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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47144-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-18-3208
v.)	
)	
ZACHARY DOUGLAS HUNSAKER,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Hunsaker failed to show that the district court abused its sentencing discretion when it denied his Rule 35 motion to reduce his sentence following relinquishment of jurisdiction?

ARGUMENT

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

A. Introduction

On January 21, 2018, law enforcement responded to a call regarding a domestic dispute. (R., p. 16.) The victim, Erma Anderson, told law enforcement that her fiancée Zachary Hunsaker was drunk and refused to leave. (R., p. 16.) By the time law enforcement arrived, Hunsaker had

left. (R., p. 16.) Anderson told law enforcement that Hunsaker had repeatedly hit her phone out of her hand, grabbed her by the throat, and thrown her on to the couch before leaving. (R., p. 16.) While law enforcement was speaking with Anderson, Hunsaker drove by the residence. (R., p. 16.) An officer made contact with Hunsaker and confirmed that he was driving while under the influence of alcohol and over the legal limit. (R., p. 16.)

The state charged Hunsaker with felony attempted strangulation, felony violation of a no contact order, misdemeanor driving under the influence of alcohol, and misdemeanor domestic battery. (R., pp. 88-90.) Pursuant to a plea agreement, the state dismissed the attempted strangulation charge and Hunsaker pled guilty to the remaining charges. (R., pp. 83-85.) The state recommended a unified sentence of five years with two years fixed and that the district court retain jurisdiction. (R., p. 104; Tr., p. 14, L. 3 – p. 20, L. 13.) Hunsaker argued for probation. (Tr., p. 20, L. 24 – p. 29, L. 21.) The district court followed the state’s recommendation and imposed a unified term of five years with two years fixed for violation of the no contact order and retained jurisdiction.¹ (Tr., p. 38, L. 25 – p. 39, L. 5; R., pp. 108-111.) Around five months later, the Department of Corrections filed an amended presentence investigation report (APSI) recommending that the district court relinquish jurisdiction. (PSI, p. 447.²) At Hunsaker’s rider review hearing, the state recommended that the district court relinquish jurisdiction based on Hunsaker’s poor performance on the rider. (Tr., p. 49, L. 23 – p. 55, L. 12.) Hunsaker objected and asked to be placed back on the rider. (Tr., p. 55, L. 15 – p. 62, L. 4.) The district court relinquished jurisdiction. (Tr., p. 65, Ls. 12-19.) Hunsaker then made an oral motion pursuant to

¹ The district court ordered 61 days of jail on each of the misdemeanor charges, with credit for 61 days served. (R., p. 109.)

² Citations to the presentence investigation report (PSI) and APSI will be designated as “PSI” and refer to the 461-page electronic document that contains those reports.

Idaho Criminal Rule 35 to have his sentence reduced, which the district court denied. (Tr., p. 68, L. 18 – p. 69, L. 1; p. 69, L. 8 – p. 70, L. 1.) Hunsaker filed a timely notice of appeal. (R., pp. 121-25; 143-46.)

B. Standard Of Review

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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.” 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. Hunsaker Has Shown No Abuse Of The District Court’s Discretion

“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. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015). Where a sentence is neither illegal nor excessive when pronounced, “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. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016) (citing Huffman, 144 Idaho at 203, 159 P.3d at 840); see State v. Dabney, 159 Idaho 790, ___, 367 P.3d 185, 193 (2016) (affirming denial of Rule 35 motion that was not supported with any relevant information). “An appeal from the denial of a

Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” Huffman, 144 Idaho at 203, 159 P.3d at 840.

The district court properly determined that Hunsaker’s Rule 35 motion was not well-founded. (Tr., p. 69, Ls. 8-10.) Hunsaker’s motion was not supported by any new or additional information that would render the otherwise appropriate sentence excessive. Rather, his motion was a bare request for leniency to enable him to seek treatment:

[I]f the Court was going to impose this sentence if the Court would consider I suppose an oral Rule 35 in reducing the fixed time to allow [Hunsaker] to begin treatment and shifting the two plus three to a one plus four so that he can get into treatment and be parole eligible as soon as possible.

(Tr., p. 68, Ls. 19-25.) Hunsaker failed to support his motion with any basis for reducing the otherwise lawful and reasonable sentence. And, the district court found that Hunsaker’s desire to seek treatment did not justify a reduced sentence because treatment and programming would be available to Hunsaker in custody. (Tr., p. 69, Ls. 16-24.) The district court properly denied Hunsaker’s unsupported Rule 35 motion. (Tr., p. 69, Ls. 12-15.)

Nonetheless, Hunsaker argues that his sentence is excessive. The record demonstrates that the sentence imposed was reasonable in light of the facts and circumstances, and necessary to achieve the objectives of criminal punishment. As the district court noted at sentencing, Hunsaker’s criminal history demonstrates a concerning pattern of violence against and control over intimate partners. (Tr., p. 35, Ls. 17-21.) As detailed in the PSI, Hunsaker’s relevant criminal history includes misdemeanor battery, misdemeanor disturbing the peace amended from battery, felony injury to child amended from rape, misdemeanor use of a telephone to terrify/harass, misdemeanor assault amended from felony aggravated assault, misdemeanor no contact order violation, misdemeanor assault and disturbing the peace both amended from felony aggravated assault with a deadly weapon without intent to kill, and misdemeanor no contact order violation

amended from second degree stalking. (PSI, pp. 7-10.) While pending sentencing, another woman that Hunsaker was involved with sought a civil protection order against him. (See PSI, pp. 445-46; Tr., p. 34, Ls. 16-24.) The district court noted that the Domestic Assault Battery Evaluation indicates that Hunsaker has a 70 percent likelihood of committing another assault against a partner within an average of five years, based on his scores. (Tr., p. 36, L. 20 – p. 37, L. 2; PSI, p. 380.) Additionally, Hunsaker has demonstrated an unwillingness to rehabilitate in the past:

[W]hen you look at the whole picture in this case you were noncompliant when you were on parole in the past. You absconded. You started out in drug court, did not complete it. You committed a new felony. You were placed on a rider in 2007, placed on probation. There was another probation violation. Your sentence was imposed. You were put on parole. You absconded. You were put on parole again and there were more problems.

(Tr., p. 33, L. 23 – p. 34, L.7; see also p. 62, Ls. 9-15.) Despite that concerning history, the district court gave Hunsaker another chance by placing him on a rider. The district court made clear that Hunsaker needed to demonstrate compliance and take programming seriously “because you have a significant track record based on your misdemeanor history of violence towards others and that simply needs to come to an end.” (Tr., p. 37, L. 25 – p. 38, L. 7.) Hunsaker failed to do so.

Hunsaker’s behavior during his rider demonstrates that he failed to make positive changes to his behavior and attitude. Hunsaker exhibited “rude, demanding, and threatening behaviors” towards staff. (PSI, p. 449.) He was overheard “talking very aggressively or inappropriately to his fiancée on the unit phone” and shifted the blame to her when confronted about it by his case manager. (PSI, pp. 449-50.) Hunsaker was counterproductive and inappropriate in group programming. (See PSI, pp. 450-51.) He was involved in a physical altercation with another inmate in which he “admits he attacked another inmate and evidence shows that he was likely the aggressor in the incident.” (PSI, p. 450.) The APSI stated: “While Mr. Hunsaker has shown that he can follow rules at times, he has consistently demonstrated that he chooses not to,” he

“continues to do what he wants, with little to no regard for others,” and there is “serious concern that Mr. Hunsaker has not been willing to let go of his criminal and addictive thinking/behavior that continually led to negative choices, as evidenced by his most recent behavior of assaulting another inmate.” (PSI, pp. 450-51.) “Mr. Hunsaker has failed to reduce his risk to the community and continues to create victims in a controlled environment.” (PSI, p. 454.) The district court appropriately followed the APSI’s recommendation to relinquish jurisdiction. (Tr., p. 65, Ls. 5-19.)

Hunsaker argues that “the progress that he made in understanding the negative impacts that his drinking and anger issues have on others, warranted a reduced sentence.” (Appellant’s brief, p. 4.) However, the record shows that Hunsaker continued to behave aggressively and act out against others in a violent manner. The district court did not abuse its discretion by denying Hunsaker’s rule 35 motion, where the sentence imposed was necessary in light of his criminal history and poor performance on his rider.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s denial of Hunsaker’s Rule 35 request for leniency.

DATED this 6th day of February, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of February, 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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/s/ Kacey L. Jones
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