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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46455-2018
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR-2016-12184
v.)	
)	REVISED
JAY RAY BRIGHT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Jay Ray Bright pleaded guilty to felony possession of a controlled substance with intent to deliver and misdemeanor theft by possession. For possession of a controlled substance with intent to deliver, the district court imposed a unified sentence of eight years, with four years fixed, suspended the sentence, and placed Mr. Bright on supervised probation for a period of three years. The district court subsequently revoked Mr. Bright's probation and executed the underlying sentence. Mr. Bright filed an Idaho Criminal Rule 35 ("Rule 35") motion for a reduction of sentence, which the district court denied. On appeal, Mr. Bright asserts the district court abused its discretion when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

Kootenai County Sheriff's Office deputies stopped a vehicle after seeing several traffic violations. (*See* Presentence Report (*hereinafter*, PSI), p.3.) The deputies identified the driver as Mr. Bright and the passenger as Shane Lester. (PSI, p.3.) Mr. Lester admitted to being on misdemeanor probation, and the deputies found several necklaces and a ring in his pockets. (*See* PSI, p.3.) The deputies then determined Mr. Bright had an invalid license, a history of failures to appear, and no current home address. (*See* PSI, p.3.) They took Mr. Bright into custody, and found several necklaces in his pockets. (*See* PSI, pp.3-4.) In an inventory of the vehicle, deputies found a baggie of heroin, a laptop later determined to be stolen, scales with residue on them, and other items. (*See* PSI, p.4.)

The district court charged Mr. Bright by Information with possession of a controlled substance with intent to deliver, felony, I.C. § 37-2732(a)(1), theft by possession, misdemeanor, I.C. §§ 18-2403(1) and 18-2407(2), possession of drug paraphernalia, misdemeanor, I.C. § 37-2734A, and driving without a valid license, misdemeanor, I.C. § 49-301. (R., pp.50-52.)¹ Pursuant to a plea agreement, Mr. Bright agreed to plead guilty to possession of a controlled substance with intent to deliver and theft by possession, and the State agreed to dismiss the other misdemeanor charges. (*See* R., pp.59-61.) For possession of a controlled substance with intent to deliver, the district court imposed a unified sentence of eight years, with four years fixed, suspended the sentence, and placed Mr. Bright on supervised probation for a period of three years. (R., pp.77-81.)

Over a year later, the State filed a Probation Violation Report and Motion for Probation Violation, alleging Mr. Bright had violated his probation. (*See* R., pp.106-08, 121-22.)

¹ All citations to "R." refer to the 223-page PDF version of the Clerk's Record on Appeal.

Mr. Bright initially denied the alleged probation violations. (*See R.*, pp.141-42.) Mr. Bright subsequently admitted to violating his probation by not being available for supervision, and after an evidentiary hearing, the district court found he had also violated his probation by committing the new crime of possession of drug paraphernalia. (*See R.*, pp.181-83.) The district court later revoked Mr. Bright’s probation and executed the underlying sentence. (*See R.*, pp.190-92.)

Mr. Bright filed a Motion for Reconsideration of Sentence Pursuant to I.C.R. 35. (*R.*, pp.188-89.) The district court conducted a hearing on the Rule 35 motion, where Mr. Bright appeared telephonically. (*See R.*, pp.203-06.) Mr. Bright requested the district court retain jurisdiction. (*See Tr.*, p.30, L.25 – p.32, L.4.)² The district court then issued an Order Denying Defendant’s Rule 35 Motion. (*R.*, pp.207-08.)

Mr. Bright filed a Notice of Appeal timely from the district court’s Order Denying Defendant’s Rule 35 Motion. (*R.*, pp.209-12.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Bright’s Idaho Criminal Rule 35 Motion for a reduction of sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Bright’s Rule 35 Motion For A Reduction Of Sentence

Mr. Bright asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of the new and additional information presented in support of the motions. “A motion to alter an otherwise lawful sentence under Rule 35 is

² All page citations to “Tr.” refer to the 76-page PDF version of the Reporter’s Transcripts, including transcripts of Mr. Bright’s July 27, 2018 probation violation disposition hearing and September 14, 2018 Rule 35 motion hearing.

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) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Mr. Bright asserts his sentence is excessive in view of the new and additional information presented in support of the motion. Specifically, Mr. Bright presented information on his family situation and his desire to seek treatment. At the probation violation disposition hearing, Mr. Bright informed the district court, “my mom and my uncle are both terminal right now, so I have maybe six months to see them, so that kind of is fueling that at the moment is to kind of be with my family and my children at this moment.” (Tr., p.73, Ls.21-25.) During the Rule 35 motion hearing, Mr. Bright presented additional information on his family situation, explaining:

Yeah, within about a month or a couple months after finishing Pastor Tim’s outpatient program in July [2017], my gram[m]a died, and then about three months later, November, my grampa died, and then in February [2018], I believe, I found out that my mom had to have another brain surgery for brain tumors, and then about a month later—well, actually, it was about a week before I relapsed, I found out that my uncle, who is one of my closest family members, is terminal with cancer with maybe a year to live.

(See Tr., p.20, L.9 – p.21, L.2.)

Mr. Bright also presented new and additional information on his desire to seek treatment. At the Rule 35 motion hearing, Mr. Bright explained that he believed his relapse “was a lot to do with loss of family members and finding out that a couple of my family members were

terminal.” (Tr., p.20, Ls.4-8.) When asked, “Have you ever obtained any type of counseling or support for grief and loss,” he replied, “No, ma’am.” (Tr., p.21, Ls.6-8.) Mr. Bright had previously completed the Good Samaritan program. (See R., p.107; Tr., p.72, Ls.11-14.) During the Rule 35 motion hearing, Mr. Bright stated that, after his relapse but before he had been taken into custody, he “contacted BPA and had treatment set up, evaluation at Port of Hope.” (See Tr., p.19, L.24 – p.20, L.3.)

Mr. Bright told the district court at the Rule 35 motion hearing, “I can succeed with counseling and that it would greatly help my situation and my family situation to maybe do a retained jurisdiction or some type of mental health and grief counseling.” (Tr., p.21, Ls.9-17.) If Mr. Bright were placed on a period of retained jurisdiction, he would seek out mental health and grief counseling. (Tr., p.21, Ls.18-21.)

Mr. Bright’s sentence is excessive in view of the above new and additional information presented in support of the Rule 35 motion. Thus, the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Mr. Bright respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 20th day of March, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2019, I caused a true and correct copy of the foregoing REVISED APPELLANT'S BRIEF, to be served as follows:

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

/s/ Kylie M. Fournier

KYLIE M. FOURTNER
Administrative Assistant

BPM/kmf