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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46344-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-16-33828
v.)	
)	
LARRY MICHAEL CLIFFORD, JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Larry Michael Clifford, Jr. appeals from the district court's order denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motion for reduction of sentence. He asserts that the district court abused its discretion by denying the motion.

Statement of the Facts & Course of Proceedings

On April 10, 2016, the Boise Police received a call regarding a potential theft. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The calling party, from Idaho Eye Pros in Boise, stated that Mr. Clifford, a recently terminated employee, had stolen approximately

\$700 from the company. (PSI, p.3.) The calling party stated that he had received a call from his bank, information him that several “returns” were made to an account that had never made a purchase at the business. (PSI, p.3.) Mr. Clifford acknowledged his guilt, stating, “I use the refund system to send money to my bank account to spend on my bills.” (PSI, p.3.) When asked about the offense, Mr. Clifford stated, “I didn’t like it then and I don’t like it now.” (PSI, p.3.)

Mr. Clifford was charged with four counts of fraud by computer. (R., p.29.) He pleaded guilty to one count and the district court imposed a sentence of five years, with two years determinate. (R., p.61.) Mr. Clifford subsequently filed a Rule 35 motion in which he requested that the court reduce the determinate term to one year. (R., p.68.) The district court denied the motion. (R., p.75.) Mr. Clifford appealed from the district court’s order on the Rule 35 motion. (R., p.78.) He asserts that the district court abused its discretion by denying his Rule 35 motion.

ISSUE

Did the district court abuse its discretion when it denied Mr. Clifford’s Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Clifford’s Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce

a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “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).

Mr. Clifford submitted a letter in support of his Rule 35 motion. (R., p.72.) He started by informing the court that “I know what I did was wrong. I’m the only person responsible for my actions. I’m not trying to get out of being punished for my actions, I just want you to know that I am a different person than I was when I committed this crime.” (R., p.72.) Mr. Clifford informed the court that his brain cancer diagnosis had made him rethink his outlook on life. (R., p.72.) Mr. Clifford had been recovering from brain surgery since August 15, 2017. (Letter from Alan Langerak, M.D. (Sealed Exhibits, p.1.)) Doctors had recommended speech, occupational, and physical therapies as well as neuropsychology to address deficits related to Mr. Clifford’s brain surgery. (Sealed Exhibits, p.2.)

Mr. Clifford knew that he may die sooner due to his cancer and did not “want to die having wasted my life.” (R., p.72.) He was committed to being a better person and wanted to spend as much time with his family as possible. (R., p.72.) He also stated that he had been struggling to cope with his father’s suicide and wanted treatment for that issue also. (R., p.72.)

Mr. Clifford’s wife, Amberly, also wrote a letter of support. (R., p.73.) She had known Mr. Clifford for nearly twenty years and knew that he was loved and respected by his friends, family and neighbors. (R., p.73.) He had been very supportive of her and her health issues. (R., p.73.) Further, she knew that Mr. Clifford had accepted responsibility for his actions. She

stated that Mr. Clifford “expressed that he was wrong in defrauding his place of employment and he is holding himself accountable for his actions.” (R., p.73.)

She also noticed a change in Mr. Clifford since his cancer diagnosis. (R., p.73.) He wanted to do everything he could to right the wrongs he had done and hoped that he time left to make those possible changes. (R., p.73.) She emphasized that Mr. Clifford had a strong support system in his family, who was willing to assist him in his rehabilitation and re-entry into society, and that she wanted him to get proper health care and mental health care so that he could live the rest of his life to the best of his ability and right his wrongs. (R., p.73.)

Mr. Clifford’s mother also submitted letter, stating that she was concerned about his medical care due to the cancer diagnosis. (R., p.73.) She also noted that Mr. Clifford had accepted responsibility for what he had done. (R., p.73.)

Considering this information, Mr. Clifford submits that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Clifford 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 hearing on his Rule 35 motion.

DATED this 8th day of April, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas