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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45887
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2017-13336
)	
MATTHEW D'ARCY MILLER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Miller failed to establish that the district court abused its discretion by not further reducing his sentence pursuant to his oral Rule 35 motion for reduction of sentence?

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

Miller pled guilty to possession of methamphetamine and the district court imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.21-22, 42-46.) After a period of retained jurisdiction, the district court relinquished jurisdiction, but

reduced the fixed portion of Miller's sentence to one and one-half years. (R., pp.55-58.) Miller filed a timely notice of appeal. (R., pp.59-61.)

Miller argues that the district court abused its discretion by failing to further reduce his sentence in light of his rider performance. (Appellant's brief, pp.3-5.) Miller has failed to establish an abuse of discretion.

Pursuant Idaho Criminal Rule 35, a court may reduce a sentence within 120 days after the court releases retained jurisdiction. A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978).

Citing his "strong performance on [his] rider and appreciation for the programming," Miller argues the district court should have reduced his sentence from five years, with two years fixed, to three years, with one year fixed. (Appellant's brief pp.3-5.) Miller has failed to establish an abuse of discretion; Miller's criminal history, his past failures to abide by community supervision, and his custody status in a case for which he was on parole when he committed the offense in this case show that Miller's sentence was reasonable as imposed and

that the district court did not abuse its discretion in declining to further reduce it upon relinquishing jurisdiction.

Miller's criminal history includes two prior felony convictions—one for violation of controlled substance/drug/dev and cosmetic act and one for intimidating a witness. (PSI, pp.6-9¹; 7/18/17 Tr., p.33, Ls.15-21, p.35, Ls.16-22.) Miller's record also includes nine misdemeanor convictions: resisting arrest, disorderly conduct, false information to law enforcement, indecent assault, violation of controlled substance/drug/dev and cosmetic act, simple assault, simple trespasser, retail theft, and possession of drug paraphernalia (amended from possession of a controlled substance). (PSI, pp.6-9.) Miller has also incurred multiple felony and misdemeanor charges that were eventually dismissed, or of which he was acquitted, or for which the disposition is unknown. (PSI, pp.6-9.) Miller has previously been incarcerated and, during his incarceration, received several disciplinary offense reports for being disrespectful to staff. (PSI, p.9.) In this case, Miller was on parole in the intimidating a witness case when officers found him, in a motel, in possession of an electronic scale with a white substance on it, a medium-sized plastic zip-lock bag with several smaller zip-lock bags inside, and a black box that contained methamphetamine in four small zip-lock bags. (PSI, p.111.)

The state acknowledges that Miller successfully completed his rider programming in this case and that rider staff recommended the court consider placing him on probation. (PSI, pp.192-96.) As Miller acknowledges, however, he violated his parole in case CR-2013-26308 when he was convicted of the offense in this case and, during his period of retained jurisdiction,

¹ PSI page numbers correspond with the page numbers of the electronic file "Miller 45887 psi.pdf."

that parole was revoked. (PSI, pp.8, 111-12; 2/13/18 Tr., p.47, Ls.14-18.) Upon learning that Miller's parole had been revoked, the district court stated:

Well, I was, until I learned that news, prepared to put you on probation. I think that your performance at the retained jurisdiction would have warranted that.

I don't control the Department of Probation and Parole. You went on the rider originally because they thought it was a good idea, otherwise you wouldn't have been eligible coming out of here.

But regardless of that, your probation or – yeah, the probation is not an option. The Court is going to relinquish jurisdiction, and the sentence will be imposed. The original sentence was five years with two fixed and three indeterminate for possession of methamphetamine. You have credit for 307 days served to date. So you've got almost a year in.

I will reduced [sic] the fixed portion to one and a half years. That would make you eligible for release on this sentence about the time you're eligible for release on your underlying, I think.

(2/13/18 Tr., p.50, L.22 – p.51, L.17.) Contrary to Miller's assertion that the district court did not give his performance while on his rider adequate weight, the district court actually reduced his sentence because of his positive performance while on his rider. Miller has failed to establish any basis for reversal of the district court's decision to not further reduce his sentence.

Conclusion

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

DATED this 1st day of November, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of November, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Lori A. Fleming
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