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### State v. Hulse Respondent's Brief Dckt. 45665

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45665
Plaintiff-Respondent,	)	
	)	Gooding County Case No.
v.	)	CR-2016-368
	)	
HARLEY J. HULSE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Hulse failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of eight years, with two years fixed, imposed following his guilty plea to injury to a child?

Hulse Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Hulse pled guilty to injury to a child and the district court imposed a unified sentence of eight years, with two years fixed, suspended the sentence, and placed Hulse on supervised probation for eight years. (R., pp.41-46.) Eight months later, the state filed a motion to revoke probation, alleging that Hulse had violated the terms of his probation by failing to pay court

costs, failing to submit to a polygraph, failing to complete programming, failing to maintain employment, failing urinalysis testing, and failing to submit to urinalysis testing. (R., pp.60-66.) Hulse admitted to violating the terms of his probation pursuant to the plea agreement and the district court revoked his probation, executed the underlying sentence, and retained jurisdiction. (R., pp.76, 79-81.) Following a period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.85-87.) Hulse filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.109-23.)

Hulse asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of a letter he wrote to the court regarding his behavior during his retained jurisdiction program and examples of how he had worked to change his behavior. (Appellant's brief, pp.3-5.) Hulse has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Hulse 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." Id. Hulse has failed to satisfy his burden.

Hulse presented no new information in support of his Rule 35 motion for a reduction of sentence. (See R., pp.109-14.) In his letter, he merely stated what he learned from probation and the retained jurisdiction program, and asked for "one last go at the community." (R., p.113.) On appeal, Hulse contends that the district court should have reduced his sentence pursuant to his Rule 35 motion because of mitigating factors, such as his progress in treatment programs both while on probation and on retained jurisdiction. (Appellant's brief pp.4-5.) All of this

information was before the district court at the time that it relinquished jurisdiction and executed Hulse's underlying sentence; as such, it was not new information. (R., p.121; PSI, pp.65-66, 77-89<sup>1</sup>.) Because Hulse presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

### Conclusion

The state respectfully requests this Court to affirm the district court's order denying Hulse's Rule 35 motion for a reduction of sentence.

DATED this 7th day of June, 2018.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "45665 Appeal – Hulse – Confidential Exhibits.pdf."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of June, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
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