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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46310-2018, 46311-2018, 46329-2018,
Plaintiff-Respondent,)	& 46330-2018
)	
v.)	CANYON COUNTY NOS. CR-2016-15050,
)	CR-2016-15466, CR-2016-11241,
JESSICA JEAN IBARRA,)	& CR-2016-12526
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jessica Ibarra appeals from the orders denying her motions for leniency under I.C.R. 35 (*hereinafter*, Rule 35 motions) in these cases. Mindful of the requirement to present new or additional information in support of Rule 35 motions for leniency, she maintains the district court failed to sufficiently consider the mitigating facts in her case, and in doing so, abused its discretion by denying her Rule 35 motions.

Statement of the Facts & Course of Proceedings

Ms. Ibarra filed timely Rule 35 motions in the underlying cases, requesting the district court reduce her sentences in an exercise of leniency. (44945 R., pp.346-52; 44948 R., pp.201-07.)¹ In the underlying cases, Ms. Ibarra was sentenced to an aggregate sentence of nineteen years, with seven years fixed, consisting of the following parts:

- A unified sentence of fourteen years, with six and one-half years fixed, in CR-2016-11241 (appeal nos. 44946, 46329) for possession of cocaine, enhanced based on a prior conviction for possession of a controlled substance.² (44945 R., pp.75, 83.)
- A unified sentence of five years, all indeterminate, in CR-2016-12526 (appeal nos. 44947, 46330) for unlawful possession of a firearm, to be served consecutive to -11241. (44945 R., pp.339-40).

¹ The Clerk's Record in these appeals, consolidated under Docket Number 46310, was provided in four independent volumes (one for each of the underlying cases). Additionally, the record in these appeals was supplemented with the records prepared for two related prior appeals – the appeals consolidated under Docket Number 44945 and the appeals consolidated under Docket Number 44948. (See 46310 R., Vol.2, p.28; 46310 R., Vol.4, p.19.) Therefore, to avoid confusion, citations to the record in this case will identify the set of appeals in which the particular volume was prepared (“46310,” “44945,” or “44948”), and, if appropriate, a volume number.

It should also be noted, again to avoid confusion, that, while the different volumes in the 46310 record generally each relate to one of the underlying case numbers, some documents are misplaced within those volumes. (Compare, e.g., 46310 R., Vol.4, pp.24-25 (the volume prepared for -12526 containing an order denying Rule 35 motions bearing case numbers for both -11241 and -12526); with generally 46310 R., Vol.3 (the volume prepared for -11241 containing no copy of the order denying the Rule 35 motion in that case).) However, between the four volumes and all the supplements and augmentations, the appellate record appears to be complete.

² Ms. Ibarra was also convicted of misdemeanor possession of marijuana in -11241 and was sentenced to a concurrent term of 180 days. (44945 R., pp.75, 83.) At this time, she has served out that entire sentence. She has also served all the time for her concurrent sentence for misdemeanor possession of paraphernalia, the only conviction in CR-2016-11195 (appeal no. 44945). (See 44945 R., p.15.)

- A unified sentence of seven years, all fixed, in CR-2016-15050 (appeal nos. 44948, 46310) for possession of methamphetamine, to be served concurrent to -12526 and -11241, but consecutive to -15466. (44948 R., p.34.)
- A unified sentence of five years, all indeterminate, in CR-2016-15466 (appeal nos. 44949, 46311) for possessing contraband in a prison, to be served consecutive to -15050. (44948 R., p.187.)

Ms. Ibarra also filed direct appeals from the judgments of conviction in all the underlying cases. In her direct appeal involving -11241 and -12526 (appeal numbers 44945, 44946, and 44947), she pursued a claim of prosecutorial misconduct during her jury trial, which the Court of Appeals rejected, and a claim that the restitution order for costs of prosecution was not based on sufficient evidence, which the Court of Appeals agreed with. *See State v. Ibarra*, 2018 WL 4608801 (Ct. App. 2018). In her direct appeal involving -15050 and -15466 (appeal numbers 44948 and 44949), she raised a claim challenging the ruling on a motion to suppress in -14566 pursuant to her conditional guilty plea, and a claim that her sentences in both cases were excessive, but the Court of Appeals affirmed on both issues. *State v. Ibarra*, 164 Idaho 349 (Ct. App. 2018), *rev. denied*.

The district court ruled on the Rule 35 motions in -15050 and -15466 on June 9, 2017. (46310 R., Vol.1, pp.15-16; 46310 R., Vol.2, pp.17-18; *see also* 44948 R., pp.224-25.) However, it did not rule on the Rule 35 motions in -11241, -12526, and -11195 until March 7, 2018. (46310 R., Vol.4, pp.24-26.) No notices of appeal or amended notices of appeal were filed after the orders denying any of the Rule 35 motions were entered. (*See generally* R.)

Ms. Ibarra subsequently filed a petition for post-conviction relief, arguing her trial attorney(s) were ineffective for not filing notices of appeal timely from the orders denying all her

Rule 35 motions.³ (See 46310 R., Vol.2, p.20; 46310 R., Vol.4, p.28.) Pursuant to a stipulation between the parties, the district court granted her petition in that regard and ordered that her right to appeal the denial of all her Rule 35 motions be restored. (46310 R., Vol.2, p.20; 46310 R., Vol.4, p.28.)

There was some confusion in the district court as to how to give effect to the order granting the stipulated post-conviction relief in the criminal cases. Relevant to this appeal, Ms. Ibarra filed notices of appeal while the confusion was sorted out so that the right to appeal which she had won back in the post-conviction proceedings would be protected. (See 46310 R., Vol.1, pp.18-19; 46310 R., Vol.2, pp.22-23, 46310 R., Vol.3, pp.20-21; 46310 R., Vol.4, pp.30-31.) The district court ultimately reentered the orders on her Rule 35 motions in all the underlying cases. (See Aug. p.1 - Aug. p.10.) At that point, Ms. Ibarra's premature notices of appeal became timely as to those reentered orders denying her Rule 35 motions. I.A.R. 17(e)(2).

ISSUES

Whether the district court abused its discretion by denying Ms. Ibarra's Rule 35 motions.

ARGUMENT

The District Court Abused Its Discretion By Denying Ms. Ibarra's Rule 35 Motions

A motion to alter an otherwise lawful sentence pursuant to Rule 35 is addressed to the sound discretion of the sentencing court, and is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Huffman*, 144 Idaho 201, 203 (2007). When petitioning for a sentence reduction pursuant to Rule 35, the defendant must

³ It is not clear from this record whether Ms. Ibarra raised other claims for post-conviction relief besides the claim about not appealing the denials of her Rule 35 motions. (See generally R.)

show his sentence is excessive in light of new or additional information presented to the sentencing court. *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994).

Mindful of the requirement in *Huffman*, Ms. Ibarra maintains that the district court abused its discretion when it denied her Rule 35 motions in these cases because it did not sufficiently consider the mitigating information in her cases.

CONCLUSION

Ms. Ibarra respectfully requests that this Court reduce her sentences as it deems appropriate, or, alternatively, remand these cases for further proceedings in the district court.

DATED this 8th day of October, 2019.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 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

BRD/eas