

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46833-2019
Plaintiff-Respondent,)	
)	Madison County Case No.
v.)	CR-2018-1681
)	
BRUCE EDWARD LAWLOR,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Lawlor failed to establish that the district court abused its discretion by declining to further reduce his sentence pursuant to his Rule 35 motion for a reduction of sentence?

Lawlor Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Lawlor pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed. (R., pp. 19-20, 31-35, 40-41.) Lawlor filed a timely Rule 35 motion for a reduction of sentence. (R., pp. 38-39.) At the hearing on his Rule 35 motion, Lawlor requested that the court reduce his sentence to “one year fixed and

maybe three years indetermina[te] for a total of four years,” and to place him on probation or in the retained jurisdiction program. (1/28/19 Tr., p. 50, L. 18 – p. 51, L. 17.) The district court granted Lawlor’s Rule 35 motion in part, reducing his sentence to seven years indeterminate, with no fixed time. (R., pp. 52-53.) Lawlor filed a timely notice of appeal. (R., pp. 43-47, 54-58.)

Lawlor asserts that the district court abused its discretion by declining to further reduce his sentence pursuant to his Rule 35 motion in light of his support from his sister and brother-in-law, his claim that he “has not had the opportunity to do any recent programming,” his mental health and substance abuse issues, and because, at the change of plea hearing, he “expressed remorse and accepted responsibility for his actions.” (Appellant’s brief, pp. 4-7.) Lawlor has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion.

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016). To prevail on appeal, Lawlor 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, 159 P.3d 838, 840 (2007). Lawlor has failed to satisfy his burden.

Lawlor provided no new information in support of his Rule 35 motion for a reduction of sentence. On appeal, Lawlor claims that he provided new information because he has support from his sister and brother-in-law and because he “has not had any focused treatment since 2006.” (Appellant’s brief, p. 5.) However, information with respect to Lawlor’s support from

his sister and brother-in-law was included in the presentence report (PSI, pp. 10, 14, 17¹) and was also addressed at sentencing (12/17/18 Tr., p. 20, L. 16 – p. 21, L. 8; p. 25, Ls. 2-4; p. 29, Ls. 3-5, 12-15). Information regarding Lawlor’s history of substance abuse treatment was likewise included in the presentence materials – during his substance abuse evaluation, Lawlor was specifically asked about his substance abuse treatment history, and he indicated that he completed “Celebrate Recovery ‘for two years in the California State Prison’” and “‘alcohol treatment two times in California years ago.’” (PSI, pp. 19, 22.) Furthermore, Lawlor told the presentence investigator that, “[w]ith his last prison term (beginning in 2014) ... he was able to engage in the LDS 12-Step Program.” (PSI, p. 14 (parenthetical notation original).) Notably, this information with respect to Lawlor’s substance abuse treatment history contradicts Lawlor’s later claims, made in support of his Rule 35 motion, that “the only program that he has done” while in prison was “a faith-based program” “back in 2006” (1/28/19 Tr., p. 48, Ls. 12-21; p. 52, Ls. 11-15), and that he “has not had any focused treatment since 2006” (Appellant’s brief, p. 5). Irrespective of when he last participated in substance abuse treatment or what type of substance abuse treatment it was, this information was known to Lawlor at the time of sentencing and thus was not “new” information. See State v. Wade, 125 Idaho 522, 526, 873 P.2d 167, 171 (Ct. App. 1994) (information in the possession of defendant and counsel at the time of sentencing “is not new or additional information” when later submitted in support of a Rule 35 motion for sentence reduction). Rule 35 functions to allow a defendant to request leniency in light of “new or additional” information that was *not available at the time of sentencing*, not to allow a defendant to purposefully withhold information that was clearly available at the time of sentencing so that he can later present it as “new” for the purpose of a Rule 35 motion.

¹ PSI page numbers correspond with the page numbers of the electronic file “Confidential

Because Lawlor presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order granting, in part, his Rule 35 motion for reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm the district court's order granting, in part, Lawlor's Rule 35 motion for reduction of sentence.

DATED this 11th day of December, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of December, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General