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### State v. Dyerson Appellant's Brief Dckt. 46072

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 46072-2018 & 46073-2018
Plaintiff-Respondent,	)	
	)	KOOTENAI CO. NOS. CR-2016-8720
	)	& CR 2017-21630
v.	)	
	)	
SETHEN SIMEON DYERSON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Mr. Dyerson appeals from the district court's judgment of conviction and its orders denying his Rule 35 motions. He asserts the district court abused its discretion when it imposed the sentences in his 2017 Case, and when it denied his Idaho Criminal Rule 35 motions in both cases.

## Statement of the Facts & Course of Proceedings

Supreme Court Docket Nos. 46072-2018 (district court case number CR-2016-8720 (*hereinafter*, 2016 Case)), and 46073-2018 (district court case number CR-2017-21630 (*hereinafter*, 2017 Case)) have been consolidated for appellate purposes. (2017 R., p.99.)<sup>1</sup>

In the 2016 Case, Mr. Dyerson was charged with one felony count of grand theft, one felony count of eluding a police officer, one misdemeanor count of concealment of evidence, and a persistent violator enhancement. (2016 R., pp.124-26.) Mr. Dyerson proceeded to trial and was found guilty on all counts. (2016 R., pp.182-83.) The district court imposed concurrent sentences of eight years, with five years fixed, for the grand theft charge, and five years, with three years fixed, for the eluding charge, but retained jurisdiction. (2016 R., pp.216-17.) After Mr. Dyerson successfully completed a rider program, the district court placed him on probation for three years. (2016 R., pp.239-42.) The State later filed a motion for a probation violation. (2016 R., pp.277-315.) Subsequently, Mr. Dyerson admitted to violating the terms of his probation by, among other things, possessing heroin and methamphetamine. (12/27/17 Tr., p.5, L.24 – p.7, L.18.)

In the 2017 Case, Mr. Dyerson was charged with two felony counts of possession of a controlled substance, two felony counts of introducing or attempting to introduce major contraband into a correctional facility, one misdemeanor count of possession of marijuana, one misdemeanor count of possession of paraphernalia, one misdemeanor count of resisting or obstructing an officer, and a persistent violator enhancement. (2017 R., pp.41-44.) Pursuant to a

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<sup>1</sup> The record on appeal contains two separate Clerk's Records: one for the 2016 Case, which is a 389-page electronic document, and one for the 2017 Case, which is a 111-page electronic document. As such, all citations to the Clerk's Record will begin with either "2016" or "2017."

plea agreement, Mr. Dyerson pled guilty to the possession and obstruction charges, and the State dismissed the other charges. (2017 R., pp.45, 47-49, 51.)

The district court later imposed concurrent sentences of seven years, with three years fixed, for the two felony possession charges in the 2017 Case and gave Mr. Dyerson credit for time served on the misdemeanor charges. (2017 R., pp.65-69; 3/1/18 Tr., p.13, L.19 – p.14, L.2.) It also revoked probation in the 2016 Case, executed Mr. Dyerson’s underlying sentences in the case, and ordered that the sentences run concurrently to the sentences in the 2017 Case. (2016 R., pp.353-54; 3/1/18 Tr., p.14, L.11 – p.15, L.9.) Subsequently, Mr. Dyerson filed Idaho Criminal Rule 35 motions requesting leniency in both cases. (2016 R., p.355; 2017 R., p.70.) After a hearing, the district court denied the motions. (2016 R., p.365; 2017 R., p.91; 4/20/18 Tr., p.33, Ls.8-15.) Mr. Dyerson filed notices of appeal timely from the district court’s judgment of conviction in the 2017 Case, the district court’s order revoking probation and executing the sentence in the 2016 Case, and the district court’s orders denying the Rule 35 motions in both cases. (2016 R., pp.361-63; 2017 R., pp.80-82.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed concurrent sentences of seven years, with three years fixed, following Mr. Dyerson’s pleas of guilty to two counts of possession of a controlled substance?
- II. Did the district court abuse its discretion when it denied Mr. Dyerson’s Idaho Criminal Rule 35 Motions for a Reduction of Sentence?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed Concurrent Sentences Of Seven Years, With Three Years Fixed, Following Mr. Dyerson's Pleas Of Guilty To Two Counts of Possession Of A Controlled Substance

Given the facts of this case, Mr. Dyerson's concurrent sentences of seven years, with three years fixed, are excessive because they are not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this Court will conduct "an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers whether the trial court: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). Unless it appears that the length of the sentence is "necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution," the sentence is unreasonable. *Id.* When a sentence is excessive "considering any view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Dyerson's sentences are excessive and unreasonable under any view of the facts. First, Mr. Dyerson accepted responsibility for his crimes and spoke frankly about his situation. These kind of statements have been recognized as mitigating. *See State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant's sentence, in part, because "the defendant has accepted responsibility for his acts"). Here, Mr. Dyerson acknowledged his problems with drugs but said he learned a lot of valuable skills on his rider. (3/1/18 Tr., p.9, L.8 – p.10, L.7.) He said that he learned to try to reach out for help when he needed it, but unfortunately his support network was not available for him when he needed it most. (3/1/18 Tr., p.10, Ls.7-15.) He also accepted responsibility for his crimes and said he knew he made mistakes, but he was "holding [himself] accountable in the hopes that [he] could get help" and treatment because he did not want to use drugs anymore. (3/1/18 Tr., p.10, Ls.16-22.) He said he hated drugs and recognized that he lost his wife, his children, and his mother due to drugs. (3/1/18 Tr., p.10, L.22 – p.11, L.1.) He also told the court that he wanted a "chance to do things righteously," and he felt that a faith-based program like Good Samaritan would help him do that. (3/1/18 Tr., p.11, Ls.2-7.) Finally, he said that he wanted to "do good" with his life; he wanted a chance to work and to be a good father and husband. (3/1/18 Tr., p.11, Ls.11-17.)

