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### State v. Fox Appellant's Brief Dckt. 46532

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46532-2018
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO. CR-2017-9518
v.	)	
	)	
TYLER JOSEPH FOX,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mr. Fox appeals from the district court's order denying his Idaho Criminal Rule 35 motion. He asserts the district court abused its discretion when it denied the motion.

Statement of the Facts & Course of Proceedings

After Mr. Fox's plea of guilty to one count of possession of a controlled substance, the district court imposed a sentence of seven years, with three years fixed, but retained jurisdiction. (R., pp.69-76.) Subsequently, the district court relinquished its jurisdiction and executed the underlying sentence. (R., pp.80-83.) Mr. Fox then filed an Idaho Criminal Rule 35 motion

requesting leniency. (R., p.85.) The district court held a hearing on the motion, and Mr. Fox participated telephonically. (Tr., p.4, Ls.2-25.) After the hearing, the district court denied the Rule 35 motion. (Tr., p.12, Ls.21-22; R., p.92.) Mr. Fox then filed a notice of appeal timely from the district court's order denying the motion. (R., pp.95-97.)

### ISSUE

In light of the progress Mr. Fox made after sentencing, did the district court abuse its discretion when it denied his Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

### ARGUMENT

#### In Light Of The Progress Mr. Fox Made After Sentencing, The District Court Abused Its Discretion When It Denied His Idaho Criminal Rule 35 Motion 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 essentially 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. Fox presented new information in the form of his progress since the district court relinquished its jurisdiction. He explained that, since he arrived at the Idaho State Correctional Center, he had already successfully completed his prerelease programming, he was over halfway through a drug treatment program that was comprised of 42 sessions, and he was "almost 70 percent" finished with his "Thinking for a Change" class. (Tr., p.6, L.11 – p.7, L.12.) Additionally, he said he was attempting to get into a diversionary program, which would also

help him to further address his addiction. (Tr., p.7, Ls.13-17.) Mr. Fox also pointed out that he had no disciplinary issues since arriving at the institution. (Tr., p.11, Ls.10-13.) Based on this information, Mr. Fox requested that the district court reduce his sentence to seven years, with two years fixed. (Tr., p.7, Ls.23-24.)

Despite this showing of his excellent progress, the district court denied Mr. Fox's Rule 35 motion. (Tr., p.12, Ls.21-22.) It stated that none of the information constituted "a legal basis for reducing an otherwise appropriately imposed sentence." (Tr., p.12, Ls.1-12.) Mr. Fox asserts that the district court did not adequately consider the new information about his progress. Indeed, that information indicated that the district court's original reasoning regarding how the goals of sentencing applied in this case was no longer appropriate. Therefore, the new information actually did constitute a valid legal basis for reducing Mr. Fox's sentence. As such, the district court abused its discretion because it did not reach its decision to deny the Rule 35 motion through an exercise of reason.

#### CONCLUSION

Mr. Fox respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the district court's order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 1<sup>st</sup> day of July, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of July, 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](mailto:ecf@ag.idaho.gov)

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

RPA/eas