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### State v. Lawlor Appellant's Brief Dckt. 46833

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46833-2019
Plaintiff-Respondent,	)	
	)	MADISON COUNTY NO. CR-2018-1681
v.	)	
	)	
BRUCE EDWARD LAWLOR,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Bruce Lawlor pled guilty to one count of possession of methamphetamine. He received a unified sentence of seven years, with two years fixed, but the sentence was reduced to seven years indeterminate, pursuant to Mr. Lawlor's Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion. On appeal, Mr. Lawlor contends that the district court erred in failing to further reduce his sentence in light of the additional information submitted in conjunction with his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

On July 19, 2018, law enforcement conducted a traffic stop on a motorhome with a broken windshield and an expired registration. (Presentencing Investigation Report, (*hereinafter*, PSI),<sup>1</sup> p.3.) Bruce Lawlor was a passenger in the motorhome. (PSI, p.3.) The driver consented to a search. (PSI, p.3.) Prior to the search of the vehicle, Mr. Lawlor was searched “for officer safety.” (PSI, p.3; R., p.11.) Two plastic baggies containing a substance that was suspected of being methamphetamine fell out of Mr. Lawlor’s pocket when the officer took a small saw blade out of the pocket. (PSI, p.3.) Several items of drug paraphernalia were located during the search of the motorhome. (PSI, p.3.)

Based on these facts, Mr. Lawlor was charged by information with one count of possession of methamphetamine and one count of misdemeanor possession of drug paraphernalia. (R., pp.19-20.) Pursuant to a plea agreement, Mr. Lawlor pled guilty to possessing methamphetamine and the remaining charges and a companion case, Madison County case number CR-18-1823,<sup>2</sup> were dismissed. (11/5/18 Tr., p.5, L.9 – p.6, L.25, p.11, Ls.21-24; p.26, L.22 – p.27, L.3; R., pp.31-33.) The parties agreed that the State would recommend a suspended sentence, probation, and credit for time served. (11/5/18 Tr., p.6, Ls.20-25.)

At the December 17, 2018 sentencing hearing, Mr. Lawlor’s counsel asked the district court to suspend Mr. Lawlor’s sentence and place him on probation. (12/17/18 Tr., p.23, Ls.16-23.) The State asked for an underlying sentence of five years fixed, with two years indeterminate but that the district court suspend the sentence and place Mr. Lawlor on probation. (12/17/18

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<sup>1</sup> Appellant’s use of the designation “PSI” includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

<sup>2</sup> The separate case involved similar facts. There, law enforcement stopped the same motorhome and, after another search, again located paraphernalia and methamphetamine. (R., pp.31-32.)

Tr., p.26, L.18 – p.27, L.10.) The State asked the district court for 180 days of local jail time, and, if the court did place Mr. Lawlor on probation, that he be required to complete a specialty court as a condition of his probation. (12/17/18 Tr., p.27, Ls.11-19.)

However, the district court sentenced Mr. Lawlor to seven years, with two years fixed, and did not place Mr. Lawlor on probation or retain jurisdiction. (12/17/18 Tr., p.37, L.2 – p.38, L.3; R., pp.40-41.) The district court entered a written Judgment of Conviction on December 31, 2018. (R., pp.40-41.)

On December 19, 2018, Mr. Lawlor filed a timely Rule 35 motion asking the district court to reconsider the sentence it imposed. (R., pp.38-39.) Mr. Lawlor asked the court to reduce the fixed portion of his sentence from two years, to one year, and to reduce the amount of indeterminate time to three years and to place him on probation. (1/28/19 Tr., p.50, L.18 – p.51, L.6.) The State did not oppose the Rule 35 motion. (1/28/19 Tr., p.53, Ls.6-7.) On January 28, 2019, after a hearing, the district court granted Mr. Lawlor's Rule 35 motion, in part, by eliminating the fixed portion of Mr. Lawlor's sentence, changing the sentence to seven years, all indeterminate. (1/28/19 Tr., p.55, Ls.19-20; R., pp.52-53.) On February 9, 2019, Mr. Lawlor filed a notice of appeal which was timely from the judgment of conviction and order granting his Rule 35 motion. (R., pp.43-47, 54-58.)