A defendant's abusive childhood is also a recognized mitigating factor. *State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993). And Mr. Dyerson had an extremely difficult childhood. He reported that his mother used cocaine when she was pregnant, and this resulted in his premature birth. (Presentence Report (PSI), p.49.)<sup>2</sup> He explained that he did not

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<sup>2</sup> All citations to the PSI refer to the 73-page electronic document, which includes the addendum to the PSI. The parties stipulated to the district court using the PSI prepared for the 2016 Case,

know his biological father growing up, and he was beaten by his alcoholic stepfather. (PSI, pp.11-12.) During his psychological evaluation, he also revealed that his stepfather abused both him and his mother, and he witnessed “severe domestic violence including sexual assault against his mother.” (PSI, p.51.) He also said that his stepfather would “beat him and urinate on him” after returning home from drinking. (PSI, p.51.) When he was 14, he said he knocked his stepfather unconscious with a beer bottle, and then ran away from home and took a bus to Tucson, Arizona. (PSI, p.51.)

Similarly, substance abuse problems should be considered as mitigating information. *State v. Nice*, 103 Idaho 89, 91 (1982). Unfortunately, Mr. Dyerson developed severe problems with substance abuse after moving to Arizona. The GAIN-I Recommendation and Referral Summary indicated he had a severe amphetamine use disorder, a mild alcohol use disorder, and a mild opioid use disorder. (PSI, pp.24-25.)

Mr. Dyerson also struggles with serious mental health problems. His psychological evaluation revealed that he had a “history of several mental health diagnoses including Bipolar Disorder, Schizophrenia, and Amphetamine induced Psychosis.” (PSI, p.50.) He also exhibited symptoms indicating a Major Depressive Disorder. (PSI, p.54.) Additionally, the evaluator noted that Mr. Dyerson “endorsed items that indicate significant symptoms of Post-Traumatic Stress Disorder . . . .” (PSI, pp.54, 50.) Such diagnoses are also long-recognized mitigating factors. *State v. Odiaga*, 125 Idaho 384, 391 (1994).

In light of the multiple mitigating factors in this case, Mr. Dyerson’s sentences were excessive and unreasonable because they were not necessary to achieve the goals of sentencing.

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and the district court ordered a file review. (2017 R., p.46.) The file review is included in an additional, confidential 30-page electronic document that is also part of the record on appeal.

The district court failed to adequately consider this mitigating information when it imposed the sentences. Therefore, it abused its discretion because it did not reach its sentencing decision through an exercise of reason.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Dyerson's Rule 35 Motions For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the discretion of the sentencing court and 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). “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.*

In this case, Mr. Dyerson presented new information to the district court when he spoke<sup>3</sup> at the Rule 35 hearing. He asked the district court to reconsider his sentences in light of the fact that his grandmother was struggling to take care of his ailing aunt and his children.<sup>4</sup> (4/20/18 Tr., p.26, Ls.10-19.) As such, he asked the district court consider retaining jurisdiction so he could participate in the Idaho Department of Correction's “Advanced Practices” program, which he had not done on his rider. (4/20/18 Tr., p.26, Ls.3-7.) He said he if he was able to do that program successfully, he may be able to get an interstate compact, which would allow him to serve his probation in Arizona and help his grandmother. (4/20/28 Tr., p.26, Ls.14-16.)

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<sup>3</sup> Mr. Dyerson appeared telephonically. (4/20/18 Tr., p.20, Ls.8-23.)

<sup>4</sup> The parties stipulated to the district court considering the new information submitted at the hearing as support for the Rule 35 motions in both cases. (4/20/18 Tr., p.21, L.22 – p.22, L.23.)

Alternatively, he asked the district court to consider placing him on probation or reducing the fixed portion of his sentence. (4/20/18 Tr., p.29, L.22 – p.30, L.13.) Nevertheless, the district court denied his Rule 35 motions. (4/20/18 Tr., p.33, Ls.8-15.)

Mr. Dyerson asserts the district court abused its discretion when it denied his Rule 35 motions because it did not adequately consider the new information regarding Mr. Dyerson's family. As such, it did not reach its decision to deny the Rule 35 motions through an exercise of reason.

### CONCLUSION

Mr. Dyerson respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that the orders denying his Rule 35 motions be vacated and the case remanded to the district court for further proceedings.

DATED this 27<sup>th</sup> day of June, 2019.

/s/ Reed P. Anderson  
REED P. ANDERSON  
Deputy State Appellate Public Defender

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of June, 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  
E-Service: ecf@ag.idaho.gov

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

RPA/eas