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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46598-2018
)	
v.)	TWIN FALLS COUNTY
)	NO. CR42-18-3603
MICHAEL ALLEN CURTIS,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael A. Curtis appeals from the district court's denial of his Idaho Criminal Rule 35 ("Rule 35") motion. Although he waived the right to file a Rule 35 motion and the right to appeal, he nonetheless argues the district court abused its discretion by denying his motion.

Statement of Facts and Course of Proceedings

The State charged [REDACTED] Mr. Curtis with one count of felony possession of a controlled substance (methamphetamine and/or amphetamine) and one count of misdemeanor possession of a controlled substance (marijuana). (R., pp.18-19.) Pursuant to a

plea agreement, Mr. Curtis pled guilty to felony possession of a controlled substance. (R., pp.27, 38.) The State agreed to dismiss the misdemeanor charge. (R., pp.27, 38.) The parties stipulated to a sentence of seven years, with three years fixed. (R., p.38.) The State would recommend imposition of the sentence, but Mr. Curtis was free to argue for less. (R., p.38.) Also as part of the agreement, Mr. Curtis waived

the right to: (1) file a Rule 35 Motion regarding the initial Judgment (except as to an illegal sentence) and (2) appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court, including all suppression issues. However, the defendant may appeal the sentence if the Court exceeds the recommendation made by the State at sentencing regarding: (1) the determinate portion of the sentence, and/or (2) a probation recommendation. and/or (3) a retained jurisdiction recommendation.

(R., p.38.)

At sentencing, the State acknowledged Mr. Curtis qualified for drug court, but nonetheless recommended the district court impose a sentence of seven years, with three years fixed. (Tr., p.6, Ls.12–15, Ls.20–24.) Mr. Curtis requested drug court. (Tr., p.10, Ls.1–4, Ls.12–13.) The district court followed the State’s recommendation and imposed a sentence of seven years, with three years fixed. (Tr., p.11, L.25–p.12, L.3; R., pp.44–45 (judgment of conviction).)

Mr. Curtis then moved for reconsideration of his sentence pursuant to Rule 35, and he included a letter in support. (R., pp.51, 53–54.) He requested the district court reduce his fixed time to two years, but increase his indeterminate time to five years, for a total sentence of seven years. (R., p.53.) The district court denied his motion. (R., pp.55–60.) The district court ruled that Mr. Curtis waived his right to file a Rule 35 motion and denied the motion on that basis. (R., pp.57–59.) Mr. Curtis timely appealed. (R., pp.62–63.)

ISSUE

Mindful of the Rule 35 and appeal waivers, did the district court abuse its discretion when it denied Mr. Curtis's Rule 35 motion?

ARGUMENT

Mindful Of The Rule 35 And Appeal Waivers, The District Court Abused Its Discretion When It Denied Mr. Curtis's Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “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).

Here, Mr. Curtis waived his right to file a Rule 35 motion and the right to appeal its denial. (R., p.38.) *See State v. Taylor*, 157 Idaho 369, 372–73 (Ct. App. 2014). Nonetheless, Mr. Curtis maintains the district court abused its discretion by denying his Rule 35 motion in light of the new and additional information presented to the district court.

In support of his Rule 35 motion, Mr. Curtis submitted a letter to the district court outlining his reasons for Rule 35 relief. (R., pp.53–54.) He explained that he had: (1) full-time employment arranged with Gil Ray Diesel Repair; (2) a good support network; (3) asked “for help this time instead of absconding”; (3) been taking his medications; and (4) a family to support.¹ (R., p.53.) He wrote to the district court:

In all honesty I just want to come home as soon as possible. To provide for myself and my family. To show my step kids how to grow up and be responsible. I have been in institutions most of my life and I hardly have any real world experience. I want to go back to college and continue my studies [and] accomplish a degree in auto body tech and diesel repair. [sic]

(R., p.53.) He explained, “I am still young and want a chance to establish myself in the community as a positive member of society.” (R., p.53.) Based on this information, Mr. Curtis asked for a reduction in his sentence from three years fixed, plus four years indeterminate, to two years fixed, plus five years indeterminate. (R., p.53.) Mindful of the waivers, Mr. Curtis submits the district court failed to exercise reason and thus abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Curtis respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court reverse or vacate the district court’s order denying his Rule 35 motion and remand this case for a Rule 35 motion hearing.

DATED this 11th day of April, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

¹ Mr. Curtis’s fiancé was pregnant with his first child. (Presentence Investigation Report, pp.13–14.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 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

JCS/eas