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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45964
Plaintiff-Respondent,)	
)	Madison County Case No.
v.)	CR-2017-3396
)	
AARON LUCIO JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Lucio failed to establish that the district court abused its discretion by declining to further reduce his sentence pursuant to his Rule 35 motion for a reduction of sentence?

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

During an argument with his live-in girlfriend, Kathlyn, Lucio “retrieved two butcher knives from the kitchen and stated that he was going to kill her and cut her up,” causing Kathlyn to fear for her life. (R., p.11.) Lucio also “shoved her against a house wall causing her to receive a concussion and pulled neck and back muscles.” (R., p.11.) After officers arrested

Lucio and transported him to the Rexburg Police Department, he “began banging his head and upper body into the plexi glass walls in an attempt to get out of the holding cell ... using so much force with his body that it was cracking the plexi-glass.” (R., p.11.) He “refused to obey commands by police to stop and was ultimately tased.” (R., p.11.) Over the next few days, Lucio called Kathlyn from the county jail and attempted to influence her testimony, making statements such as: ““The only thing that’s gonna make that [prison time] go away is if you don’t say anything””; ““You don’t have to do any of that, that they’re telling [you] you have to do, you know that””; and, ““You can’t listen to anybody you hear me? ... Don’t listen to, you can’t listen to these officers”” (R., pp.32-33.)

The state charged Lucio with aggravated assault, felony domestic battery, resisting and obstructing an officer, malicious injury to property, and intimidating a witness. (R., pp.47-50.) Pursuant to a plea agreement, Lucio pled guilty to aggravated assault and to a reduced charge of misdemeanor domestic battery, and the state dismissed the remaining charges. (R., pp.54-55.) The district court imposed a unified sentence of five years, with four years fixed, for aggravated assault and a concurrent sentence of six months in the county jail for domestic battery. (R., pp.59-60.) Lucio filed a notice of appeal timely from the judgment of conviction. (R., pp.64-66.) He also filed a timely Rule 35 motion for a reduction of sentence, requesting that the district court reduce the fixed portion of his sentence by two years. (R., pp.61-62.) The district court granted Lucio’s motion in part by reducing his sentence to five years, with three years fixed. (R., p.71.)

Lucio asserts that district court abused its discretion by declining to further reduce his sentence as requested in his Rule 35 motion because he was participating in jail programs, he apologized to the victim at sentencing, and the victim believes that he needs ““help mentally with

what happened to him in his childhood” and that his children ““need their dad.”” (Appellant’s brief, pp.3-5 (quoting Tr., p.67, Ls.1-7).) Lucio 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, Lucio 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. Lucio has failed to satisfy his burden.

Lucio failed to provide any “new” information in support of his Rule 35 request for sentence reduction. Information with respect to his willingness to participate in programs while incarcerated, purported remorse, acknowledgment that he requires treatment to address his childhood abuse and his related substance abuse, and the victim’s belief that Lucio needs mental health treatment and wishes to ““be a good father”” was all before the district court at the time of sentencing. (PSI, pp.5-7, 15-17, 22, 25, 68-69, 72-74, 80, 90;¹ GAIN-I Recommendation and Referral Summary, pp.15-16; 2/1/18 Addendum to DV Evaluation; Tr., p.41, Ls.1-4.) Because Lucio 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 granting, in part, his Rule 35 motion for a reduction of sentence.

Even if this Court addresses the merits of Lucio’s claim, he has still failed to establish an

¹ PSI page numbers correspond with the page numbers of the electronic file “LUCIO PSI SEALED.pdf.”

abuse of discretion. The district court's decision to not further reduce Lucio's sentence pursuant to his Rule 35 motion is reasonable in light of Lucio's criminal record alone, which consists of at least 25 criminal convictions over a 25-year period, many of which are for violent crimes, including assault or battery upon certain personnel, resisting or obstructing officers, two convictions for assault (one of which was amended from aggravated assault), "assault – attempt to do bodily injury to another," interference with an arresting officer, domestic violence, domestic violence in the presence of a child, and the instant aggravated assault and domestic battery offenses. (PSI, pp.8-15.) Lucio has previously been afforded multiple opportunities on probation and parole, completed numerous treatment programs, participated in Drug Court, and served several stints in prison, yet he has failed to rehabilitate or be deterred. (PSI, pp.15-16; GAIN-I Recommendation and Referral Summary, p.4; Domestic Violence Evaluation, p.5.) The substance abuse evaluator recommended residential treatment, and the domestic violence evaluator recommended "High Intensity" domestic violence treatment, advising that Lucio presents a high risk to reoffend and stating, "In this evaluator[']s opinion this individual is extremely dangerous." (GAIN-I Recommendation and Referral Summary, p.17; Domestic Violence Evaluation, pp.2, 5.) The presentence investigator likewise determined that Lucio presents a high risk to reoffend and stated, "Mr. Lucio has continued to pose a significant risk to himself and to others, with his alcohol abuse and uncontrolled anger/violence. In an effort to reduce that risk, I respectfully recommend the defendant serve a period of incarceration, where he may attend additional treatment programming in a secure setting." (PSI, p.27.)

Lucio's participation in jail programs, purported remorse, and desire to participate in treatment do not outweigh the danger he presents to the community. Furthermore, the victim's agreement that Lucio needs programming and her belief that his children (who reside out-of-state

with his ex-wife and her family and reportedly ““want nothing to do with [him]” (GAIN-I Recommendation and Referral Summary, p.16; PSI, pp.19-20)) ““need their dad”” does not merit a further reduction of Lucio’s sentence, particularly in light of his ongoing criminal offending and violence toward others and his failure to rehabilitate or be deterred despite numerous prior treatment opportunities. Given any reasonable view of the facts, Lucio has failed to establish that the district court abused its discretion by declining to further reduce his sentence.

Conclusion

The state respectfully requests this Court to affirm the district court’s order granting, in part, Lucio’s Rule 35 motion for a reduction of sentence.

DATED this 5th day of February, 2019.

/s/ Lori A. Fleming
LORI A. FLEMING
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VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February, 2019, served a true and correct copy of the attached RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
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/s/ Lori A. Fleming
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