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### State v. Bracamontes Appellant's Brief Dckt. 46722

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

JASON C. PINTLER  
Deputy State Appellate Public Defender  
I.S.B. #6661  
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,	)	
	)	NO. 46722-2019
Plaintiff-Respondent,	)	
	)	CASSIA COUNTY NO. CR16-18-2625
v.	)	
	)	
JESUS BRACAMONTES,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jesus Bracamontes aided and abetted his brother in robbing a convenience store, and the district court sentenced Mr. Bracamontes to a unified term of 10 years, with three years fixed. Mr. Brocamontes filed a timely Rule 35 motion seeking leniency but that motion was denied by the district court. Mindful that he did not support his Rule 35 motion with any new or additional information, Mr. Bracamontes asserts the district court abused its discretion when it denied his motion.

## Statement of the Facts & Course of Proceedings

The State filed a criminal complaint alleging that Jesus Bracamontes committed the crimes of robbery with the use of a deadly weapon, burglary, and conspiring with his brother, Gregori Bracamontes, to commit these crimes. (R., pp.8-10.) Mr. Bracamontes waived his right to a preliminary hearing, was bound over into the district court, and an information was filed charging him with the above crimes. (R., pp.15-22.) Pursuant to an agreement with the State, Mr. Bracamontes pled guilty to aiding and abetting his brother in committing the robbery, as alleged in an amended information; in exchange, the State agreed to dismiss the remaining charges and agreed to recommend the district court impose a unified term of 10 years, with four years fixed, and retain jurisdiction. (R., pp.38-52; Tr. 9/28/18, p.2, L.8 – p.13, L.19.)

During the sentencing hearing, the State honored its obligations under the plea agreement and recommended the court impose a 10 year sentence, with four years fixed, with the district court retaining jurisdiction (Tr. 12/4/18, p.6, Ls.7-11), while Mr. Bracamontes' counsel asked the court to impose an underlying sentence of nine years, with three years fixed, and to either place Mr. Bracamontes on probation or retain jurisdiction (Tr. 12/4/18, p.11, Ls.10-22). The district court followed neither recommendation and instead imposed a unified sentence of 10 years, with three years fixed, and declined to retain jurisdiction. (R., pp.55-58; Tr. 12/4/18, p.18, Ls.12-15.) Mr. Bracamontes then filed a Rule 35 motion seeking leniency, but he did not provide any new or additional information. (R., pp.65-66.) The district court denied the motion. (R., pp.67-70.) Mr. Bracamontes filed a notice of appeal timely from the order denying his Rule 35 motion. (R., pp.71-73.)

## ISSUE

Did the district court abuse its discretion in denying Mr. Bracamontes' Rule 35 motion?

## ARGUMENT

### The District Court Abused Its Discretion In Denying Mr. Bracamontes' Rule 35 Motion

Mindful of *State v. Huffman*, 144 Idaho 201, 203 (2007) (“An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.”), Mr. Bracamontes asserts the district court abused its discretion by denying his Rule 35 motion.

The decision on whether to reduce a sentence pursuant to a timely filed Rule 35 motion, is left to the sound discretion of the district court. When presented with such a motion, the court should consider the governing criteria or objectives of criminal punishment, which are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Mr. Bracamontes was just [REDACTED] at the time he committed this crime, which was his first felony conviction. (PSI, pp.2-5.) He knows what he did was wrong and, after initially denying any involvement, he contacted an officer and confessed what he had done. (PSI, pp.3-4, 38-39.) During his sentencing hearing, Mr. Bracamontes stated that he was sorry and that he takes responsibility for his actions. (Tr. 12/4/18, p.14, Ls.12-17.) Idaho Courts recognize that youthful, first-time felons, who take responsibility for their actions and express remorse, should be afforded more lenient treatment. *See State v. Hoskins*, 131 Idaho 670 (1998); *State v. Dunnagan*, 101 Idaho 125 (1980); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991); *State v. Sanchez*, 117 Idaho 51 (Ct. App. 1990). In light of the mitigating factors that exist in this case,

and mindful of *Huffman*, Mr. Bracamontes asserts the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

Mr. Bracamontes respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 18<sup>th</sup> day of September, 2019.

/s/ Jason C. Pintler  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of September, 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

JCP/eas