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State v. Brown Appellant's Brief Dckt. 47160

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 47160-2019
	)	
v.	)	KOOTENAI COUNTY NO. CR28-18-5631
	)	
CHARLES CLIFFORD BROWN,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After the district court sentenced Charles C. Brown to fifteen years, with four years fixed, for delivery of a controlled substance, Mr. Brown moved for reconsideration of his sentence under Idaho Criminal Rule 35(b) ("Rule 35"). The district court denied his motion, and Mr. Brown appeals.

Statement of Facts and Course of Proceedings

In August 2018, Mr. Brown pled guilty to delivery of a controlled substance for giving methamphetamine to a woman who later drowned with her two children by driving her car into a

lake. (No. 46660 R.,[1] p.54; No. 46660 Presentence Investigation Report ("PSI"),[2] pp.2–3.) At sentencing, held on October 30, 2018, Mr. Brown requested the district court place him on probation or retain jurisdiction. (No. 46660 Tr., p.35, L.25–p.36, L.3, p.36, Ls.12–17.) The district court sentenced him to fifteen years, with four years fixed, which was consistent with the State's recommendation in the plea agreement. (No. 46660 Tr., p.45, Ls.21–24; No. 46660 R., p.54.) Mr. Brown appealed. (No. 46660 R., pp.82–84.)

While the appeal was pending, Mr. Brown moved for reconsideration of his sentence under Rule 35. (R., pp.11–12.) He filed his Rule 35 motion on March 8, 2019, 115 days after the entry of judgment on November 13, 2018. (R., p.11; No. 44460 R., pp.77–78 (judgment).) In support of his motion, Mr. Brown wrote a letter to the district court and included three letters from close friends. (R., pp.13–18.) Mr. Brown also requested a hearing on the motion. (R., p.12.)

A few days later, the district court notified Mr. Brown of its intent to dismiss his motion because he had not requested a hearing or provided a basis for relief. (R., pp.19–20.) Mr. Brown replied that, when he filed his Rule 35 motion, he had contacted the district court's clerk and scheduled a hearing for April 26, 2019. (R., p.22.) He also informed the district court of his request for a period of retained jurisdiction or a reduction in his fixed time to two years. (R., p.22.) In addition, Mr. Brown stated that he provided letters in support of his motion, and he expected to call at least one witness at the Rule 35 motion hearing. (R., p.23.) Along with his reply, Mr. Brown provided notice of the April 26 hearing. (Aug. R., p.1.)

[1] The Court augmented the record on appeal with the record from Mr. Brown's prior appeal, No. 46660-2019. Citations to the record from Mr. Brown's prior appeal will reference "No. 46660" in the citation.

[2] Citations to the PSI refer to the seventy-two-page electronic document with the confidential documents in No. 46660.

The district court reset the hearing to May 14, 2019, "to be heard by the sentencing judge" and then reset the hearing to May 16, 2019, and later to May 21, 2019, "to accommodate court schedule." (Aug. R., pp.3, 4, 5.) Before the hearing, Mr. Brown filed another letter under seal in support of his Rule 35 motion. (Conf. Ex., pp.1–2.) The district court held the Rule 35 motion hearing on May 21, and Mr. Brown testified. (*See generally* Tr.) The district court denied the motion at the end of the hearing. (Tr., p.15, Ls.6–12; R., p.71.)

On June 18, 2019, the Court of Appeals issued an Opinion from Mr. Brown's appeal of his judgment of conviction. (R., pp.73–74.) The Court of Appeals rejected his argument that the district court abused its discretion by imposing an excessive sentence. (R., pp.73–74.) Accordingly, the Court of Appeals affirmed Mr. Brown's judgment of conviction and sentence. (R., pp.73–74.) *See also State v. Brown*, No. 46660-2019, Unpublished Opinion (Idaho Court of Appeals June 18, 2019).

Mr. Brown timely appealed from the district court's order denying his Rule 35 motion. (R., pp.75–77.)

ISSUE

Did the district court abuse its discretion by denying Mr. Brown's Rule 35 motion?

ARGUMENT

"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. Brown argues the district court did not exercise reason and thus abused its discretion by denying his Rule 35 motion in light of the new and additional information. Mr. Brown presented new and additional information on his supportive community, conduct in prison, and mental health. This information warranted a reduction in his sentence or a period of retained jurisdiction.

First, Mr. Brown provided three letters in support from long-term friends. One family friend wrote:

> I have known Charles Brown for over 35 years. Our relationship is far beyond friendship. I have considered him a brother for over 3 decades. My own mother refers to Charlie as a son. As a testimony to his character I would like to tell you that of hundreds of associates in my life time I can count maybe 5 that I would trust with my life or the life of my children. Charlie [B]rown is on that list! Charlie[']s conscience, integrity, and desire to help others has long been a standard I myself wish to possess. I [a]m available in any capacity to help Charlie with housing, [t]ransportation, [f]ood, [s]upport, as well as any type of mental health needs, he may be considering. He can count on me for anything I have the capacity to provide so I can make certain that he remains a most loved and valued member of my family.

(R., p.16.) Another friend of ten years wrote a letter in support, stating that she believed Mr. Brown was "a good person who made some bad choices," and a treatment center would be "a more appropriate alternative for him." (R., p.17.) A friend of thirty years stated that he would

be there to help Mr. Brown as a "dear and lifelong friend to me and my family." (R., p.18.) This friend wrote that he was willing to provide temporary housing and transportation, to help with parole and recovery meetings, to hire Mr. Brown to work with him, or to help him find a job. (R., p.18.) This new information justified a reduction in Mr. Brown's sentence or a period of retained jurisdiction.

In addition, Mr. Brown provided new and additional information on his behavior since sentencing and his mental health issues. In his first letter, Mr. Brown wrote, "Since my sentencing, I have been a model prisoner and have been involved in every program and class available to me. I'm attending LDS church services. I'm attending multiple faith-based 12-step programs and the State is offering me the opportunity to attend a substance abuse program as well." (R., p.13.) He also wrote that he had been working on a release plan and had a bed in progress at Good Samaritan. (R., p.14.) In his second letter under seal, Mr. Brown explained his schizophrenia was untreated and undiagnosed at the time of the offense. (Conf. Ex., p.1.) He reiterated his commitment to his sobriety. (Conf. Ex., p.1.) He also informed the district court of his lack of criminal intent: "I understand the circumstances surrounding this case were tragic. I wish more than anything else that it could be undone. I did not sell [the woman] methamphetamine. I merely shared it with her. With no foresight of what her mental health state was, or planned actions were." (Conf. Ex., p.2.) At the Rule 35 motion hearing, Mr. Brown testified that he was diagnosed with schizophrenia. (Tr., p.7, Ls.2–17.) He also testified that he was working five days a week as a janitor for the administration part of the prison building. (Tr., p.9, Ls.15–19.) Further, he explained that he was not able to start substance abuse classes or a pre-release program for eighteen months due to the current length of this fixed time. (Tr., p.10,

Ls.9–11.) Lastly, his attorney pointed out that he had been very cooperative throughout the police's investigation. (Tr., p.13, Ls.19–23.)

In light of this new and additional information, Mr. Brown maintains the district court did not exercise reason and thus abused its discretion by denying his Rule 35 motion. This new and additional information of Mr. Brown's community support, opportunities in prison, commitment to treatment, and his mental health issues supported a reduction in his sentence or a period of retained jurisdiction.

CONCLUSION

Mr. Brown 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 to the district court for a new Rule 35 motion hearing.

DATED this 30th day of October, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 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
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas