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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46888-2019
Plaintiff-Respondent,)	
)	CASSIA COUNTY NO. CR-2017-647
v.)	
)	
JOSE RIOS MARIO ALVARADO,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jose Rios Mario Alvarado appeals from the district court's Order Denying the Defendant's Motion to Reconsider Sentence. Mr. Alvarado was sentenced to a unified sentence of five years, with two year fixed, for his unlawful possession of a firearm conviction. Mindful that he waived his right to appeal, he asserts that the district court abused its discretion in denying his Rule 35 motion without giving proper weight and consideration to the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

On February 28, 2017, an Information was filed charging Mr. Alvarado with unlawful possession of a firearm, possession of a controlled substance, concealment or destruction of evidence, possession of drug paraphernalia with intent to use, and possession of a prescription legend drug. (R., pp.29-31.) Mr. Alvarado was arrested after a traffic stop and the subsequent search of a vehicle in which he was a passenger. (R., pp.12-15.) During the search, a handgun and other illegal items were located either near where he had been sitting or on his person. (R., pp.12-15.)

Mr. Alvarado entered a guilty plea to the unlawful possession of a firearm charge. (R., pp.54-55.) Pursuant to a plea agreement, the remaining charges were dismissed. (R., pp.51-53, 62.) Mr. Alvarado was sentenced to a period of retained jurisdiction, with a unified sentence of five years, with two years fixed. (R., pp.56-57.) Approximately eight months later, the district court relinquished jurisdiction after receiving a report that Mr. Alvarado had been in a physical altercation while on his rider. (R., pp.67-70.) Mr. Alvarado filed a Defendant's Verified Motion to Withdraw Guilty Plea / Commute Sentence and/or Reduction of the Sentence with Affidavit in Support. (R., pp.72-78.) At the hearing, all but the Rule 35 motions for a reduction of sentence and credit for time served were abandoned. (Tr., p.4, L.24, p.5, L3.) An Order Correcting Credit for Time Served was issued after a stipulation to correct credit for time served was filed. (R., pp.185-186.) The district court denied the motion for a reduction of sentence. (R., pp.180-182.) Mr. Alvarado filed a Notice of Appeal timely from the district court's Order Denying the Defendant's Motion to Reconsider Sentence. (R., pp.180-182.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Alvarado's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Alvarado's Rule 35 Motion For A Reduction Of Sentence

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).

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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). Mindful that he waived his right to appeal, Mr. Alvarado now asserts that the district court failed to give proper weight and consideration to the new information provided in support of his Rule 35 motion and, as a result, did not reach its decision by an exercise of reason.

Mr. Alvarado provided new and additional information in support of his Rule 35 motion. At the Rule 35 hearing, Mr. Alvarado testified that, while he did not serve a perfect rider, he was “growing” while working though the program. (Tr., p.7, L.21 – p.8, L.1.) He explained what occurred on the day of the altercation:

Okay. On that day I was helping another inmate who was not able to read and write very well, and I was helping him do his homework. And he was approached by another individual, bigger than him or I, and some words were exchanged.

I used the tools that I’ve learned from CAPP to de-escalate the situation, and then I was helping him do his homework, and then I went back to go get my glasses when I was approached by this individual.

Okay. And the individual approached me and stated, just verbally slandered me, whatever, and I paid him no mind until he spit and socked me. Then, after that, he continued to hit me. So I was just – I felt, you know what I mean, threatened. So after that I started defending myself.

(Tr., p.9, Ls.7-21.) Although he told the Department of Corrections that he was defending himself, they did not appear to care, and falsely reported that Mr. Alvarado had started the fight.

(Tr., p.10, L.13 – p.11, L14.)

Mr. Alvarado also asked the district court for leniency noting:

Your Honor, I’m not saying that I was perfect in any way, shape, or form, but I did try and I was using the tools that I was given to change my ways, and I was two weeks away from graduating. You know what I mean?

It's not like I was out there trying to look for trouble, and I was – from the instructors, if you ask any of the instructors, they said that I was, like, I was helpful and, like, redefined. You what I mean? Like, I really showed effort in every step.

And all I ask from the Court is to have a chance to prove that I belong in the community.

(Tr., p.17, L.22- p.18, L.8.)

Based upon the new and additional information presented with his Rule 35 motion, Mr. Alvarado asserts that the district court abused its discretion in denying his Rule 35 motion. He asserts that had the district court given proper weight and consideration to his actual involvement in the altercation and success in working through his rider programming, it would have granted the Rule 35 motion and either placed him on probation or reduced his sentence.

CONCLUSION

Mr. Alvarado respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 8th day of August, 2019.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th 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

EAA/eas