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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46332-2018
)	
v.)	ADA COUNTY NO. CR01-17-14786
)	
STEVEN KENNETH BOWMAN,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

While serving a prison sentence for a drug crime, Steven Bowman and a friend, Mark Woodland, were involved in a fight at the Idaho Maximum Security Institution (“IMSI”) in Boise. Mr. Woodland admitted to having started the fight with the victim, and to using an improvised weapon; Mr. Bowman joined the fight only after it started, ostensibly to defend his friend. Because Mr. Woodland used a weapon, the victim suffered multiple deep lacerations, and was left soaked in his own blood.

Mr. Woodland and Mr. Bowman were both charged with aggravated battery while on the grounds of a correctional facility. Both also faced “persistent violator” sentencing enhancements.

In a separate case, Mr. Woodland pled guilty and received a sentence of 30 years, with seven years fixed. Mr. Bowman, however, exercised his constitutional right to a jury trial. He was found guilty and, later, the district court imposed a sentence of 30 years, with twelve years fixed. Mr. Bowman filed a timely motion seeking a sentence reduction pursuant to Idaho Criminal Rule 35, but that motion was denied by the district court.

On appeal, Mr. Bowman contends the district court abused its discretion in denying his Rule 35 motion.

Statement of the Facts and Course of Proceedings

In February of 2017, Mark Woodland and Steven Bowman were both incarcerated at IMSI. (*See Tr.*, p.253, L.19 – p.259, L.9.)¹ Mr. Bowman was serving time for two drug convictions. (*See APSI*, pp.191-93, 193-96, 309.) The record does not reflect why Mr. Woodland was there.

¹ The appellate record in this case is somewhat confusing. It consists of the following items:

- The Clerk’s Record (“R.”) can be found in an electronic document labeled “Bowman_CR.”
- The regular exhibits to the Clerk’s Record (“Ex.”) can be found in an electronic document erroneously-labeled “Confidential Exhibits Appeal,” and on three CDs containing digital media files.
- The confidential exhibits to the Clerk’s Record (“APSI”) can be found in an electronic document labeled “Bowman_ConDocs.”
- The Reporter’s Transcript (“Tr.”) can be found in an electronic document labeled “Transcripts Appeal.”
- Additional confidential exhibits augmented into the record pursuant to the Supreme Court’s order of July 22, 2019 (“Confidential Augmentation”) can be found in an electronic document labeled “Bowman 46332 aug conf.”

On February 16, 2017, the two friends were moved to a new housing unit within the prison (A Block, Tier 2 or “A2”), where they were to be cellmates. (*See* Tr., p.253, L.19 – p.254, L.11, p.257, Ls.8-20, p.258, L.23 – p.259, L.9, p.275, L.7 – p.276, L.12.) For reasons that were not made clear at trial, Mr. Woodland fully expected to have trouble with the other inmates on their new tier. (*See* Tr., p.254, L.19 – p.255, L.4, p.259, Ls.10-13.)² So much so that, before he was moved, he wrapped bandages around his midsection to protect his vital organs, and he made an improvised weapon—two razor blades attached to a piece of a toothbrush handle—which he secreted inside his underwear. (Tr., p.255, L.1 – p.257, L.7, p.258, Ls.12-22; *see also* Tr., p.184, L.16 – p.185, L.6, p.186, L.16 – p.11.)

That evening, Mr. Woodland, Mr. Bowman, and the rest of the inmates on A2 were taken out to the “rec yard.” (Tr., p.262, Ls.1-3.)³ After the inmates were left alone in the rec yard, Mr. Woodland “got into a discussion” with Robert Harmon, the victim in this case. (Tr., p.263, Ls.21-25.) According to Mr. Woodland, they both knew how they felt about one another, thereby implying that there was bad blood between them. (*See* Tr., p.264, Ls.6-9.)

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- Additional documents with which Mr. Bowman requests the Supreme Court augment the record (“Augmentation”) are attached to a motion to augment the record that is filed concurrently with this brief.

² Mr. Woodland was not the only one who expected trouble on A2. An inmate janitor expected there to be a fight the day Mr. Woodland and Mr. Bowman arrived on the tier, and perhaps even corrections staff knew what was coming, as they brought in extra officers that day. (*See* Tr., p.261, Ls.2-13, p.421, Ls.3-24; *but see* Tr., p.170, Ls.15-24.) The problem, it seems, is that the Idaho Department of Correction (“IDOC”) has labeled Mr. Woodland and Mr. Bowman as members of the Aryan Knights (“AK”) and/or Severely Violent Criminals (“SVC”) (*see, e.g.*, APSI, pp.274-75, 294-95, 308, 309, 310, 311, 312, 313, 317, 319, 320, 321, 332, 333, 334, 336, 338, 339, 344; *see also* Tr., p.282, L.10 – p.283, L.16 (prosecutor attempting, unsuccessfully, to elicit an admission from Mr. Woodland that he and/or Mr. Bowman was a member of a prison gang))—both of which are reputed to be white supremacist prison gangs—and A2 was a tier where such labels apparently made them targets (*see* Tr., p.411, Ls.11-23, p.421, Ls.3-15, p.423, Ls.13-15; APSI, pp.283-84).

Mr. Woodland testified: “He just asked me, ‘What’s up?’ And I asked him the same thing. I just said, ‘What’s up?’ And that’s kind of—people aren’t aware of prison slang. That’s just kind of a terminology like, ‘Hey, what do you want to do, you know?’ And so I proceeded to show him what I thought was up, and attacked him.” (Tr., p.267, Ls.1-9; *see also* Ex. 2 at 4:23.) He explained that he struck Mr. Harmon with his fist initially, then pulled out his improvised “weapon and started to attack him and cut Mr. Harmon.” (Tr., p.265, Ls.16-21.) Through all this, Mr. Harmon was able to fight back, striking Mr. Woodland in the mouth. (Tr., p.167, Ls.18-23, p.187, Ls.15-25, p.265, L.22 – p.266, L.3; *see also* Ex.25, Photos 1-2.)⁴

When Mr. Woodland attacked Mr. Harmon, Mr. Bowman was standing at the other side of the rec yard—perhaps 20 to 30 feet away. (Tr., p.266, Ls.4-10, p.267, L.23 – p.268, L.2; *see also* Ex. 2 at 4:23 – 4:27 (showing the distance Mr. Bowman covered to join the fight).) Seeing his friend engaged in a fight, Mr. Bowman quickly went to his aid. (*See* Ex. 2 at 4:23 – 4:27 (depicting Mr. Bowman coming across the rec yard to join his friend immediately after Mr. Woodland attacked Mr. Harmon).)⁵ As best Mr. Woodland could figure, Mr. Bowman saw he was in a fight, thought he had been attacked, and was just trying to help him. (Tr., p.269, Ls.16-21, p.277, Ls.3-5.)⁶ In coming to his friend’s aid, Mr. Bowman was also injured by

³ The fight was captured on an IMSI surveillance video, which was admitted as Exhibit 2. The inmates enter the rec yard at 2 minutes and 52 seconds into the video; the last prison staff appear to leave the rec yard at three minutes and 28 seconds into the video.

⁴ Exhibit 25 consists of eight photographs of Mr. Woodland and Mr. Bowman. (*See* Tr., p.215, Ls.11-20.) The first two photos depict Mr. Woodland’s face. (*See* Tr., p.216, Ls.6-15.) Both, but particularly the second one, show blood and abrasions around Mr. Woodland’s mouth.

⁵ Mr. Woodland testified that Mr. Bowman did not join the fight until “way after it had started,” and only after he (Mr. Woodland) had thrown “dozens” of punches. (Tr., p.269, Ls.6-12; accord Tr., p.276, L.23 – p.277, L.2.) The video, however, shows he was clearly mistaken about that.

⁶ At sentencing, Mr. Bowman confirmed that’s exactly what happened

I just see someone that I consider my friend—and I don’t know how it started because I wasn’t facing that way. And when I see that, like I don’t just—I don’t

Mr. Harmon, suffering injuries to his face. (Tr., p.230, L.22 – p.231, L.5; *see also* Ex. 25, Photo 6.)⁷ However, at no point did Mr. Bowman ever use a weapon against Mr. Harmon. (R., p.225; Tr., p.269, Ls.22-24; *see also* Tr., p.427, Ls.21-22 (Mr. Bowman stating he never saw anyone, including Mr. Woodland, use a weapon), p.428, Ls.10-15 (Mr. Bowman stating he did not even realize Mr. Harmon had been slashed until after the fight was over).)⁸

The initial phase of the fight lasted less than a minute before Mr. Woodland and Mr. Bowman disengaged and walked away from Mr. Harmon. (*See* Ex. 2 at 4:23 – 5:16.) At that point, they went over to the recreation yard toilet so that Mr. Woodland could dispose of his improvised weapon. (*See* Tr., p.139, Ls.17-25, p.194, Ls.20-24, p.273, L.24 – p.274, L.19; *see also* Ex. 2 at 5:16 – 5:33.) Thereafter, they appeared to try re-engage Mr. Harmon with their fists; however, that effort was extremely short-lived (a couple seconds at most), as it was at virtually the same moment that IMSI staff entered the recreation yard and the fight stopped for good. (*See* Tr., p.122, Ls.7-12, p.194, L.25 – p.195, L.3; Ex. 2 at 5:37 – 5:40.) Of course, by then, the damage had already been done by Mr. Woodland’s improvised weapon. Mr. Harmon

know if I’m wrong or what, but I just don’t know what different I could do, you know.

(Tr., p.426, Ls.10-16. *See also* Tr., p.428, Ls.2-8.)

⁷ The sixth through eighth photos in Exhibit 25 depict Mr. Bowman, but none clearly show his face. (Tr., p.216, L.24 – p.217, L.12; *see* Ex. 25, Photos 6-8.) However, the sixth photo appears to show at least one trail of blood through his goatee. (*See* Ex. 25, Photo 6.) As it turned out, Mr. Bowman’s injuries were rather significant. X-rays showed that he suffered a broken nose, and a possible jaw fracture. (*See* Confidential Augmentation, pp.3, 197-98; *see also* Confidential Augmentation, pp.242-44, 253-54 (documenting Mr. Bowman’s facial pain, headaches, dizziness, and intermittent nosebleeds in the days following the fight).)

⁸ Although he never used it during the fight, Mr. Bowman readily concedes that he had an improvised weapon secreted on his person (between his buttocks). (*See* APSI p.220.) Mr. Bowman brought that improvised weapon to the recreation yard because he expected to have to fight certain *other* inmates. (*See* Tr., p.411, L.11 – p.412, L.25; APSI, p.220.) In fact, Mr. Bowman did not even know Mr. Harmon, so he certainly did not expect to have to fight him. (Tr., p.411, L.24 – p.412, L.4, p.412, Ls.24-25, p.415, Ls.6-7.)

had a number of deep lacerations and was bleeding profusely. (Tr., p.121, L.25 – p.122, L.6, p.124, Ls.12-15, p.129, L.18 – p.131, L.7, p.196, L.3 – p.197, L.2, p.208, L.15 – p.209, L.24, p.226, L.20 – p.24; *see also* Ex. 1.⁹) He was quickly transported to a Boise hospital, where he received over 200 stitches, staples, etc., but he was able to be returned to IMSI just a few hours later. (Tr., p.131, L.15 – p.134, L.14, p.135, Ls.9-12, p.211, L.18 – p.212, L.12.) There is no indication that Mr. Harmon suffered any injuries other than the lacerations. (*See* Tr., p.134, L.23 – p.136, L.7.)

Mr. Bowman was charged with aggravated battery (I.C. § 18-907), along with an enhancement for having committed that offense in a correctional facility (I.C. § 19-2520F). (R., pp.29-30.) He eventually also faced an enhancement for being “considered a persistent violator of law” (I.C. § 19-2514).¹⁰ (*See* R., pp.56-60.) It appears that Mr. Woodland faced identical charges. (*See* R., pp.37-38 (court minutes for consolidated preliminary hearing); Tr., p.270, Ls.2-4 (Mr. Woodland testifying the he had pled guilty to aggravated battery), Tr., p.407, Ls.17-19 (defense counsel commenting at Mr. Bowman’s sentencing that

⁹ Exhibit 1 consists of six separate photographs of Mr. Harmon’s injuries.

¹⁰ Although the State filed a motion seeking leave to file an “Information Part II” alleging the persistent violator enhancement (along with the proposed Information Part II) (R., pp.56-60), that motion was never noticed up for a hearing, the district court never granted the State permission to file an Information Part II, and no Information Part II was ever actually filed with the court. Thus, Mr. Bowman had no notice that the State was seeking the persistent violator enhancement. (*See* Augmentation, pp.6-7 (letter from Mr. Bowman stating, “I never even knew they had filed the persistent on me. I never even had a hearing for it until after the verdict”); *see also* Tr., p.363, Ls.2-14 (district court noting Mr. Bowman’s claim of lack of notice and continuing the originally-scheduled sentencing hearing, in part, to provide an opportunity for defense counsel to research the procedural history of the case to see if it was true that the Information Part II had never actually been filed).) However, Mr. Bowman’s counsel never raised any objection to this breakdown in the process and, in fact, not only allowed Mr. Bowman to plead guilty to the persistent violator enhancement at the conclusion of his trial (Tr., p.354, L.11 – p.359, L.19), but invited the court to impose “the mandatory minimum of five years” for “the persistent violator” (Tr., p.407, Ls.19-23).

Mr. Woodland had received a 30-year sentence, thereby raising the inference that Mr. Woodland had also faced a persistent violator enhancement).)

Mr. Woodland pled guilty to aggravated battery. (Tr., p.270, Ls.2-4.) Despite the fact that was he the one who initiated the fight with Mr. Harmon, and wielded the improvised weapon that injured Mr. Harmon, he received a sentence of 30 years, with only seven years fixed. (Tr., p.407, Ls.17-19; R., pp.228-29.)

Mr. Bowman exercised his constitutional right to a jury trial as to the charge of aggravated battery in a correctional institution, but was found guilty. (R., pp.159-60; Tr., p.352, L.10 – p.353, L.7.) Thereafter, he pled guilty to the persistent violator enhancement. (Tr., p.354, L.14 – p.359, L.19.) Ultimately, he received a significantly longer sentence than Mr. Woodland—30 years, with twelve years fixed, consecutive to any existing sentence(s).¹¹ (R., pp.183, 185; Tr., p.431, Ls.18-22.)

Less than two months after entry of the judgment of conviction, Mr. Bowman wrote a letter to the district court (*see* R., pp.198-202), which the district court construed as a motion requesting a sentence reduction pursuant to Idaho Criminal Rule 35 (*see* R., pp.203-04). Thereafter, Mr. Bowman submitted a memorandum in support of his motion (R., pp.217-22), another letter from Mr. Bowman himself (R., pp.224-27), and a multitude of additional letters of support from family and friends (R., p.241-43; Augmentation, pp.9-24). Mr. Bowman asked the

¹¹ No new pre-sentence investigation report (“PSI”) was prepared for Mr. Bowman’s sentencing. (*See* Order Granting Objection to the Record, Feb. 27, 2019.) And although the Supreme Court, on July 22, 2019, ordered the appellate record augmented with whatever “prior PSIs” the district court mentioned having considered at Mr. Bowman’s sentencing hearing, no such prior PSIs have been provided by the district court. That is because, according to the district court’s chambers, no prior PSIs were actually considered in conjunction with Mr. Bowman’s sentencing, and the district court simply misspoke in referring to “prior PSIs.” Accordingly, it is undersigned counsel’s belief that the appellate record now contains all of the information considered by the court at sentencing and, later, in denying Mr. Bowman’s Rule 35 motion.

district court to reduce his sentence to that which had been imposed upon Mr. Woodland—30 years, with seven years fixed. (R., pp.228-29.) Ultimately though, the district court entered an order denying Mr. Bowman’s Rule 35 motion. (Augmentation, pp.25-30.)

In the meantime, Mr. Bowman had filed a notice of appeal timely from the judgment of conviction. (R., pp.190-92.) On appeal, Mr. Bowman contends that the district court abused its discretion in denying his Rule 35 motion.

ISSUE

Did the district court abuse its discretion in denying Mr. Bowman’s Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion In Denying Mr. Bowman’s Rule 35 Motion

Mr. Bowman knows what it takes to survive in prison. However, the “tough guy” persona that he exhibits in order to survive in that environment is not who he is as a person. One former inmate who knew Mr. Bowman in prison indicates that Mr. Bowman’s reputation as “a hard core, institutionalized, gang member” preceded him, but he explains that Mr. Bowman is actually “quite the opposite.” (Augmentation, p.14.) He writes as follows:

I met [Mr. Bowman] in 2015 and I was kind of on the wrong path and looking for trouble and possibly joining a gang because I was very angry I was in there. But Steve taught me how to do time without ruining my life and he told me to think about my children and put my family first. He was . . . a mentor to me and many others. He gave me daily advice on making better choices for my kids and to make choices to be a better man. He helped me to see the light at the end of the tunnel and realize [I’ve] got so much more to look forward to.

. . .

[Mr. Bowman] is the reason I’m still doing good to this day and I’m still putting my family first every day.

(Augmentation, p.14.)

Those sentiments are echoed by the words of another former inmate who was fortunate enough to have gotten to know Mr. Bowman during a low point in his life. He agrees that Mr. Bowman is not the person he appears to be on paper. (Augmentation, p.15.) He explains that Mr. Bowman is someone to whom he could turn when times were rough, and who would always offer plenty of “positive encouragement.” (Augmentation, p.15.) He describes Mr. Bowman as “a smart man with many talents,” who will go on to “do many great things.” (Augmentation, p.15.)

