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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46407-2018
Plaintiff-Respondent,)	
)	SHOSHONE COUNTY NO. CR-2018-170
v.)	
)	
MICHAEL DEAN BOLEY,)	APPELLANT'S REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael Dean Boley appeals from his judgment of conviction for grand theft. Mr. Boley pleaded guilty and the district court imposed a unified sentence of fourteen years, with ten years fixed. Mr. Boley subsequently filed an Idaho Criminal Rule (*hereinafter*, Rule) 35 motion for reduction of sentence, which was denied. Mr. Boley appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion. This Reply Brief addresses some of the State's assertions on appeal.

Statement of the Facts & Course of Proceedings

The Statement of the Facts & Court of Proceedings are set forth in the Appellant's Brief and are incorporated herein by reference.

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of fourteen years, with ten years fixed, upon Mr. Boley following his plea of guilty to grand theft?
- II. Did the district court abuse its discretion when it denied Mr. Boley's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fourteen Years, With Ten Years Fixed, Upon Mr. Boley Following His Plea Of Guilty To Grand Theft

The State asserts that Mr. Boley's claim that he did well for several years after being incarcerated for ten years is questionable because he was convicted of two new misdemeanor offenses. (Respondent's Brief, p.3.) Mr. Boley wishes to note that these were traffic offenses and completely unrelated to the charge at issue in this case. (See PSI, pp.11-12.) Further, as noted by Mr. Boley at the sentencing hearing, he was indeed making progress: "I held jobs. I held opportunities where theft would have been an easy option. I worked at hotels and casinos, worked at gas stations that dealt with thousands of dollars in cash everyday and never once in any circumstance did a penny ever come up missing. Never." (Tr., p.37, Ls.1-9.) However, in October, Mr. Boley and his girlfriend found out that she was pregnant and "my whole life changed. I never – I've never had kids. I've never – I've never really had any responsibility period." (Tr., p.38, Ls.1-6.)

The State also disputes Mr. Boley's claim that he has no history of violence by stating that he was previously charged with domestic violence, and that in this case he sent threatening text messages about the victim and her family to his mother. (Respondent's Brief, p.4.) Mr. Boley wishes to note that this domestic violence charge is from 1999, and the charge was dismissed; Mr. Boley was not convicted of this charge. (PSI, p.9.) With regard to the text messages, they were never sent to the victim in this case, and as Mr. Boley stated at sentencing, "I understand where Ms. Card is coming from and I understand how the messages that I did send to my mother could come across that way [as threats]. They were never – they were never meant for that. I've never been [a violent person.]" (Tr., p.36, Ls.3-8.) Mr. Boley sending a text message to his mother hardly qualifies as a crime of violence to the victim in this case.

CONCLUSION

Mr. Boley respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing or Rule 35 hearing.

DATED this 28th day of June, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas