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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46245
Plaintiff-Respondent,	)	
	)	Ada County Case No. CR01-2016-42881
v.	)	
	)	
BOBBY KEE ALLOWAY,	)	RESPONDENT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Has Alloway failed to show that the district court abused its sentencing discretion when it denied his Rule 35 motion for leniency?

ARGUMENT

Alloway Has Failed Show That The District Court Abused Its Discretion By Denying His Request For Leniency

A. Introduction

A grand jury indicted Alloway for three counts of lewd conduct with a minor under 16, five counts of sexual abuse of a child under 16, and two counts of injury to a child. (R., pp. 10-13.) Pursuant to a plea agreement Alloway pled guilty to the two counts of injury to a child and

the state dismissed the other counts. (R., pp. 100-08.) The district court imposed concurrent sentences of 10 years with 2 years determinate, also to run concurrent with the sentence in a 2013 case. (R., pp. 129-31.<sup>1</sup>) Alloway filed a Rule 35 motion seeking a reduction of his sentence. (R., pp. 133-35.) The district court denied the motion. (R., pp. 140-43.) Alloway filed a timely notice of appeal. (R., pp. 144-47.)

On appeal Alloway argues that his sentence “was excessive in light of the new information he provided in his Rule 35 motion.” (Appellant’s brief, p. 5.)

B. Standard Of Review

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Grant, 154 Idaho 281, 288, 297 P.3d 244, 251 (2013) (quoting State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). See also State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015) (“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.”).

C. Alloway Has Shown No Abuse Of The District Court’s Discretion

“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. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (internal quotations omitted). “In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” Anderson, 163 Idaho at 517, 415 P.3d at 385.

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<sup>1</sup> The 2013 case was for a grant theft. (PSI, p. 7.)

In his motion, Alloway asserted that, “[s]ince his sentence was imposed, the defendant has participated in ‘brighter futures,’ ‘sage recovery,’ ‘P.E.E.R. Wellness,’ and has applied to good samaritan houses.” (R., p. 134.) The district court held that although it was “encouraged by any rehabilitative measures taken by Defendant,” Alloway had “not presented any new evidence or authority for the Court to consider that was not considered during the original sentencing.” (R., p. 142.) Alloway presented no evidence, and his claim was limited to an assertion that he had “participated” in two programs and “applied” for another. However, Alloway had previously represented to the district court that he had been accepted at Brighter Futures, SAGE, “Pure Wellness,” and Good Samaritan Homes. (PSI, p. 17; Tr., p. 35, L. 18 – p. 36, L. 6.) Alloway’s arguments notwithstanding (Appellant’s brief, p. 5), the district court did not abuse its discretion in denying the motion.

#### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 8th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of March, 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:

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/s/ Kenneth K. Jorgensen  
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