A third former inmate who had the opportunity to get to know Mr. Bowman in prison likewise explains that Mr. Bowman “has a big heart and made [him] feel like a long time friend,” and was someone he could turn to for advice. (Augmentation, p.16.) He credits Mr. Bowman “keeping [him] on the right track” for his current success outside of prison. (Augmentation, p.16.)

Of course, Mr. Bowman’s family members are the ones who know him best of all. His mother and sisters love him, support him, and will never give up on him. (R., pp.162, 167, 178.) His mother indicates that their family has always known Mr. Bowman to be a “generous, kind, smart man.” (R., p.178.) Similarly, one of sisters, Desiree, describes him as “a compassionate, loyal, generous man with . . . a quick wit second to none.” (R., p.180.) But Mr. Bowman’s other sister, Lisa, provides the most thorough assessment of his character. She describes him as “uplifting, caring, witty, loving, intelligent, creative and empathetic.” (R., p.165.) She says, “[h]is smile can light up a room and his sense of humor can make [her] laugh out loud” (R., p.166.) She indicates he is a kind man who “would give anyone the shirt off his back.” (R., p.167.) Lisa finds it remarkable that, despite the lonely, cruel conditions he faces in prison, her brother has never lost his humanity or gotten so caught up in his own problems as to forget

about his loved ones. (*See R.*, p.166.) She says he is still her cheerleader—congratulating her on her achievements when things are going well; reminding her to remain positive and encouraging her when they are not; and dispensing brotherly advice whenever it is needed.¹² (*See R.*, pp.165-66.) He turns down her offers to put money on his books, so that she will have more to spend on her kids. (*R.*, p.166.) He always thinks about her family—asking about her husband and sending drawings to her children. (*R.*, p.166.) And he always remembers to thank her for her continued support. (*R.*, pp.165-66.) Lisa knows that despite his failings, Mr. Bowman “can and will contribute positive things to society.” (*R.*, p.167.)

Mr. Bowman also has a wife, a daughter, and two stepdaughters who love him and support him too. (*R.*, pp.162, 167, 177, 242.) His wife, Dorothy, describes him in much the same way that his mother and sisters do—as “an intelligent man with many hopes and dreams” who “can succeed at absolutely anything he puts his mind to,” and who “has more love and compassion in his heart than anybody.” (*R.*, p.177.) She indicates that Mr. Bowman has helped her to get her own life on track, stating, “Steve has opened my eyes [and] my heart and shown me that I can be more[,] and overcome anything.” (*R.*, p.242.) She says he has helped her to grow as a person, and to remain stable, such that she runs a business, obtained a home and a car, and, most importantly, got her two daughters (from a prior relationship) back. (*R.*, p.242.)

Not only has Mr. Bowman’s presence in her life allowed Dorothy to be a better, more stable mother for her daughters, but it has given her girls their first opportunity to have a father figure in their lives. (*R.*, p.242.) Although Mr. Bowman is not their biological father, he is still

¹² Lisa explains that their father was not present for much of their lives, and that their father’s absence is part of the reason she is so close to her brother and relies so heavily on him for emotional support. (*Augmentation*, p.20.)

their “father.” (*See R.*, p.242.) He loves them and guides them as if they are his own children. (*R.*, p.242.)

Dorothy indicates that despite Mr. Bowman’s incarceration, he still works hard to be the best father he can be. “He does what he can from where he is. He gives our children boundaries, guidelines and good morals.” (*R.*, p.177.) She says “the thing he wants to be the most is a present father especially because he now understands how the absence of his own Dad negatively affected his life.” (*R.*, p.177; *see also R.*, p.226 (“I’m kinda devastated right now because my family is falling apart [and] I can’t see or even talk to or email them as I could in Idaho.”).¹³) And, of course, what the kids want and need most is to have their father back. (*See R.*, p.242.) One of his daughters told the court she “just wants her dad home,” and she “loves and misses him.” (*R.*, p.179.)

CONCLUSION

For the reasons set forth above, Mr. Bowman respectfully requests that this Court vacate the district court’s order denying his Rule 35 motion, and that it remand his case to the district court with an order requiring his sentence to be reduced to 30 years, with seven years fixed.

DATED this 28th day of August, 2019.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief, Appellate Unit

¹³ For reasons that are not clear from the record, IDOC has chosen to make arrangements for Mr. Bowman to serve his sentence at a prison in Florida. (Augmentation, pp.13, 17.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 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

ERL/eas