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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45467
)	
v.)	ADA COUNTY NO. CR-FE-2016-8574
)	
RONALD LEE GLAZIER,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Ronald Glazier contends the district court abused its discretion by denying his I.C.R. 35 motion (*hereinafter*, Rule 35 motion) requesting leniency. The State makes two responses, that because he requested the sentence the district court imposed at the sentencing hearing, his Rule 35 motion is barred under the invited error doctrine, and that the district court's decision was proper on its merits. The State is mistaken in both respects. Therefore, this Court should reduce his sentences as it deems appropriate, or, alternatively, remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

The statement of facts and course of proceedings were previously articulated in Mr. Glazier's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court abused its discretion by denying Mr. Glazier's Rule 35 motion.

ARGUMENT

The District Court Abused Its Discretion By Denying Mr. Glazier's Rule 35 Motion

A. The Doctrine Of Invited Error Does Not Preclude Mr. Glazier From Challenging The Denial Of His Rule 35 Motion On Appeal

The invited error doctrine prevents a party from complaining about a decision which the district court made with his consent or at his urging. *State v. Carlson*, 134 Idaho 389, 402 (Ct. App. 2000). As the Idaho Supreme Court has made clear, Rule 35 motions are entirely distinct from the initial sentencing determination. *State v. Adair*, 145 Idaho 514, 516 (2008) ("This Court will not use a Rule 35 motion as a vehicle to review the underlying sentence absent the presentation of new information."); *State v. Huffman*, 144 Idaho 201, 203 (2007) ("Rule 35 does not function as an appeal of the sentence.") As a result, the district court's decision regarding the imposition of sentence is not the same as its decision on a Rule 35 motion, and therefore, the invited error doctrine will not prevent a defendant from pursuing a Rule 35 motion even if he actually stipulated to a particular sentence as part of his plea agreement.¹ *See, e.g., State v. Person*, 145 Idaho 293, 299 (Ct. App. 2007).

¹ Mr. Glazier did not stipulate to a particular sentence as part of his plea agreement. (R., pp.147, 150 (noting that the sentencing recommendations were open under his plea agreement).) As

Mr. Glazier did not invite, consent, or urge the district court to deny his Rule 35 motion. (*See generally* R.) Ergo, even if the invited error doctrine would preclude him from challenging the initial decision to impose his sentence,² it does not preclude him from challenging the entirely separate decision to deny his Rule 35 motion which was based on different facts – the new and additional information he presented in support of his motion which was not available at the time of the initial sentencing.

B. The District Court Abused Its Discretion When It Denied Mr. Glazier’s Rule 35 Motion Without Sufficiently Considering The New And Additional Information Presented With That Motion

The State’s arguments in regard to the merits of the district court’s decision to deny Mr. Glazier’s Rule 35 motion are not remarkable, and so, no further reply is needed in that regard. Accordingly, Mr. Glazier simply refers the Court back to pages 4-5 of his Appellant’s Brief.

CONCLUSION

Mr. Glazier respectfully requests that this Court reverse the order denying his Rule 35 motion and either reduce his sentence as it deems appropriate, or, alternatively, remand this case to the district court for further proceedings.

DATED this 30th day of May, 2018.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

such, several of the potential issues with pursuing the Rule 35 motion following such a stipulation which *Person* addressed are not present in Mr. Glazier’s case, meaning there is even less justification to prevent him from pursuing the Rule 35 motion than there was in *Person*.

² Mr. Glazier has not challenged the district court’s decision in imposing his sentence in this appeal. (*See generally* App. Br.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of May, 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:

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KARNES COUNTY CORRECTIONAL CENTER
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DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas