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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 46667-2019 & 46668-2019
)	
v.)	ADA COUNTY NOS. CR-FE-2015-11237
)	& CR-FE-2015-18090
ROXANN KAY CALHOON,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Roxanne Kay Calhoon appeals from the orders denying her Criminal Rule 35 motions for a reduction of sentence in these two Ada County cases. Ms. Calhoon had been serving probation in both cases when she committed a new offense in Canyon County. Because the district court in the Canyon County case had imposed a prison sentence that was longer than the underlying sentences in these Ada County cases, Ms. Calhoon stipulated to the revocation of probation and execution of sentence in these cases. However, she subsequently moved for a reduction of her sentences in these Ada County cases based on new information that the judge in her Canyon

County case was considering a reduction of sentence in that case. On appeal, Ms. Calhoon asserts that the district court abused its discretion by denying her Rule 35 motions in these Ada County cases, mindful of the fact that she has since been denied a reduction of sentence in her Canyon County case.

Statement of the Facts and Course of Proceedings

Ms. Calhoon was on probation in CR-FE-2015-18090, for possessing a controlled substance and injury to a child, and in CR-FE-11247, for possession of a controlled substance. (R., pp.95, 245.) R., pp.137, 284-85.) Her suspended sentence totaled seven years, with three years fixed, but she had already served a significant period of her fixed time. (See R., pp.137, 284-85.) While on probation, on September 6, 2017, Ms. Calhoon was charged in Canyon County with aggravated DUI and leaving the scene of an accident, and based on that new offense, the State filed a motion to revoke her probation in these Ada County cases. (R., pp.131, 253.) Ms. Calhoon admitted violating her probation. (R., pp.117, 118.)

By the time of her August 1, 2017 disposition hearing in these cases, Ms. Calhoon had already received her sentence in the Canyon County case: ten years, with three years fixed, without retained jurisdiction. (See 8/1/17 Tr. p.7, Ls.5-10.) Citing the sentencing decision in the Canyon County case, and the fact that the fixed time imposed in that case was longer than the remaining fixed time in these cases, the parties agreed that Ms. Calhoon's probation should be revoked and her sentences executed. (8/1/18 Tr., p.7, Ls.5-10.) The district court stated,

Ma'am, as indicated by counsel having had your Canyon County sentence imposed, really this court's hands are [tied]. And []both counsel recommend your probation be revoked in both cases and your sentence be imposed. It is important that, while you're going to have an extended period of incarceration that you will be released back into the community after you complete that incarceration – the fixed portion of your Canyon County sentence. And it is important that you address – continue addressing mental health issues while you are in custody.

(8/1/17 Tr., p.8, Ls.10-21.)

The district court then revoked probation in both cases and executed Ms. Calhoon's underlying, aggregate sentence of seven years, with three years fixed, and ordered 633 days credit for the time she already served. (8/1/17 Tr., p.9, Ls.9-18; R., pp.137, 284-85.)

Ms. Calhoon timely filed a motion in both Ada County cases seeking a reduction of sentence pursuant to Idaho Criminal Rule 35. (R., pp.141, 288.) After learning that she was being considered for a reduction of sentence in her Canyon County case, and that the judge in that case was "leaning toward" granting a reduction that would result in her completing her fixed time in that case before her fixed time in the present cases, Ms. Calhoon supplemented her motion with that information. (R., pp.147, 294.) The State filed an objection. (R., pp.149, 296.) The district court entered orders denying Ms. Calhoon's Rule 35 motions. (R., pp.152, 299.) Ms. Calhoon filed Notices of Appeal that are timely from those orders. (R., pp.157, 304)

ISSUE

Did the district court abuse its discretion when it denied Ms. Calhoon's Rule 35 motions for reduction of her sentences?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Calhoon's Rule 35 Motions For Reduction Of Her Sentences

A Rule 35(b) motion is essentially 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 grant or denial of a Rule 35(b) motion is reviewed for an abuse of discretion. *State v. McIntosh*, 160 Idaho 1, 8 (2015). "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.” *State v. Huffman*, 144 Idaho at 203.

In this case, Ms. Calhoon requested leniency based on the fact she had filed a Rule 35 motion a for sentence reduction in her Canyon County Case No. CR-2017-15178, which, if granted, would mean that she could complete her Canyon County fixed prison time before the time required by her original sentences in these cases. Mindful of the fact that her request for reduction of sentence in her Canyon County case has since been denied,¹ Ms. Calhoon submits that the district court abused its discretion when it denied her request to reduce her sentences in these Ada County cases.

CONCLUSION

Ms. Calhoon respectfully requests this Court vacate the district court’s order revoking probation in both of her cases, and that it reduce her sentences, or else vacate her sentences and remand her cases to the district court with instructions to impose less severe, reasonable sentences.

DATED this 25th day of June, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

¹ In Canyon County Case No. CR-2017-1518, the district court filed its “Order Denying I.C.R. 35 Motion for Leniency” on January 3, 2019.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

KAC/eas