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### State v. Causer Appellant's Brief Dckt. 45621

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45621
	)	
v.	)	BANNOCK COUNTY
	)	NO. CR-2015-7164
	)	
JOSHUA CAUSER,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Joshua Causer appeals from the district court's denial of his Rule 35 request for a reduction of his sentence. Mr. Causer was sentenced to six years, with three years fixed, for delivery of a controlled substance, Oxycontin. On appeal, he contends that his sentence is excessive in light of the additional information he presented with his motion, and that the district court abused its discretion by refusing to reduce his sentence or to place him on probation.

## Statement of the Facts and Course of Proceedings

Based on an informant's tip, detectives in Pocatello made a controlled buy from Mr. Causer of \$120 worth of Oxycontin pills, and a second controlled buy of \$120 in heroin. (R., pp.24, 29; PSI, p.5.)<sup>1</sup> The State filed an Information charging Mr. Causer with two counts of delivery of a controlled substance. (R., p.45.) Pursuant to the terms of an agreement with the State, Mr. Causer pled guilty to delivery of Oxycontin and the State dismissed the heroin count. (R., p.95.) The district court imposed a unified sentence of six years, with three years fixed, ordered the sentence suspended, and placed Mr. Causer on probation. (R., p.126.)

Mr. Causer struggled on probation, and he had difficulty securing employment and staying away from drug use. (R., pp.134, 139, 141, 144.) His probation officer filed a report of probation violation. (R., p.152.) Based on Mr. Causer's admissions, the district revoked his probation and executed his previously-suspended sentence. (Tr., p.5, L.6 – p.7, L.18; R., p.156.) However, the district court followed the parties' joint recommendation and ordered retained jurisdiction so that Mr. Causer could participate in a "rider" program. (Tr., p.7, L.21 – p.9, L.24; R., p.156.) At the time, Mr. Causer told the court he was "nervous and terrified" about the rider, but the district court tried to assure him, "you'll learn things, you really will, if you'll be willing to submit to the program and really try and learn things." (Tr., p.12, Ls.2-10.) Mr. Causer told the court, "I'm going to a hundred percent." (Tr., p.12, L.11.) And he did.

Mr. Causer was placed at North Idaho Correctional Institution ("NICI"). (PSI, p.44.) He attended classes and almost completed his GED. (PSI, pp.71-72.) He also went to chapel every evening. (PSI, pp.71-72.) His rider performance was imperfect, however. He had difficulty

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<sup>1</sup>Citations to the Presentence Investigation Report and attached materials will use the designation "PSI" and will include the page numbers associated with the 72-page electronic file containing those documents.

with the small rules, and reacted strongly when he was informed he would not be able to return home with his mother, sister, and dog, since his brother – also a probationer – was already living there. (PSI, p.47.) Yet, Mr. Causer had no major disciplinary infractions, nor did he engage in any type of criminal conduct while on his rider. (*See generally* PSI, pp.45-47.) Nevertheless, the Department of Correction recommended that jurisdiction be relinquished. (PSI, p.44.) The district court adopted that recommendation and entered an order relinquishing jurisdiction. (R., p.161.)

Mr. Causer timely filed a motion pursuant to Rule 35, asking the district court to reconsider his original sentence – both the fixed and indeterminate terms – and that the court to give him another chance at probation, this time in the structured Wood Court program. (R., pp.165-66; Tr., p.13, L.10 – p.14, L.2.) In support of his motion, Mr. Causer submitted a handwritten letter. (PSI, pp.71-72.) The district court denied the motion. (Tr., p.15, L.4; R., p.170.) Mr. Causer filed a Notice of Appeal that is timely from that decision. (R., p.172.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Causer’s Rule 35 motion for a reduction of sentence, in light of the additional information he presented?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Causer’s Rule 35 Motion For A Reduction Of Sentence, In Light Of The Additional Information He Presented

##### A. Introduction

Mr. Causer claims that his sentence is excessive in light of the additional information he presented with his Rule 35 motion, and that the denial of his motion for a reduction of his sentence represents an abuse of the district court’s sentencing discretion.

B. Standard Of Review

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. *State v. Huffman*, 144 Idaho 201, 202 (2006).

Where a defendant challenges his sentence as excessively harsh, 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). The 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). “A sentence is 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 Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722 (2007).

C. The District Court's Imposition Of A Six Year Sentence, With Three Years' Fixed, Is Excessive And Unreasonable, And In Light Of The Additional Information Presented; Mr. Causer's Rule 35 Request For Leniency Should Have Been Granted

In his letter presented in connection with his Rule 35 motion, Mr. Causer attempted to provide the court with a candid overview of where his head and heart lay. (PSI, pp.71-72.) Mr. Causer admitted, candidly, that he'd made poor decisions for the past four years, and took accountability for his actions; he told the court he deeply regretted the harm he had caused others along his path of self-destruction. (PSI, p.71.) He explained, however, that he started attending Chapel the very day that he arrived at NICI, and that he had gone every evening thereafter. (PSI, pp.71-72.) He became grounded and found purpose; he told the court he felt like he was becoming the man his family had hoped for. (PSI, p.72)

He also informed the court of his hard academic work while on his rider, and how proud he was, after twelve years' being out of school, to have all but completed his GED. (PSI, p.72.) Even after he was "flopped," he requested an opportunity to take the final course exam, so that he could sit for the GED in the fall. (PSI, pp.71-72.) He also told the court about the classes he attended, which had provided him with insight into his mental health problems, as well as his addiction and addictive tendencies. (PSI, pp.71-72.)

He also took pride in his new-found sobriety, and asked for another chance at probation, this time, in the structured Wood Court program. (PSI, pp.71-72.) He told the court once released, he wanted to return to the Crossroads Program, where he had begun to gain important insight into his thinking difficulties. (PSI, p.71.)

Mr. Causer submits that, in light of this additional information, his original sentence of six years, with three years fixed, without another chance at probation, is excessive and

unreasonable, and the district court's refusal to grant his Rule 35 requested leniency represents an abuse of discretion.

CONCLUSION

For the reasons stated above, Mr. Causer respectfully requests that this Court reduce his sentence, or else vacate his sentence and remand the case to the district court for resentencing.

DATED this 16<sup>th</sup> day of May, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16<sup>th</sup> day of May, 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:

JOSHUA CAUSER  
INMATE #118049  
ISCC  
PO BOX 70010  
BOISE ID 83707

STEPHEN S DUNN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

RANDALL D SCHULTHIES  
BANNOCK COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

KAC/eas