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### State v. Bright Appellant's Reply Brief Dckt. 46455

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46455-2018
	)	
v.	)	KOOTENAI COUNTY NO. CR-2016-12184
	)	
JAY RAY BRIGHT,	)	APPELLANT'S
	)	REPLY 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. Mr. Bright appealed, asserting the district court abused its discretion when it denied his Rule 35 motion.

In its Respondent's Brief, the State argued Mr. Bright had not established the district court abused its discretion when it denied the Rule 35 motion, because "he did not provide any 'new' information in support of his Rule 35 request for a reduction of sentence." (*See Resp. Br.*, pp.1-4.)

This Reply Brief is necessary to clarify that even if Mr. Bright had not provided any new information in support of his Rule 35 motion, he submitted additional information that provides a basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion. The district court abused its discretion when it denied Mr. Bright's Rule 35 motion, and he relies on the arguments presented in his Appellant's Brief and will not repeat those arguments here.

#### Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Bright's Appellant's Brief, and are incorporated herein by reference thereto.

#### 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 motion.

The State argues Mr. Bright "did not provide any 'new' information in support of his Rule 35 request for a reduction of sentence." (*Resp. Br.*, p.2.) The State contends that, because

Mr. Bright “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 denying his Rule 35 motion.” (Resp. Br., p.3.)

The Idaho Supreme Court has held that “[w]hen 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). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Mr. Bright asserts that, even assuming (without conceding) he did not provide any *new* information in support of his Rule 35 motion, he nonetheless has provided a basis for this Court to find that the denial of his Rule 35 motion was an abuse of discretion. At the least, the information on his family situation and his desire to seek treatment (*see* Tr., p.19, L.24 – p.21, L.21), was *additional* information as contemplated by *Huffman*.

Ms. Bright submits the State is incorrect in arguing that “new information” serves as the only basis for reversal of the denial of a Rule 35 motion. As discussed above, “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.” *Huffman*, 144 Idaho at 203. While the Idaho Supreme Court stated in *Huffman* that “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information,” *Huffman*, 144 Idaho at 203, the Court has indicated that additional information also serves as a basis for an appellate court to find that a denial of a Rule 35 motion was an abuse of discretion.

For example, in *State v. Adair*, 145 Idaho 514 (2008), the Idaho Supreme Court, citing *Huffman*, stated that, “absent the presentation of new evidence, an appeal from a Rule 35 motion merely asks this Court to review the underlying sentence. Without additional information being presented, there is no basis for this Court to find that the denial of the Rule 35 motion was an abuse of discretion.” *Adair*, 145 Idaho at 517 (citation omitted). The *Adair* Court, because “[n]o additional information was provided to the trial court to indicate that the sentence was excessive,” decided that “[t]he trial court operated without its discretion when it denied [the defendant’s] Rule 35 motion for reduction of sentence.” *Id.*

Because the Idaho Supreme Court in *Huffman* and *Adair* recognized “additional information” (alongside “new information”) as a way to show that a sentence is excessive in support of a Rule 35 motion, *Huffman*, 144 Idaho at 203, *Adair*, 145 Idaho at 517, Mr. Bright submits that additional information serves as a basis for an appellate court to find that a district court’s denial of a Rule 35 motion was an abuse of discretion. Thus, because Mr. Bright presented additional information in support of his Rule 35 motion, he has provided a basis for this Court to find that the denial of the motion was an abuse of discretion.

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

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Bright respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 2<sup>nd</sup> day of May, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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DEPUTY ATTORNEY GENERAL  
E-Service: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BPM/eas