#### ISSUE

Did the district court abuse its discretion when it declined to further reduce Mr. Lawlor's sentence pursuant to his Idaho Criminal Rule 35 Motion?

## ARGUMENT

### The District Court Abused Its Discretion When It Failed to Further Reduce Mr. Lawlor's Sentence In Light Of The New Information Offered In Support Of His Rule 35 Motion

In Mr. Lawlor's Rule 35 motion, he asked the district court for leniency, and in support of his motion, he submitted information indicating that he had not had substance abuse treatment in approximately thirteen years and would benefit from treatment in the community. (1/28/19 Tr., p.49, Ls.14-19; p.51, Ls.1-12; p.52, Ls.11-15.) Mr. Lawlor asserts that the district court's refusal to further reduce his sentence represents an abuse of discretion.

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). "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.* "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).

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

In support of his Rule 35 motion, Mr. Lawlor, through counsel, told the court that Mr. Lawlor had not had significant mental health or substance abuse treatment in the past. (1/28/19 Tr. p.48, Ls.2-4.) Counsel told the court that Mr. Lawlor did one faith-based program, but had never had an opportunity to do a CSC- or MRT- or DBT-type program. (1/28/19 Tr., p.48, Ls.12-25.) Further, Mr. Lawlor has not had any focused treatment since 2006, almost thirteen years ago. (1/28/19 Tr., p.52, Ls.11-15.) Counsel asked the court to reduce Mr. Lawlor's sentence in order to give him an opportunity to get treatment going into the community. (1/28/19 Tr., p.49, Ls.14-19; p.51, Ls.1-12.) Mr. Lawlor provided a letter from his family members demonstrating their support of Mr. Lawlor once he is released into the community. (1/28/19 Tr., p.51, Ls.18-25; Aug., pp.1-5.) See *State v. Shideler*, 103 Idaho 593, 594-95 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts). In light of the fact that Mr. Lawlor has not had the opportunity to do any recent programming, and his support in the community upon his release from custody, the district court should have further reduced his sentence.

In addition to the new information provided in his Rule 35 motion, the district court was aware of other mitigating circumstances, including Mr. Lawlor's expressions of remorse, his mental health conditions, his interest in treatment, and the role that his substance abuse issues played in his original crime.

Mr. Lawlor suffers from severe depression and acute anxiety. (11/5/18 Tr., p.15, L.1; PSI, pp.12-13.) The Idaho Supreme Court has held that the trial court must consider a defendant's mental illness as a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Lawlor has attempted suicide, but is now taking medication and has noticed a substantial improvement in his mental health. (PSI, p.13.)

Further, Mr. Lawlor expressed remorse and accepted responsibility for his actions. (11/5/18 Tr., p.26, L.22 – p.27, L.3.) Idaho recognizes that some leniency may be warranted when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991). At his sentencing hearing, Mr. Lawlor told the district court:

After my mother died, when I was 20, I got involved in the drug culture of Southern California, specifically the Los Angeles area. My sister has been trying to get me to move to Idaho ever since my brother died three years ago to get me out of that environment.

Each time I've been released from incarceration, I've done extremely well on probation or parole. Unfortunately, past friends and associations would catch up with me. I'm hoping that this will be the new beginning and fresh start that I've wanted and needed before I get much older.

I'd also like to rejoin the work force. The only friend or associate I have in this area is a loving and caring older sister that will have me under closer supervision than the probation department can offer.

(12/17/18 Tr., p.29, Ls.1-15.) Mr. Lawlor first started to struggle with substance abuse after his mother passed away following a heart attack. (PSI, p.16.) The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate the criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981).

The majority of Mr. Lawlor's criminal conduct has been drug or alcohol-related. (PSI, pp.4-9.) Mr. Lawlor knows that he has a problem with methamphetamine and marijuana and wants to stop using these substances. (PSI, pp.14, 16-17.)

Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion in failing to further reduce Mr. Lawlor's sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Lawlor respectfully requests that this Court further reduce his sentence by reducing the indeterminate portion of his sentence.

DATED this 13<sup>th</sup> day of November, 2019.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of November, 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

SJC/eas