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

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
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. 45469
)	
v.)	ADA COUNTY NO. CR01-17-3803
)	
JONATHON DANIEL ROJAS,)	APPELLANT'S REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

The district court denied Jonathon Daniel Rojas' Idaho Criminal Rule 35 ("Rule 35") motion for a reduction of sentence, even though Mr. Rojas requested a reduction of the fixed term of his sentence so he could start programming earlier. Mr. Rojas appealed, asserting the district court abused its discretion when it denied his Rule 35 motion, in view of the new and additional information presented with the motion on his desire to rehabilitate.

In its Respondent's Brief, the State argues Mr. Rojas did not establish an abuse of discretion, in part because he did not provide any new information in support of his Rule 35 motion. (*See Resp. Br.*, pp.2-3.)

This Reply Brief is necessary to address the State's contention that Mr. Rojas provided no new information in support of his Rule 35 motion. Mr. Rojas asserts that even if he had not provided any new information in support of his Rule 35 motion, he submitted additional information that provides a basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion. Mr. Rojas also challenges the State's general argument that he did not establish an abuse of discretion, and he relies on the arguments presented in his Appellant's Brief and will not repeat those arguments here.

Statement of the Facts and Course of Proceedings

The Statement of Facts and Course of Proceedings were previously articulated in Mr. Rojas' Appellant's Brief, and are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it denied Mr. Rojas' Idaho Criminal Rule 35 motion for a reduction of sentence, in light of the new and additional information presented in support of the motion on his desire to rehabilitate?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Rojas' Idaho Criminal Rule 35 Motion For A Reduction Of Sentence, In View Of The New And Additional Information Presented With The Motion On His Desire To Rehabilitate

Mr. Rojas asserts the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of the new and additional information presented with the motion on his desire to rehabilitate.

The State argues Mr. Rojas' "desire to rehabilitate and immediately participate in prison programs was not new information before the district court." (Resp. Br., p.3.) Thus, the State

contends Mr. Rojas did not show in the Rule 35 motion that his sentence was excessive, and did not establish any basis for reversal of the district court's denial of the motion. (Resp. Br., p.3.)

The Idaho Supreme Court has held that “[w]hen 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). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Mr. Rojas asserts that, even assuming (without conceding) he did not provide any *new* information in support of his Rule 35 motion, he nonetheless has provided a basis for this Court to find that the denial of his Rule 35 motion was an abuse of discretion. At the least, the information presented in support of the Rule 35 motion on Mr. Rojas' desire to rehabilitate (*see generally* R., pp.105-11), was *additional* information as contemplated by *Huffman*.

Mr. Rojas submits the State is incorrect in arguing that “new information” serves as the only basis for reversal of the denial of a Rule 35 motion. As discussed above, “[w]hen 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.” *Huffman*, 144 Idaho at 203. While the Idaho Supreme Court stated in *Huffman* that “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information,” *id.*, the Court has indicated that additional information also serves as a basis for an appellate court to find that a denial of a Rule 35 motion was an abuse of discretion.

For example, in *State v. Adair*, 145 Idaho 514 (2008), the Idaho Supreme Court, citing *Huffman*, stated that, “absent the presentation of new evidence, an appeal from a Rule 35 motion

merely asks this Court to review the underlying sentence. Without additional information being presented, there is no basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion.” *Adair*, 145 Idaho at 517 (citation omitted). The *Adair* Court, because “[n]o additional information was provided to the trial court to indicate that the sentence was excessive,” decided that “[t]he trial court operated without its discretion when it denied [the defendant’s] Rule 35 motion for reduction of sentence.” *Id.*

Because the Idaho Supreme Court in *Huffman* and *Adair* recognized “additional information” (alongside “new information”) as a way to show that a sentence is excessive in support of a Rule 35 motion, *Huffman*, 144 Idaho at 203, *Adair*, 145 Idaho at 517, Mr. Rojas submits that additional information serves as a basis for an appellate court to find that a district court’s denial of a Rule 35 motion was an abuse of discretion. Thus, because Mr. Rojas presented additional information in support of his Rule 35 motion, he has provided a basis for this Court to find that the denial of the motion was an abuse of discretion.

Mr. Rojas further submits the district court abused its discretion when it denied the Rule 35 motion, for the reasons contained in the Appellant’s Brief and incorporated herein by reference thereto. (*See App. Br.*, pp.5-7.)

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant’s Brief, Mr. Rojas respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 12th day of April, 2018.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of April, 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:

JONATHON DANIEL ROJAS
INMATE #76613
SAWC
125 N 8TH WEST
ST ANTHONY ID 83445

LYNN G NORTON
DISTRICT COURT JUDGE
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas