parties recommended a five year sentence, with two years fixed, and retained jurisdiction in order to allow Mr. Ray to participate in substance abuse programing. The district court disregarded that recommendation, however, and sentenced Mr. Ray to six years, with four years fixed, without retaining jurisdiction. Mr. Ray filed a Rule 35 motion offering new information showing that Mr. Ray also had mental health issues, and again asked for the retained jurisdiction or a lesser sentence. The district court denied the motion.

On appeal Mr. Ray asserts that, in light of the additional information he presented, the district court's refusal to reduce his sentence or retain jurisdiction was unreasonable, representing an abuse of discretion.

Statement of the Facts and Course of Proceedings

When a police officer approached him about an active arrest warrant for a parole violation, Mr. Ray provided the officer with names other than his own and attempted to run away. (R., p.12.) He was apprehended by the officer and, during the ensuing search of his person, the officer found drugs and paraphernalia. (R., p.12.) The State charged Mr. Ray with one felony count of possession of methamphetamine, four misdemeanors, and being a persistent violator enhancement. (R., pp.6, 20, 24.)

Pursuant to his agreement with the State, Mr. Ray pled guilty to the methamphetamine charge, and the State dismissed the misdemeanors and the enhancement; the State also agreed to recommend a five year sentence, with two years fixed, with either drug court or retained jurisdiction. (R., p.40; Tr., p.5, L.19 – p.20, L.4.)

Mr. Ray was initially assigned to drug court, but was soon terminated from the program due to his continued drug use and getting into a fight with another participant. (R., pp.47, 52, 54-64.) According to the termination report, Mr. Ray was “not prepared to engage in his recovery as evident by his on-going drug use.” (R., p.57.)

The presentence investigation, (PSI),¹ revealed that Mr. Ray has a severe drug and alcohol addiction that extends back to his childhood. (PSI, pp.7, 17, 23.) The Department of

¹ Citations to the Presentence Investigation Report and attached materials, which includes the The Department of Health and Welfare's mental health exam, (MHE), will use the designation “PSI”, and include the page numbers associated with the 61-page electronic file containing those documents.

Health and Welfare's mental health exam, (MHE), found there were no serious mental health issues, no history of mental health treatment, and consequently, no mental health treatment was recommended. (PSI, p.33.)

At sentencing, both parties asked the district court to impose a five year sentence, with two fixed, and to retain jurisdiction. Both parties agreed that Mr. Ray needed to get his drug problem under control and his mental health stabilized; and both agreed the retained jurisdiction program offered the needed tools, and that Mr. Ray should have that chance to demonstrate his rehabilitation potential. (Tr., p.15, Ls.14-21.) The district court disregarded the joint recommendation, noting "[substance abuse] treatment doesn't help everybody." (Tr., p.24, L.9.) The court imposed a six-year term, with four years fixed, without retaining jurisdiction. (Tr., p.26, L.4 – p.27, L.10; R., p.82.)

Mr. Ray subsequently obtained his mental health treatment records from Oregon, where he was incarcerated and on parole from 2015 to 2016. (Aug.R., *Affidavit*, pp.10-72.)² These records contain recent diagnoses of significant anxiety and post-traumatic stress disorders, detailing efforts to try to stabilize Mr. Ray's condition through managed prescription medication. (Aug.R., *Affidavit*, pp.26, 53, 62 -72.) During the course of the year, Mr. Ray was prescribed an array of antipsychotics – over a dozen – in an attempt to handle his out-of-control anxiety. (Aug.R., *Affidavit*, pp.2-25.) Based on this new information, Mr. Ray filed a motion pursuant to Criminal Rule 35, presenting these documents to the district court, and asking the district court to

² Copies of Mr. Ray's Motion for Reconsideration of Sentence Pursuant to Rule 35, together with his Memorandum in Support, and accompanying Affidavit, filed on October 31, 2017; the State's Response to Defendant's Motion, filed on November 1, 2017; and the district court's Order Denying Motion for Reconsideration of Sentence I.C.R. Rule 35, filed November 28, 2017; are being augmented into the appellate record via Appellant's Motion To Augment, filed contemporaneously with this Appellant's Brief.

reconsider the original sentence in light of his mental health condition. (Aug.R., Motion for Reconsideration of Sentence.) The State filed a response indicating it did not object to the motion, and reaffirmed its original recommendation for retained jurisdiction and a two-to-five year sentence. (Aug.R., *State's Response to Motion*.)

