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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46541-2018 & 46548-2018
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NOS. CR-2016-14757
)	& CR-2017-6901
v.)	
)	
JASON RAY BURNSIDE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated appeals, Jason Ray Burnside appeals from the district court's orders denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motions for reduction of sentence. He asserts that the district court abused its discretion by denying the motions.

Statement of the Facts & Course of Proceedings

In Docket No. 46541, Mr. Burnside was charged with possession of a controlled substance, possession with intent to use drug paraphernalia, and providing false information to

an officer. (R., No. 46541, p.62.) He pleaded guilty to possession of a controlled substance and the district court imposed a unified sentence of seven years, with one year fixed, and the court retained jurisdiction. (R., No. 46541, p.187.) The district court subsequently relinquished jurisdiction. (R., No. 46541, p.211.) Mr. Burnside filed a Rule 35 motion to reduce his sentence. (R., No. 46541, p.224.) The court denied the motion to reduce the sentence but ordered that Mr. Burnside receive credit for time served in the amount of thirty-one days. (R., No. 46541, p.231.) Mr. Burnside appealed. (R., No. 46541, p.233.)

In Docket No. 46548, Mr. Burnside was charged with possession of a controlled substance, destruction, alteration, or concealment of evidence, and possession with intent to use drug paraphernalia. (R., No. 46548, p.57.) He pleaded guilty to destruction, alteration, or concealment of evidence and the district court imposed a unified sentence of five years, with one year fixed, and the court retained jurisdiction. (R., No. 46548, p.123.) The court also ordered that this sentence run consecutive to the sentence in Docket No. 46541. (R., No. 46548, p.124.) The district court subsequently relinquished jurisdiction. (R., No. 46548, p.148.) Mr. Burnside filed a Rule 35 motion to reduce his sentence, which the district court denied. (R., No. 46548, pp.161, 167, 175.) Mr. Burnside appealed. (R., No. 46548, p.168.)

In both cases, Mr. Burnside asserts that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence.

ISSUE

Did the district court abuse its discretion when denied Mr. Burnside's Rule 35 motions?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Burnside's Rule 35 Motions

In his Rule 35 motions and at the hearing, Mr. Burnside informed the court that his motion was not timely filed. (Rule 35 Tr., p.3, Ls.13-16.) However, the motion was timely filed. Idaho Criminal Rule 35(b) requires that a Rule 35 motion for reduction of sentence be filed within 120 days of an order relinquishing jurisdiction. I.C.R. 35(b). In these cases, the court relinquished jurisdiction on July 6, 2018. (R., No. 46541, p.211; R., No. 46548, p.148.) He therefore had until November 3, 2018 to file his motion. The motions were filed on September 27, 2018, and were therefore timely. (R., No. 46541, p.224; R., No. 46548, p.148.)

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound 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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Mr. Jensen must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). “When presenting a Rule 35 motion, the defendant must show that the

sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

At the Rule 35 hearing, after making his argument for credit for time served, Mr. Burnside requested that the court reduce his sentences so that they run concurrent. He made the following argument:

[Mr. Burnside] would like the Court to run them consecutively or rather, concurrently rather than consecutively. He wanted me also, although I know it's not necessarily something that the Court normally considers, he wanted me to let the Court know that he has been working hard. Under his sentence, he has been doing some classes and is certainly working hard to change his life at this point.

(Rule 35 Tr., p.5, Ls.15-22.)

Based on counsel's representations that Mr. Burnside had been working hard and had been taking classes while incarcerated, Mr. Burnside respectfully submits that the district court abused its discretion by denying his Rule 35 motions.

CONCLUSION

Mr. Burnside respectfully requests that this Court order that his sentences run concurrently.

DATED this 7th day of August, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th 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

JMC/eas