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### State v. Creech Appellant's Brief Dckt. 45545

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45545
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-904
v.	)	
	)	
JAMES GORDON CREECH II,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

James Gordon Creech II appeals from the district court's order denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motion for reduction of sentence. Mindful of the fact that Mr. Creech did not submit any new information in support of the motion, Mr. Creech asserts that the district court abused its discretion by denying the motion.

Statement of the Facts & Course of Proceedings

On November 13, 2016, the Boise Police Department reported that Mr. Creech had cut off the strap to his court-ordered ankle monitor and discarded the monitor. (Presentence

Investigation Report (*hereinafter*, PSI), p.2.) The monitor and ankle strap were not located. (PSI, p.2.) The value of the items was \$1,889.00. (PSI, p.3.)

Mr. Creech was charged with one count of grand theft. (R., p.40.) He pleaded guilty to the charge and the district court imposed a unified sentence of eight years, with one year fixed. (R., p.64.) Mr. Creech subsequently filed a Rule 35 motion requesting leniency, which the district court denied because the motion did not present any new or additional information. (R., pp.71, 77.) Mr. Creech appealed from the denial of the Rule 35 motion. (R., p.80.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Creech's Rule 35 motion for reduction of sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Creech's Rule 35 Motion For Reduction Of Sentence

Mr. Creech acknowledged that, while high on methamphetamine, he got paranoid and cut the ankle monitor off and tossed it in some bushes. (PSI, p.3.) He planned on returning to the area and turning in the monitor but his parole officer arrested him before he could. (PSI, p.3.) Mr. Creech stated that his actions were irresponsible and he regretting them very much. (PSI, p.3.) Mr. Creech had obtained employment and was working security at Boise State University. (PSI, p.3.) He had previously attended the Providence Sober Living Facility and was "doing good" and had started treatment through Sage Recovery. (PSI, p.3.)

An order denying a motion for reduction of a sentence under Rule 35 is reviewed for an abuse of discretion. If the sentence is found to be reasonable at the time of pronouncement, the defendant must then show that it is excessive in view of the additional information presented

with the motion for reduction. *State v. Hillman*, 143 Idaho 295, 296 (Ct. App. 2006). Mr. Creech concedes that he did not present any new or additional information for the district court's consideration in this case. Mindful of this fact, Mr. Creech submits that the district court abused its discretion by denying his motion due to his expression of remorse, his acknowledgment that his actions were irresponsible, the fact that he had found employment, and the fact that he had been attending substance abuse courses.

### CONCLUSION

Mr. Creech respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a hearing on his Rule 35 motion.

DATED this 20<sup>th</sup> day of March, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20<sup>th</sup> day of March, 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:

JAMES GORDON CREECH II  
INMATE #87310  
ICIO  
381 W HOSPITAL DRIVE  
OROFINO ID 83544

STEVEN J HIPPLER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

TERI K JONES  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JMC/eas