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

ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender
I.S.B. #7259
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,)	
)	NO. 45582
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-4786
v.)	
)	
RUDY ALLEN GARCIA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Rudy Allen Garcia appeals from the district court's Order Denying Motion for Reconsideration of Sentence. Mr. Garcia was sentenced to a unified sentence of ten years, with five years fixed, for his injury to children conviction. He asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On February 14, 2017, an Indictment was filed charging Mr. Garcia with injury to children and infliction of great bodily injury. (R., pp.7-8.) The charges arose out of an

investigation for commercial burglaries. (PSI, p.3.)¹ When officers made contact with Mr. Garcia and his girlfriend, it was discovered that their child D.G. had been repeatedly abused. (PSI, p.3.)

Mr. Garcia entered a guilty plea to injury to children. (R., p.52.) At sentencing, the State recommended imposition of a unified sentence of ten years, with five years fixed. (Tr., p.12, Ls.17-18.) Defense counsel requested that the fixed portion of Mr. Garcia's sentence be less than five years. (Tr., p.20, Ls.21-25.) The district court imposed a unified sentence of ten years, with five years fixed. (R., pp.71-73.) Mr. Garcia filed a timely Motion for Reconsideration of Sentence. (R., p.78.) The district court denied the Rule 35 motion. (R., pp.85-89.) Mr. Garcia filed a Notice of Appeal timely from the district court's Order Denying Motion for Reconsideration of Sentence. (R., pp.90-92.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Garcia's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

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

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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447

¹ For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

(Ct. App. 1984)). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Mr. Garcia must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). “When 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).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Garcia asserts that the district court failed to give proper weight and consideration to the new information provided in support of his Rule 35 motion and the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Mr. Garcia supplied new or additional information in support of his Rule 35 motion. Specifically, he provided two certificates for his successful completion of Seven Areas of Life

Training My Mind, Will, and Emotions Psychological Area of Life and Seven Areas of Life Training My Relationship With Others Social Area of Life. (PSI, pp.79-80.) He also supplied information indicating that he was participating in a G.E.D. program. (R., pp.81-82.) This information shows that Mr. Garcia is willing to participate in programming and attempt to better himself. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 209.

Additionally, there are mitigating factors present in Mr. Garcia’s case that counsel toward a reduction in sentence. Mr. Garcia has a serious drug addiction, recognizes that he needs treatment, and is willing to participate in any recommended treatment. (PSI, pp.17-18, 20, 27-28, 36.) Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In addition to his substance abuse issues, he also suffers from several mental health issues including depression, anxiety, post-traumatic stress disorder, and antisocial personality disorder. (PSI, pp.21, 26-27, 60.) Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant’s mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Finally, he has also expressed his sincere remorse for his criminal conduct. (Tr., p.21, L.8 – p.22, L.23.)

Mr. Garcia asserts that, in light of the new information provided in support of his Rule 35 motion and the mitigating factors present in his case, the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

Mr. Garcia respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 24th day of May, 2018.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of May, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

RUDY ALLEN GARCIA
INMATE #123521
KANRNES COUNTY CORRECTIONAL CENTER
810 COMMERCE ST
KARNES CITY TX 78118

JONATHAN MEDEMA
DISTRICT COURT JUDGE
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas