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

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
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. 45665
)	
v.)	GOODING COUNTY NO. CR-2016-368
)	
HARLEY HULSE,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Harley Hulse contends the district court abused its discretion when it denied his I.C.R. 35 motion for leniency (*hereinafter*, Rule 35 motion) because it did not sufficiently consider the mitigating factors in his case. As such, this Court should vacate the order denying his motion and reduce his sentence as it deems appropriate, or alternatively, remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

Pursuant to a plea agreement, Mr. Hulse pled guilty to an amended charge of injury to a child. (R., pp.29-32.) That was his first adult felony conviction, and he was only eighteen years old at the time of sentencing. (Presentence Investigation Report (*hereinafter*, PSI), pp.3, 7-8.) The district court imposed a unified term of eight years, with two years fixed, which it suspended for an eight-year term of probation. (R., pp.41-44.)

Mr. Hulse began that period of probation very motivated to make a change, but that motivation waned over time. (R., p.64.) As a result, he struggled in adhering to the terms of his probation. (*See* R., pp.62-66.) However, he also showed the ability to adjust his behavior in response to such shortcomings. For example, though he was initially discharged from his sex offender treatment program, he was readmitted to that program, and after being readmitted, he was attending and participating regularly and keeping current on his fee payments. (PSI, p.65.) As a result, he was able to make moderate progress in the community treatment program. (PSI, p.65.) Nevertheless, pursuant to a plea agreement, Mr. Hulse admitted several violations of the terms of his probation and the district court ultimately revoked that probation and retained jurisdiction. (R., pp.76, 79-80.)

Mr. Hulse's rider went similarly to his term of probation. He was able to make some good progress in the classes. (PSI, pp.84-88 (containing at least twelve C-Notes praising his efforts and successes in his various classes).) Nevertheless, the rider staff noted that he still struggled in putting those lessons into action. (PSI, p.80.) They also noted several disciplinary issues, including at least one formal DOR. (PSI, pp.79-80.) The rider staff ultimately removed him from the program because of his disciplinary issues. (PSI, pp.79-80; *see also* PSI, p.11 (nothing Mr. Hulse had qualified for special education classes due to the effect his ADHD had

on his behavior).) Mr. Hulse indicated he would provide his comments to the court separate from the rider staff's report. (PSI, p.82.) The district court relinquished jurisdiction over him. (R., pp.85-86.)

Mr. Hulse filed a timely Rule 35 motion. (R., p.109.) He attached a letter to that motion in which he offered his explanations regarding his struggles in the rider program, and also identified ways in which he had or could work to address those issues as part of his rehabilitation process, so as to make himself more suitable for a return to the community. (R., pp.111-14.) The district court concluded that his letter did not constitute new or additional information and, alternatively, that it did not constitute a basis to return Mr. Hulse to probation. (*See* R., pp.120-21 (the district court asserting Mr. Hulse's self-assessment was not reliable, but then commending him for the efforts he reported making to address the struggles he had in the rider program).) The district court ultimately determined that the sentence imposed was not excessive in light of the information in this case. (R., p.121.) As a result, it denied Mr. Hulse's Rule 35 motion. (R., p.121.) Mr. Hulse filed a timely notice of appeal. (*See* R., pp.91-93.)

ISSUE

Whether the district court abused its discretion when it denied Mr. Hulse's Rule 35 motion.

ARGUMENT

Whether The District Court Abused Its Discretion When It Denied Mr. Hulse's Rule 35 Motion

A motion to alter an otherwise lawful sentence pursuant to Rule 35 is addressed to the sound discretion of the sentencing court, and is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Huffman*, 144 Idaho 201, 203 (2007). A district court abuses its discretion when it fails to perceive the issue as one of

discretion, fails to act within the outer boundaries of that discretion or fails to act consistently with applicable legal standards, or fails to reach its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Therefore, the district court needed to sufficiently consider the recognized sentencing objectives in light of the mitigating factors as they were altered by the new or additional evidence Mr. Hulse presented in support of his motion. *See id.*; *Huffman*, 144 Idaho at 203.

The protection of society is the primary objective the court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). The Idaho Supreme Court has indicated that rehabilitation is the first means the district court should consider to achieve that goal. *See State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

In his Rule 35 motion, Mr. Hulse provided the district court with explanations it did not previously have regarding his behavior during the period of retained jurisdiction as well as examples of how he had worked to change his behavior in response to those incidents. (R., pp.111-14; *see* PSI, p.82 (noting Mr. Hulse would provide his statement to the court separate from the rider staff’s report).) That new and additional information, when considered alongside all the other mitigating factors in this case, reveals that the sentencing objectives in this case would be best served by reducing the term of Mr. Hulse’s sentence. For example, he was making progress, both in the treatment program during the period of probation and his classes during the period of retained jurisdiction. (PSI, p.65 (explaining that after he was re-admitted to the community treatment program, Mr. Hulse had been regularly attending his program and had

made moderate progress in that program); PSI, pp.84-88 (containing at least twelve C-Notes praising Mr. Hulse's efforts and successes in his various classes during the rider); *see also* PSI p.11 (noting that Mr. Hulse qualified for special education classes in school because of the way his ADHD affected him.)

The new or additional information reaffirmed that Mr. Hulse was able to identify ways to improve his behavioral issues and act on those points. (*See R.*, p.121 (the district court commending his efforts in those regards).) As such, a sufficient consideration of the mitigating factors in this case reveals that the district court should have reduced the term of his sentence in order to encourage Mr. Hulse's continued efforts in that regard. That would best serve the goals of sentencing, especially since, given his young age and short criminal record, that sort of rehabilitation is likely. *See, e.g., State v. Dunnagan*, 101 Idaho 125, 126 (1980) (explaining that younger offenders should be treated more leniently because he is still maturing, and still able to become a productive member of society); *McCoy*, 94 Idaho at 240 ("We recognize that rehabilitation, particularly of first offenders, should usually be the initial consideration in the imposition of the criminal sanction."). As such, the district court abused its discretion by not reducing Mr. Hulse's sentence pursuant to his Rule 35 motion.

CONCLUSION

Mr. Hulse respectfully requests this Court vacate the order denying his Rule 35 motion and reduce his sentence as it deems appropriate, or alternatively, remand this case for further proceedings.

DATED this 10th day of May, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th 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:

HARLEY HULSE
INMATE #119591
ISCI
PO BOX 14
BOISE ID 83707

JOHN K BUTLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

C BRADLEY CALBO
ATTORNEY AT LAW
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas