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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46124
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-8451
v.)	
)	
OMAR GUADALUPE SOTO,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Omar Guadalupe Soto appeals from the district court's Order Denying Rule 35 Motion for Reconsideration of Sentence. Mr. Soto was sentenced to a unified sentence of five years, with one and one-half years fixed, for his possession of a controlled substance conviction. Mr. Soto 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 March 6, 2018, an Information was filed charging Mr. Soto with possession of a controlled substance, possession of drug paraphernalia, resisting and/or obstructing, and eluding

a peace office. (R., pp.16-17.) Mr. Soto entered into a plea agreement in which he pleaded guilty to possession of a controlled substance and eluding and, in exchange, the remaining charges were dismissed. (R., pp.29-31.)

At sentencing, the prosecution recommended a unified sentence of five years, with one and one-half years fixed. (Tr., p.14, Ls.7-10.) Defense counsel requested a unified sentence of five years, with one year fixed. (Tr., p.17, Ls.20-21.) The district court imposed a unified sentence of five years, with one and one-half years fixed, for the possession of a controlled substance conviction, and forty-five days, for the eluding conviction. (R., pp.45-47.)

Mr. Soto filed a timely Motion for Reconsideration of Sentence and Memorandum in Support. (R., pp.55-56.) The motion was denied. (R., pp.59-62.) Mr. Soto filed a Notice of Appeal timely from the district court's Order Denying Rule 35 Motion for Reconsideration of Sentence. (R., pp.63-64.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Soto's Idaho Criminal Rule 35 Motion?

ARGUMENT

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 (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. Barrera 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. Soto asserts that the district court failed to give proper weight and consideration to the new or additional information provided in support of his Rule 35 motion and, as a result, did not reach its decision by an exercise of reason.

Mr. Soto provided the following new or additional information in his Rule 35 motion:

. . . Mr. Soto is 25 and grew up in Caldwell. He has good family support in the community. Mr. Soto helps support his fiancée’s 2 year old son, also Mr. Soto has a daughter who lives with her mother. Mr. Soto is very remorseful for the situation in which he has put himself and his family. Mr. Soto’s own father died when he was young so he knows the impact a father’s absence can have on a child. It is likely that the absence of a father played some role in Mr. Soto’s problems in life. Despite his problems, Mr. Soto is remaining positive and upbeat

about the future. That said, it is essential to the family that he return and support them as soon as possible. He stepped up and is supporting his fiancée's child.

Drugs have been his downfall, an Achilles heel so to speak. His struggles with substance abuse have led to poor decisions. Despite this, he is a hard worker, a valued employee, and has a job waiting for him in roofing and auto body repair with his family. He has recommitted himself to stay clean, participate in treatment, and focus on family and work when he is released. Mr. Soto is confident that he will succeed this time.

As such, Mr. Soto and his family ask that the Court consider reducing the fixed portion of his sentence to one year. With good behavior, this will allow him to be released a little sooner rather than later. This reduction is not much in the large scheme of the criminal justice system but it would mean the world to Mr. Soto and his family.

(R., pp.55-56.)

Additionally, Mr. Soto re-submitted a letter from his fiancée, Tiavone Pang, who wrote that Mr. Soto is a hard worker and supports her family financially. (R., pp.57-58.)

Based upon the above information, Mr. Soto asserts that the district court abused its discretion when it failed to reduce his sentence.

CONCLUSION

Mr. Soto 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 31st day of October, 2018.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

EAA/eas