The district court denied Mr. Ray's 35 motion. (Aug.R., Order Denying Motion.) The court recognized new information was presented, but was not convinced Mr. Ray's sentence should be reduced. (Aug.R., Order Denying Motion.) Mr. Ray filed a notice of appeal that is timely from his judgment and from the denial of his Rule 35 motion. I.A.R. 17(e)(1)(C). (R., p.102.)

ISSUE

Did the district court abuse its discretion by declining to retain jurisdiction, and by declining to reduce the sentence, in light of the additional information Mr. Ray presented with his Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion By Declining To Retain Jurisdiction Or Reduce Mr. Ray's Sentence, In Light Of The Additional Information He Presented With His Rule 35 Motion

A. Introduction

The additional information presented with Mr. Ray's Rule 35 motion show that Mr. Ray has an underlying mental health condition that needs to be addressed before he is amenable to substance abuse treatment. The district court abused its discretion when it disregarded that information, and the joint recommendations from the parties, and refused to retain jurisdiction.

B. Standard Of Review

The appellate court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). 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. *State v. Miller*, 151 Idaho 828, 834 (2011). A sentence will be deemed "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." *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the appellate court considers the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726 (2007).

In addition to imposing a sentence directly, the district court has the discretion to retain jurisdiction. *See* I.C. § 19-2601(4). The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193 (Ct.App.1984); *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982). The sentencing court's refusal to retain jurisdiction is not an abuse of discretion if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005).

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). The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable. *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

C. The District Court Abused Its Discretion By Imposing An Excessive Sentence, Without Retaining Jurisdiction, And By Declining To Grant A Sentence Reduction

Mr. Ray’s sentence of six years, with four years fixed, is excessive in light of the facts of this case. Mr. Ray’s drug addiction and his potential for overcoming that addiction should be taken into account in this case. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). Additionally, the Idaho Supreme Court has recognized that Idaho Code § 19-2523 requires that an individual’s mental illness be considered a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999). Both of these factors – his mental illness and his addiction – are at play in this case; both conditions are amenable to treatment, and both must be addressed in order for Mr. Ray to recover.

Mr. Ray’s history with alcohol and drug abuse began early. He first tasted alcohol when he was seven years old, and by the time he was sixteen he was sharing an eighteen pack of beer with a friend, every day. (PSI, p.17.) He began using heroin and methamphetamine when he was twelve; he smoked, snorted, and injected these drugs on a daily basis. (PSI, p.17.) As an adult, he would drink a fifth to a gallon of vodka every couple days, and was injecting meth every day too. (PSI, p.20.) His GAIN assessment recommended that he complete an intensive outpatient treatment and then participate in drug court. (PSI, p.32.)

The district court declined to follow the recommendation for retained jurisdiction and treatment, stating its belief that Mr. Ray was not amendable to treatment given his past attempts

and constant failures. (Tr., p.24, L.9.) However, the court was subsequently informed, through the Rule 35 motion, that Mr. Ray has untreated and unresolved mental health conditions that need to be controlled first. (Aug.R., *Affidavit*, pp.10-72.) Mr. Ray submits that his mental instability may well be the cause of, or a substantial contributor to, his evident inability to stay away from drugs. Until he is stable, however, Mr. Ray knows he is not ready for drug treatment, drug court, or probation. Mr. Ray is highly motivated to get that treatment (PSI, p.32), and he needs mental health treatment as well. As noted by counsel at sentencing, the retained jurisdiction program offers treatment for these co-occurring disorders, and both parties agreed Mr. Ray should have that treatment. (Tr., p.15, L.24 – p.18, L.17.)

The district court failed to adequately take into account Mr. Ray's mental health condition and need for treatment when it denied his Rule 35 motion. The district court should have granted the motion and retained jurisdiction, allowing Mr. Ray the chance for treatment and stabilization, and giving him the opportunity to demonstrate his rehabilitation potential.

CONCLUSION

Mr. Ray respectfully requests that this Court vacate his sentence and remand his case to the district court with instructions that the district court retain jurisdiction, or else reduce his sentence.

DATED this 22nd day of January, 2018.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TRAVIS SCOTT RAY
INMATE #53157
ISCI
PO BOX 14
BOISE ID 83707

JONATHAN BRODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

STEVEN MCRAE
ATTORNEY AT LAW
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas