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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46298-2018
)	
v.)	KOOTENAI COUNTY
)	NO. CR-2016-18717
)	
JON ROLAND-OZZY POUNDS,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Jon Roland-Ozzy Pounds, pled guilty to one count of lewd conduct. He received a unified sentence of twenty years, with ten years fixed. On appeal, Mr. Pounds contends that, in light of the new information presented in support of his I.C.R. 35 (*hereinafter*, Rule 35) motion, along with the mitigating circumstances present at sentencing, the district court abused its discretion when it denied his Rule 35 motion.

This Reply Brief is necessary to address misstatements made in the State's Respondent's Brief.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Pounds's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it denied Mr. Pounds's Idaho Criminal Rule 35 Motion in light of the new information provided in support thereof?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Pounds's Rule 35 Motion In Light Of The New Information Provided In Support Thereof

The State appears to imply that Mr. Pounds was to be faulted for not taking any psychotropic medications and reporting that "he can manage on his own for now" and, further, that he did not plan to attend mental health treatment while incarcerated and had not previously attended therapy while in custody from 2011 to 2016. (Respondent's Brief, pp.4-5.) However, in the same paragraph, the State recognizes that Mr. Pounds "does not meet criteria for a bipolar disorder or other major psychiatric condition requiring treatment." (Respondent's Brief, p.4.) The State appears to be arguing against itself in claiming that Mr. Pounds does not have a mental health condition requiring treatment, while simultaneously pointing out that Mr. Pounds does not plan to take medications or attend treatment for the mental health conditions he does not have.

The State also claims that Mr. Pounds's conduct while incarcerated is simply the "acceptable behavior" "expected of inmates committed to the Department of Correction." (Respondent's Brief, p.5.) However, the State's argument ignores the extent of Mr. Pounds's proactive conduct while incarcerated. While not receiving DORs is conduct to be expected of a

prisoner, Mr. Pounds went above and beyond the minimum standards for an incarcerated person. The information submitted in support of his Rule 35 motion showed that Mr. Pounds had volunteered in the Recreation area until he was hired on full-time, and by the second Rule 35 hearing, he had been working in Recreation for nearly 90 days. (R., p.116.) Further, he voluntarily sought out a peer mentor and regularly saw that person. (R., p.116.) Finally, he was taking courses not required by the institution—he completed the institution’s Career Planning class and was on the wait list for the CORE Curriculum class in order to learn “hands on” employment skills. (R., p.116.) These are not activities required in order to meet the institution’s minimal “acceptable behavior” standards.

The information supplied by the Psychological Evaluation was clearly new information and it was information which supported leniency. The psychiatrist concluded, “It is my opinion with a reasonable degree of medical certainty that Mr. Pounds’s risk of violence to others is low.” (Tr., p.41, Ls.17-20; PSI, p.85.) She concluded that “he has not been the aggressor and does not have an impulse control disorder or bipolar disorder that would increase that risk.” (Tr., p.41, L.20 – p.42, L.1; PSI, p.85.) The doctor concluded that his substance use disorders would increase his risk for violence, but “he is more likely to be a risk for himself given his borderline personality disorder diagnoses.” (Tr., p.42, Ls.1-6; PSI, p.85.)

Mr. Pounds asserts that the district court abused its discretion by failing to exercise reason where the court failed to reduce Mr. Pounds’s sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Pounds respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing. 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 15th day of April, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
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Administrative Assistant

SJC/eas