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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47085-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-18-42579
v.)	
)	
TIMOTHY BRIAN FREEGARD,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Timothy Brian Freegard failed to show that the district court abused its sentencing discretion when it denied his Rule 35 motion for reduction of his sentence?

ARGUMENT

Freegard Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Freegard walked into a U.S. Bank branch in Boise, Idaho wearing a mask, hoodie and sunglasses, brandished a gun, and announced, “This is a fucking robbery.” (PSI, p. 3.) He was soon thereafter arrested with the cash he made off with. (PSI, p. 3.)

The state charged Freegard with two counts of robbery and one count of burglary. (R., pp. 20-21.) Freegard pled guilty to one count of robbery and the state dismissed the other counts. (R., pp. 31-32.) At sentencing the district court found that this was Freegard's seventh felony, that he had "been involved in this type of activity before," that he scored high on his risk to re-offend assessment, and that at [REDACTED] he had been afforded ample opportunities to "change [his] behavior" but has "simply failed to do so." (5/15/19 Tr., p. 35, Ls. 15-21.) Among other aggravators the court found that the robbery had been extensively planned, including steps to hide his appearance and avoid detection after the robbery was completed. (5/15/19 Tr., p. 36, Ls. 6-14.) The court imposed a sentence of life with ten years determinate. (R., pp. 52-55.) Freegard timely appealed from the judgment of the district court. (R., pp. 57-58.)

Freegard filed a Rule 35 motion. (Supp. R., pp. 11-12.) The district court denied the motion. (Aug., pp. 1-7.)

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

“A motion for reduction of sentence under Rule 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Sorensen, ___ Idaho ___, ___ P.3d ___, 2020 WL 1059961, at *1 (Ct. App. Mar. 5, 2020).

In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the 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.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Freegard Has Shown No Abuse Of The District Court’s Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). “In 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 motion.” State v. Bakke, ___ Idaho ___, ___ P.3d ___, 2020 WL 1698642, at *5 (Ct. App. Apr. 8, 2020).

The district court determined that Freegard had presented additional information about his mental health in support of his motion, but found that “at the time of sentencing it had ample evidence to consider regarding Defendant’s mental health issues and needs for purposes of sentencing including a mental health screening pursuant to I.C. section 19-2524.” (Aug., pp. 5-6.) The district court reaffirmed that the sentence was reasonable based on Freegard’s history and the risk he presents to society. (Aug., pp. 6-7.) The district court’s findings that this was a very serious offense with harm to the victims, that it was Freegard’s seventh felony, and that Freegard remains

a high risk of re-offense despite many prior rehabilitative opportunities, justify the sentence. The new information did not show the sentence to be unreasonable.

On appeal Freegard argues that his evidence that he had recognized the need for mental health treatment, better understood the interplay of his mental health and drug abuse issues, and had made progress in treatment “means the risk of recidivism due to those co-occurring issues is beginning to decrease.” (Appellant’s brief, p. 7.) That he presented evidence suggesting a decreased risk of recidivism does not show an actual reduced risk of recidivism, much less an abuse of discretion. The district court made no factual finding that Freegard’s risk of recidivism had been reduced. To the contrary, the district court found that the evidence did not alter the factual findings it had balanced at sentencing, which were based on ample evidence of the role mental health and drug abuse played in the crime. (Aug., pp. 5-7.)

Freegard presented additional evidence in support of his Rule 35 motion. The district court, however, found that evidence unpersuasive in terms of showing the sentence was excessive or otherwise inappropriate. Freegard has shown no abuse of discretion on appeal.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 22nd day of May, 2020.

/s/ Kenneth K. Jorgensen
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Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of May, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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